



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Lithuania

Review by the Russian Federation and Egypt of the implementation by Lithuania of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

I. Introduction

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

II. Process

The following review of the implementation by Lithuania of the Convention is based on the response to the comprehensive self-assessment checklist received from Lithuania, and any supplementary information provided in accordance with paragraph 27 of the terms of reference. It is also based on the outcome of the constructive dialogue between the governmental experts from the Russian Federation, Egypt and Lithuania, by means of telephone conferences, videoconferences, e-mail exchanges, or any further means of direct dialogue in accordance with the terms of reference of the Review Mechanism. Within the framework of the review process, the following experts were involved:

Lithuania

- Ms. Aušra Bernotienė, Director, Department of International Law; Ministry of Justice;
- Ms. Elena Koncevičiūtė, International Relations Officer; International Relations Division; Special Investigation Service; and
- Mr. Paulius Griciūnas, Deputy Director, Department of International Law, Ministry of Justice.

Russian Federation

- Mr. Aslan Yusufov (coordinator), Deputy Head, Department for Monitoring the Implementation of Legislation on Combating Corruption, Prosecutor's General Office;
- Mr. Anton Tronin, Deputy Head of the Department for preventing and countering corruption, Presidential Civil Service and Personnel Directorate, Presidential Executive Office; and

- Mr. Nidzhat Yusifov, Senior Prosecutor, Prosecutor General's Office, Division No. 1 of the Directorate for Legal Assistance, General Directorate for International Legal Cooperation.

Egypt

- Mr. Ayman Elgammal, Corruption Coordinator, Director of the Information Unit, Cabinet of the Minister of Foreign Affairs; and
- Mr. Abdelr Abelmouti Amr, Judge, Technical Office, Ministry of Justice, Member, International Cooperation Section, Ministry of Justice.

A country visit, agreed to by Lithuania, was conducted in Vilnius, Lithuania from 21 to 23 September 2011. During the on-site visit, meetings were held with representatives from the Ministry of Justice, Ministry of Interior, Financial Crimes Investigation Unit, Prosecution service and Special Investigation Service and the Prime Minister Office. A representative from the academia (Law Institute of Lithuania) was also present in the proceedings of the country visit.

III. Executive summary

1. Introduction

1.1. Legal system of Lithuania

Lithuania signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003 and ratified it on 5 December 2006. According to article 39 of the Lithuanian Constitution, the UNCAC became, upon ratification, an integral part of national legislation with overriding legal effect against any other contrary provision of domestic laws.

1.2. Overview over the anti-corruption legal and institutional framework of Lithuania

The national legal framework against corruption includes a wide range of legislative provisions from the Criminal Code (CC), the Criminal Procedure Code (CPC) and specific laws, including the Law on the Special Investigation Service; the Law on Operational Activities; the Law on Prevention of Money Laundering; and other laws on prevention of corruption.

The criminal process is governed by the CPC and is based on a typical continental/civil law system. Corruption offences are processed in the same manner, and before regular criminal courts, as all other criminal offences. The criminal justice system is based on the principle of mandatory prosecution. The

independence of the prosecution services and the courts is strongly emphasized in legislation.

Lithuania has put in place a comprehensive institutional framework to address corruption. The main anti-corruption body is the Special Investigation Service (SIS), an independent body accountable to the President of the Republic and the Parliament (Seimas), which was established in 1998 and in 2000 received a broad anti-corruption mandate.

Other specialized anti-corruption bodies in the field of corruption are the Chief Institutional Ethics Commission (CIEC); the Seimas Anti-corruption Commission (SACC); the Interdepartmental Commission for Coordinating the Fight against Corruption (ICCFC); and the Department of Organized Crime and Corruption within the Prosecutor General's Office (DOCC).

In general, the reviewers emphasized the need to make available more statistics/cases on the implementation of legal provisions that would facilitate an assessment of their effectiveness. The importance of concrete practical information on how the coordination of anti-corruption institutions is accomplished at the operational level was stressed. The Lithuanian authorities indicated that the new anti-corruption programme, adopted by the Parliament in June 2011, was expected to focus on practical issues of enforcement and, thus, shape a better picture of implementation practice.

2. Implementation of chapters III and IV of UNCAC

2.1. Criminalization and Law Enforcement (Chapter III — UNCAC)

2.1.1. Criminalization (Articles 15 to 28)

2.1.1.1. Main findings and observations

Existing incriminations of active (art. 227 CC) and passive (art. 225 CC) bribery of national public officials, as amended in May 2011, were found to be in compliance with the requirements of article 15 of the UNCAC.

An amendment to article 230 CC, which was adopted by the Parliament and came into force on 5 July 2011, introduced a new paragraph on the definition of “bribe”, which covers any form of benefit, whether material or immaterial.

Similarly, the 2011 amendments to article 227 CC introduced an explicit reference to cases where the advantage is not intended for the official him/herself but for a third party (third-party beneficiary).

A broad definition of the public official is provided in article 230 CC and includes foreign and international public officials. Accordingly, for the prosecution of corruption offences involving foreign and international public officials, the same articles are applied as for corruption of domestic public officials.

The embezzlement, misappropriation or other diversion of property by a public official is criminalized through article 228 (“Abuse of Office”); article 183 (“Misappropriation of Property”); and article 184 (“Squandering of Property”) CC.

The review team noted that the public official as perpetrator of the offence was only enshrined in the typology of abuse of office and that, further, articles 183-184 CC refer to “another’s property” in general and not to property entrusted to the public official by virtue of his/her position. The Lithuanian authorities clarified that articles 183 and 184 CC did not make a distinction between the private or public sector. If the relevant offences are committed through abuse of office, the established court practice is to apply article 228 CC in concurrence with articles 183 and 184. The diversion of property by a public official is not criminalized as a separate offence. Such an act can again be prosecuted under the provisions of article 228 CC (“Abuse of Office”).

The reviewers argued in favour of putting in place ad hoc criminalization provisions to cover acts of embezzlement, misappropriation or diversion of property by a public official. This is also because the analogous application of article 228 CC may lead to the establishment of criminal responsibility for diversion of property by a public official only when the acts have caused major damage (see below), while the Convention does not foresee this requirement.

The 2011 amendments of CC included changes in the wording of article 226 CC to address shortcomings regarding the criminalization of trading in influence. In its new wording, article 226 CC establishes criminal liability for trading in influence involving the use of one’s social position, office, powers, family relations, acquaintances or any other kind of possible influence, the latter covering both real and supposed influence. The amended provision also introduces an explicit reference to “third-party beneficiaries”.

The abuse of functions is criminalized through article 228 CC. The judicial practice of the Supreme Court interprets the (major) damage required for applying article 228 in a wide sense, thus covering both material and immaterial damage. The review team, bearing in mind the optional wording of article 19 of the UNCAC, noted that the notion of “damage” was not required by the Convention. This additional restriction of the domestic legislation may result in non-criminalization of acts of abuse of office by which no damage was caused.

Illicit enrichment is criminalized through article 189-1 CC, which was adopted on 2 December 2010.

The passive and active bribery in the private sector are criminalized by the same provisions as those on bribery of public officials (“a public servant or a person of equivalent status”).

The current money-laundering provision (art. 216 CC) only partially implements the relevant UNCAC requirements, as it lacks — or partially covers — some of the objective elements prescribed in article 23 of the Convention. In order to cope with existing shortcomings, a draft Law supplementing and amending article 216 CC was in the legislative pipeline and expected to be adopted by the end of 2012. Under the current status of legislation, predicate offences for purposes of money-laundering include any offence listed in the CC, including corruption-related crimes.

The reported provisions of the CC (arts. 189, 237 and 238) were not found to fully cover the requirement of the “concealment or continued retention of property obtained as a result of offence”, as prescribed in article 24 of the UNCAC (optional provision).

The provisions on the criminalization of obstruction of justice (arts. 231 and 233 CC) were found to fully meet the requirements of article 25 of the UNCAC.

Lithuania has introduced in its legal system (art. 20 CC) the criminal responsibility of legal persons. However, there is no clarity in the domestic legislation as to the imposition of sanctions to legal persons for specific offences. The reviewing experts welcomed relevant examples from jurisprudence and invited the Lithuanian authorities to continue to pursue further clarity on this issue, especially with regard to the criteria of choosing between different types of sanctions against legal persons.

2.1.1.2. *Successes and good practices*

The following were identified as good practices by the review team:

- *The criminalization of a wide array of corruption-related conducts. It is noteworthy that Lithuania also adopted legislative measures to criminalize illicit enrichment.*
- *The approach to incriminate the offer and/or promise of bribery, as well as the promise or agreement to accept a bribe, as autonomous conducts, rather than through attempt or preparation to commit bribery.*
- *The establishment of criminal liability of legal persons involved in the commission of UNCAC-based offences.*
- *The latest amendments in the CC allowing for a wider incrimination of bribery to cover any form of benefit, whether material or immaterial, as well as cases where the advantage is intended for a third-party beneficiary.*
- *Although there was no data or jurisprudence available to assess the effectiveness of the incrimination of bribery in the private sector, the review team noted the practice to criminalize by the same provisions bribery in both the public and private sectors as an asset in the fight against corruption. The strengths of this approach relate to the decreased possibility of loopholes when determining the provisions applicable to private sector entities in charge of a public service or public-private partnerships.*

2.1.1.3. *Challenges and recommendations*

While noting Lithuania's considerable efforts to achieve full compliance of the national legal system with the UNCAC criminalization provisions, the reviewers identified some grounds for further improvement and made the following recommendations for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant UNCAC requirements):

- *Explore ways to secure that the embezzlement, misappropriation or other diversion of property made by a public official are criminalized through specific provisions;*
- *Undertake appropriate follow-up action to ensure the timely enactment of the new legislation supplementing and amending the existing provision of the CC on money-laundering;*
- *Explore the possibility of giving more precise description of the act of concealment and, thus, ensure more effective implementation of article 24 of the UNCAC at the domestic level;*

- *Study the possibility of criminalizing the abuse of functions regardless of the damage caused and in line with the requirements of article 19 of the UNCAC; and*
- *Continue to pursue further clarity in jurisprudence as to the imposition of sanctions to legal persons for specific offences by means of identifying thresholds of penalties for such legal persons, as well as specifying appropriate indicators for application of a certain type of penalty; in doing so, take into consideration the size or the financial situation of the legal person.*

2.1.2. Supporting provisions to criminalization (Articles 29-35, 37, 40-42)

2.1.2.1. Main findings and observations

The sanctions applicable to natural and legal persons involved in most corruption offences appear to be adequate and dissuasive. Specifically with regard to active and passive bribery and trading in influence, it was specified during the country visit that recent amendments in the legislation foresaw a complete overhaul of the penalties available.

New legislation was adopted in June 2010 extending the statute of limitations in respect of all criminal offences (art. 95 CC). The new extended time limits appear to be adequate enough to preserve the interests of the administration of justice. The amended article 95 CC further provides for the suspension of the statute of limitations during the case hearing at court.

According to the Constitution, immunity from prosecution is accorded to the members of Parliament (Seimas), the President of the Republic, the Prime Minister and ministers, and judges. Immunities may be lifted with the consent of more than half of all MP's. For impeachment there is a need of a 3/5 majority.

Confiscation may be ordered with regard to proceeds of crime, instrumentalities and means of crime. It may also be ordered, pursuant to jurisprudence of the Supreme Court, in relation to property obtained from criminal activities which was converted into other property. It is usually considered separately from the sentencing of the offender, without being dependent on his/her conviction (in rem confiscation), and is imposed regardless of the sanction. The burden of proof in relation to the proceeds of crime lies with the prosecution. In exceptional cases of "extended confiscation" against illegally obtained property found to be disproportionate to the lawful income of the offender, the offender is obliged to furnish facts proving the lawfulness of the acquisition of this property.

Two issues were found by the review team to require further attention in relation to proceeds of corruption:

(a) The lack of clarity in the legislation regarding the confiscation of income and other benefits derived from corresponding proceeds of crime or property, i.e. added value of such property, as required in article 31, paragraph 6, of the UNCAC, in particular, whether “property received directly or indirectly from a criminal act”, as set forth in article 72, paragraph 2, CC covers instances of confiscation of secondary proceeds of crime;¹ and

(b) The need for additional clarity regarding the definition and nature of “good will” of third parties to ensure that their rights are not prejudiced.²

Lithuania has put in place a rather comprehensive system for the protection of different categories of witnesses, victims and other participants in criminal proceedings from potential retaliation and intimidation. The review team argued in favour of ensuring in an explicit manner that the status of victims in criminal proceedings is afforded not only to natural persons, but also to legal persons.

The Lithuanian authorities reported on a law supplementing the CPC, in force since December 2010, which provides for partial anonymity of witness testimony and offers additional guarantees to secret witnesses who report offences of corruption.

There is still no ad hoc legislation in Lithuania ensuring the protection of reporting persons, as set forth in article 33 of the UNCAC and the reviewers called the national authorities to reconsider the need for such legislation.³

¹ The Lithuanian authorities provided assurances that amendments in art. 72, para. 2, CC have introduced a definition of the proceeds of crime which includes both direct and indirect proceeds. Upon relevant request, the Lithuanian authorities provided information on relevant jurisprudence of the Supreme Court and an appeal court to substantiate that property subject to confiscation also includes items of economic value, money or other assets newly acquired from such property. The reviewers welcomed this jurisprudence and favoured its consistent development on this matter.

² The Lithuanian authorities clarified that the outcome of the property acquired in good faith was to be resolved in accordance with the provisions prescribed in the Civil Code.

³ The Lithuanian Parliament has registered a number of draft laws specifically dealing with the legal protection of whistle-blowers of corruption related offences. These drafts were discussed extensively and received different assessments. The position on this issue was expressed by Governmental Resolution No. 1649 of 17 November 2010 “On the Republic of Lithuania Draft Law No. XIP-2459 on the Protection of Whistle-Blowers”, whereby the Government did not approve the draft laws arguing that separate legislation on this issue would be superfluous.

The domestic legislation further provides incentives to persons who have participated in corruption offences to supply information useful for investigative and evidentiary purposes. Such incentives include the recognition of mitigating circumstances or grounds for providing immunity from prosecution. Agreements with Estonia and Latvia in this field have been reported.

Jurisdiction is established in articles 4-8 CC and includes territorial jurisdiction for all crimes. Jurisdiction based on the active personality principle is also established, but insufficient information was provided regarding the passive personality principle. The domestic provisions establishing jurisdiction over offences committed against the State Party did not refer to UNCAC offences. The reviewing experts also noted that double criminality impeded prosecution against a national who has committed an offence abroad — or a foreigner who has committed an offence and is located in Lithuania without a possibility to be extradited for some reason — where the offence at stake is not established in the CC. In response, the Lithuanian authorities reported that the recent amendments in the CC expanded jurisdiction by additionally listing in article 7 CC (Criminal Liability for the Crimes Provided for in Treaties) active and passive bribery offences. However, article 7 CC seems to expand excessively the jurisdictional limits by introducing the principle of universality without any clarification on the establishment of that principle by the international treaty per se. The Lithuanian authorities underscored that such expansion of jurisdiction should be understood in the national context and therefore it was irrelevant whether the international treaty itself required universal jurisdiction or not.

The consequences for acts of corruption and compensation for damages are addressed through the Civil Code and the Civil Procedure Code — in addition to the criminal legislation — and the civil system enables annulment of contracts and compensation for damages in cases of corruption. Lithuania is also a party to the Council of Europe Civil Law Convention on Corruption which covers these matters.

Bank secrecy does not seem to present an obstacle to domestic investigation. A number of legal acts grant law enforcement agencies effective and prompt access to financial information falling under the bank secrecy as provided for in the Law on Banks. Bank secrecy can be lifted by court order and upon request of the prosecutor.

2.1.2.2. Successes and good practices

The review team identified the following measures, initiatives or practices that are of particular value for Lithuania in its efforts against corruption and have the potential to significantly facilitate the prosecution or adjudication of corruption-related offences:

- The strengthening of sanctions against some of the qualified corruption offences;*
- The streamlining of legislation on the statute of limitations;*
- The wide array of sanctions of criminal nature against legal persons as a result of the far-reaching recognition of their criminal liability;*
- The possibility of non-conviction-based confiscation;*
- The extended confiscation against illegally obtained property found to be disproportionate to the lawful income of the offender and the relevant obligation of the offender to furnish facts proving the lawfulness of the acquisition of this property (reversed burden of proof);*
- The comprehensive legal and other measures for the protection of different categories of witnesses, victims and other participants in criminal proceedings from potential retaliation and intimidation; and*
- The practice of granting law enforcement agencies effective and prompt access to financial information.*

2.1.2.3. Challenges and recommendations

Bearing in mind the laudable progress that Lithuania has made in putting in place effective measures to support criminalization against corruption acts, the review team highlighted some areas for further improvement and proposed the following recommended action to be taken or considered by the competent national authorities (depending on the mandatory or optional nature of the relevant UNCAC requirements):

- Develop consistent jurisprudence to provide clarity regarding the confiscation of income and other benefits derived from corresponding proceeds of crime or property, i.e. added value of such property, as required in article 31, paragraph 6, of the UNCAC, in particular, whether “property received directly or indirectly from a criminal act”, as set forth in article 72, paragraph 2, CC covers instances of confiscation of secondary proceeds of crime;*
- Pursue action, including through the consistent development of relevant jurisprudence, to secure that the concept of “good will” of third parties is applied in a manner that is not prejudicial to their rights in confiscation procedures;*

- *Ensure, in line with article 35 of the UNCAC, that legal persons or entities would benefit not only from the status of civil plaintiff, but also from the status of victim in criminal proceedings, as such status is currently afforded only to natural persons;*
- *Take into account the need to reconsider the development of specific legislation on the protection of reporting persons, to further ensure that procedural and non-procedural witness protection measures are applied to whistle-blowers in corruption cases;*
- *Continue to clarify the interpretation of existing legislation on criminal jurisdiction through jurisprudence to enable a more comprehensive and flexible scheme of criminal jurisdiction over corruption offences.*

2.1.3. Articles 36, 38-39: Specialized authorities and inter-agency cooperation

2.1.3.1. Main findings and observations

Several state bodies and agencies have been established to deal with anti-corruption measures in the field of law enforcement and operate within their respective areas of competence. Domestic legislation gives the SIS a wide range of investigative powers.

The Financial Investigation Service (FIS) cooperates with the SIS by analyzing financial information for it. When the FIS obtains well-grounded information about suspicious financial transactions involving corruption or money-laundering, it refers the case to the SIS. The FIS has a right to investigate information regarding the opening of an account but purely for intelligence purposes. Banks are obliged to provide all information about opened accounts to the FIS.

2.1.3.2. Successes and good practices

The reviewing experts underlined that the diversity of law enforcement institutions and their different institutional placement contributed to the establishment of a system of checks and balances among anti-corruption services with extensive powers. They further noted that most of the existing institutions enjoyed a high level of independence.

The review team noted the key role of the SIS as a specialized anti-corruption body, which appears to have sufficient powers for effective law enforcement.

2.1.3.3. Challenges and recommendations

The review team identified the following recommended action with the intention to assist the national authorities in their efforts to strengthen the effectiveness of law enforcement against corruption:

- *Consider the allocation of additional resources to strengthen the efficiency and capacity of law enforcement bodies and agencies;*
- *Continue to strengthen inter-agency coordination and cooperation in the field of law enforcement against corruption, as well as the exchange of information among competent bodies, with a view to avoiding, to the extent possible, conflicts at the institutional level.*

2.2. International Cooperation (Chapter IV — UNCAC)

2.2.1. Extradition, transfer of sentenced persons and transfer of criminal proceedings (Articles 44, 45 and 47) — Main findings and observations

A two-tier system on extradition has been put in place in Lithuania. With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the Framework Decision on the European Arrest Warrant (2002). This decision has been implemented in Lithuania by the amendments to the CC and CPC and entered into force in May 2004. The FD departs from the requirement of double criminality for offences punishable by a custodial sentence for a maximum of at least three years (money-laundering and some corruption offences fall into that category).

With regard to other countries, Lithuania makes extradition dependant on the existence of a treaty. The country is bound by existing multilateral treaties (Council of Europe Convention on Extradition and its two Additional Protocols; UNTOC). Lithuania has concluded bilateral extradition treaties with the United States of America and China and is negotiating treaties with Algeria, Egypt, Mexico and India.

The procedural aspects of extradition are regulated by the CPC. Requests for extradition to another State are processed through the Prosecutor General's Office or through the Ministry of Justice. Regular provisions of the CPC related to arrest and pre-trial custody are applicable to persons subject to extradition procedures unless the applicable treaty provides otherwise.

Lithuania notified the Secretary-General that it considers the UNCAC as a legal basis for extradition except for the extradition of nationals. Article 13 of the Constitution prohibits

the extradition of nationals, unless an international treaty permits so. Article 9, paragraph 1, CC stipulates that a national may be extradited “solely in accordance with a treaty to which the country is a party”.

The time frame needed to grant an extradition request varies depending on whether the whereabouts of the person sought are known, the complexity of the case and the potentially parallel asylum proceedings. Despite the lack of concrete statistics, it was reported that, on average, it takes from 1.5 to 4 months for an extradition case to be completed. The EAW process has contributed to shortening the period needed for the surrender of a fugitive to another EU Member State, but no statistics were available to support this observation.

No specific information was provided on the practical application of article 44, paragraph 11, of the UNCAC. Conditional surrender of nationals, as foreseen in article 44, paragraph 12, of the Convention, is carried out within the framework of the EAW process.

The transfer of sentenced persons is regulated by the CPC, as well as the European Convention on the Transfer of Sentenced Persons and its Additional Protocol to which Lithuania is a party. Bilateral treaties have been concluded with Azerbaijan, Belarus, Poland and the Russian Federation. At present, Lithuania is considering the possibility of entering into agreements with Argentina, Brazil, Cuba, Morocco, Pakistan and Peru.

Transfer of criminal proceedings is enabled through article 68 CPC and the European Convention on the Transfer of Proceedings in Criminal Matters to which Lithuania is a party.

2.2.2. Mutual legal assistance (Article 46) — Main findings and observations

Mutual legal assistance is subject to the provisions of the CPC and international agreements and can be afforded for all purposes stipulated in article 46, paragraph 3, of the UNCAC, provided that this does not contravene the Constitution and the national laws and is not against the fundamental principles of the criminal procedure of Lithuania (art. 67 CPC). Bank secrecy does not seem to present an obstacle for granting assistance.

In cases of MLA requests involving restrictions of human rights, the provision of assistance is subject to the double criminality requirement, as well as the assessment whether or not it violates the Constitution, the domestic legislation and the fundamental principles of criminal procedure. If no violation

exists, the request may be executed even in the absence of double criminality.

The Ministry of Justice and the Prosecutor General's Office are the designated central authorities to receive MLA requests. Lithuania has notified the Secretary-General of the United Nations accordingly. The MLA requests can be transmitted through diplomatic channels or, in urgent circumstances, through Interpol. Direct cooperation between competent authorities is also possible.

The time needed for dealing with MLA requests varies depending on the nature of the request, the type of assistance and the complexity of the case. On average, it does take up to four months to execute MLA requests.

No specific information was provided on practical cases of postponement of MLA proceedings and consultations before refusal of MLA requests. The execution of MLA requests may be postponed for objective reasons, for instance, when a person who is requested to be questioned has left Lithuania.

Lithuania has concluded bilateral and subregional MLA treaties with Armenia, Azerbaijan, Belarus, Estonia, Kazakhstan, Latvia, Poland, the Republic of Moldova, the Russian Federation, Ukraine and Uzbekistan.

2.2.3. Law enforcement cooperation, joint investigations and special investigative techniques (Articles 48 to 50) — Main findings and observations

Law enforcement cooperation is facilitated through the conclusion of bilateral agreements with a number of countries, including Belarus, Finland, Germany, Hungary, Kazakhstan, Latvia, Poland, Slovakia, Spain, Turkey, Ukraine, the United States and Uzbekistan.

As a member of INTERPOL, Eurojust and Europol, Lithuania is in a position to use and provide information through their databases as well as through the Schengen Information System. International cooperation in the field of gathering evidence through special investigative means and joint investigation teams is possible and subject to the CPC and the Law on Operational Activities. In addition, a special Recommendation on Joint Investigations has been adopted by the Prosecutor General to facilitate investigations on a case-by-case basis.

2.2.4. Successes and good practices in the field of international cooperation

The review team concluded that Lithuania had established a solid framework of international judicial and law enforcement cooperation. Clear indications and examples of particular value for the country's efforts to strengthen international cooperation and networking are the following:

- The status as State party to numerous regional instruments on different forms of international cooperation per se, as well as regional and multilateral instruments on corruption, money-laundering and organized crime, containing provisions on international cooperation in criminal matters;*
- The membership and active participation in EU bodies such as Eurojust and Europol, aimed at facilitating inter-State judicial assistance and law enforcement cooperation within the European Union.*

2.2.5. Challenges and recommendations in the field of international cooperation

The following is brought to the attention of the Lithuanian authorities as recommended action to be taken or considered (depending on the mandatory or optional nature of the relevant UNCAC requirements) for further enhancement of international cooperation:

- Systematize and make best use of statistics, or, in their absence, examples of cases indicating the length of extradition and MLA proceedings to assess their efficiency and effectiveness;*
- Continue to make best efforts to ensure that extradition and MLA proceedings are carried out in the shortest possible period;*
- Systematize and make best use of statistics, or, in their absence, examples of cases of simplified extradition, postponement of MLA proceedings and enforcement of foreign criminal judgements;*
- Continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of different forms of international cooperation;*
- Consider the allocation of additional resources to strengthen the efficiency and capacity of international cooperation mechanisms.*

IV. Implementation of the Convention

A. Ratification of the Convention

The Republic of Lithuania (hereinafter – Lithuania) signed the Convention on 10 December 2003, and ratified it on 9 December 2006. Lithuania deposited its instrument of ratification with the Secretary-General of the United Nations on 21 December 2006.

Legislation for the purpose of UNCAC implementation, including the Law of the Republic of Lithuania on the Ratification of the United Nations Convention against Corruption (X- 943)– was adopted by the Parliament of the Republic of Lithuania on 5 December 2006, was enacted and published in the Official Gazette “Valstybės žinios” No.36 on 14 December 2006.

B. Legal system of Lithuania

Article 39 of the Constitution states that generally accepted rules of international law and international conventions when they have been ratified by law and have come into effect shall form an integral part of Lithuania’s domestic law and shall override any other contrary provision of domestic law.

Article 11(2) of the Law on Treaties state that if a ratified treaty of the Republic of Lithuania which has entered into force establishes norms other than those established by the laws, other legal acts of the Republic of Lithuania which are in force at the moment of conclusion of the treaty or which entered into force after the entry into force of the treaty, the provisions of the treaty of the Republic of Lithuania shall prevail.

Accordingly, the United Nations Convention against Corruption has become an integral part of Lithuania’s domestic law following ratification of the Convention by the Parliament on 5 December 2006 and entered into force on 21 March 2007 in accordance with Article 68 of the Convention.

C. Overview of the anti-corruption legal and institutional framework of Lithuania

The national legal framework against corruption includes a wide range of legislative provisions from the Criminal Code (CC), the Criminal Procedure Code (CPC) and specific laws, including the Law on the Special Investigation Service; the Law on Operational Activities; the Law on Prevention of Money Laundering; and other laws on prevention of corruption.

The criminal process is governed by the CPC and is based on a typical continental/civil law system. Corruption offences are processed in the same manner, and before regular criminal courts, as all other criminal offences. The criminal justice system is based on the principle of mandatory prosecution. The independence of the prosecution services and the courts is strongly emphasized in legislation.

Lithuania has put in place a comprehensive institutional framework to address corruption. The main anti-corruption body is the Special Investigation Service (SIS), an independent body accountable to the President of the Republic and the Parliament (Seimas), which was established in 1998 and in 2000 received a broad anti-corruption mandate.

Other specialized anti-corruption bodies in the field of corruption are the Chief Institutional Ethics Commission (CIEC); the Seimas Anti-corruption Commission (SACC); the Interdepartmental Commission for Coordinating the Fight against Corruption (ICCF); and the Department of Organized Crime and Corruption within the Prosecutor General's Office (DOCC).

In general, the reviewers emphasized the need to make available more statistics/cases on the implementation of legal provisions that would facilitate an assessment of their effectiveness. The importance of concrete practical information on how the coordination of anti-corruption institutions is accomplished at the operational level was stressed. The Lithuanian authorities indicated that the new anti-corruption programme, adopted by the Parliament in June 2011, was expected to focus on practical issues of enforcement and, thus, shape a better picture of implementation practice.

D. Implementation of articles under review

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented by Article 227 of the Criminal Code (see Annex 1).

The Lithuanian authorities reported after the country visit that an amendment to Article 230 CC, which was adopted by the Parliament and came into force on 5 July 2011, introduced a new paragraph providing for a definition of “bribe”, which contains all the necessary elements of an “undue advantage” and covers any form of benefit, whether material or immaterial.

Similarly, and in response to the issue raised by the review team on the scope of bribery offences to cover cases where the advantage is not intended for the official him/herself but for

a third party (*third-party beneficiary*), the Lithuanian authorities reported that the 2011 amendments to art. 227 CC had introduced an explicit reference to “third party beneficiaries”.

It was indicated that the effectiveness of the measures adopted to criminalize active bribery of national public officials had been assessed. In this regard, Lithuania referred to two supporting documents:

- Supreme Court Case Overview (see Annex 2 pt. 1);
- Overview of corruption cases carried out by the Prosecutor General's Office (see Annex 3 pt 1).

The parts of these documents relating to the implementation of the provision under review are reflected in Annexes 2 and 3.

Lithuania further referred to the review conducted in the framework of the third evaluation round of the Group of State against Corruption (GRECO).

(b) Observations on the implementation of the article

The existing incrimination of active bribery of national public officials (art. 227 CC) was found to be in compliance with the requirements of article 15 of the UNCAC. A “*graft*”, provided for in art. 227 CC, is “*an offer, promise to give or giving of a bribe to a civil servant or a person equivalent thereto for a desired lawful act or inaction in exercising his powers or to an intermediary seeking to achieve the same results*”.

The review team welcomed the 2011 amendments in the text of articles 227 and 230 CC, on the issues of “third party beneficiaries” and the definition of a bribe respectively. These amendments were considered to be in compliance with the requirements set forth in article 15(a) of the UNCAC.

A special norm included in art. 227 para. 4 CC provides the legal basis for effective regret and enables the release of the offender from criminal liability for grafting, when this person “was demanded or provoked to give a bribe and he, upon offering, promising or giving the bribe and before the delivery of a notice of suspicion raised against him, notifies a law enforcement institution thereof or offers, promises or gives the bribe with the law enforcement institution being aware thereof”.

(c) Successes and good practices

- The approach to incriminate the offer and/or promise of bribery as an autonomous conduct rather than through attempt or preparation to commit bribery.
- The latest amendments in the CC allowing for a wider incrimination of bribery to cover any form of benefit, whether material or immaterial, as well as cases where the advantage is intended for a third-party beneficiary.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented by Article 227 of the Criminal Code (see Annex 1).

It was indicated that the effectiveness of the measures adopted to criminalize active bribery of national public officials had been assessed. In this regard, Lithuania referred to two supporting documents:

- Supreme Court Case Overview (see Annex 2 pt. 2);
- Overview of corruption cases carried out by the Prosecutor General's Office (see Annex 3 pt. 2).

The parts of these documents relating to the implementation of the provision under review are reflected in Annexes 2 and 3.

Lithuania further referred to the review conducted in the framework of the third evaluation round of the Group of State against Corruption (GRECO).

(b) Observations on the implementation of the article

Based on the information provided above it appears that Lithuania has implemented the provision under review. The existing incrimination of passive bribery of national public officials (art. 225 CC, as amended in 2011) was found to be in compliance with the requirements of article 15 of the UNCAC.

(c) Successes and good practices

- The approach to incriminate the promise or agreement to accept a bribe as an autonomous conduct, rather than through attempt or preparation to commit bribery.
- The latest amendments in the CC allowing for a wider incrimination of bribery to cover any form of benefit, whether material or immaterial

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented by Articles 227 and 230 (especially para. 2) of the Criminal Code (see Annex 1).

Under Para 2 of Article 230, a person holding appropriate powers at a foreign state institution, an international public organization or international judicial institutions, also official candidates for such office shall be held equivalent to a civil servant. Moreover, a person who works at any state, non-state or private body, undertaking or organization or engages in professional activities and holds appropriate administrative powers or has the right to act on behalf of this body, undertaking or organization or provides public services shall also be held equivalent to a civil servant (Para 3 of Article 230).

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

It should be noted that paragraph 1 of Article 230 CC defines the concept of the civil servant, based on which persons who have the characteristics specified therein are considered civil servants within the meaning of the Criminal Code. Paragraphs 2 and 3 of Article 230 CC contain an interpretation of what persons, within the meaning of the Criminal Code, are held equivalent to the civil servants specified in paragraph 1 of Article 230 CC. Paragraph 2 of Article 230 CC states that, within the meaning of the Criminal Code, persons holding *appropriate powers* at a foreign state institution, an international public organisation or international judicial institutions, also official candidates for such office shall be held equivalent to civil servants, which is equivalent to the concepts of "a foreign public official or an official of a public international organization" referred to in Article 16 of the Convention. Unlike paragraph 3 of Article 230 CC, paragraph 2 does not contain a list of powers held by such foreign public officials, but it is limited to the wording of a general nature – "a person holding *appropriate powers* at a foreign state institution", in order not to narrow the circle of such persons who fall within the list of those public officials under different laws of foreign states, and thereby not to narrow the scope of Articles 225 to 229 of the Criminal Code. Accordingly, any powers held by a person at a foreign state institution, an international public organisation or international judicial institutions, taking into account the differences of laws of foreign states on the relationships of civil service, etc., would be evaluated ad hoc each time, seeking to establish whether he or she holds *appropriate powers* that would allow concluding, based on the laws of that state, that the person is a civil servant or official of a foreign state institution, an international public organisation or international judicial institutions (i.e. according to the Convention – whether he or she is a foreign public official or an official of a public international organization). It should be noted that any attempt to specify the powers held by persons referred to in paragraph 2 of Article 230 CC (for example, by inserting the following wording – a person holding appropriate *administrative or public administration*, etc., powers), bearing in mind that the differences of laws of foreign states on

the relationships of civil service, etc., would mean an inevitable narrowing of the circle of persons who under the different laws of *all* foreign states fall within the lists of officials of those states, since laws of different states may simply provide for different powers of officials that would no longer comply with the list of powers laid down in paragraph 2 of Article 230 CC (for example, an official of some state may have no public administration powers, etc.). In view of that, it should be stated that the provisions of Article 230 CC are harmonised with those of the Convention (it is noteworthy that the report of the Council of Europe's Group of States against Corruption (GRECO) of 2 July 2009 to the Republic of Lithuania contains no comments regarding Article 230 CC. On the contrary, this article is evaluated as a strength of the Lithuanian Criminal Code), and that there are no obstacles that prevent any effective prosecution in the event of bribery committed by foreign public officials and officials of public international organizations.

(b) Observations on the implementation of the article

Liability for the promise, offering or giving to a public official directly or indirectly of an undue advantage is provided in Article 227 of the Criminal Code. As to the question whether this provision could be applicable in case covered by article 16, paragraph 1, of the UNCAC through an expanded definition of a public official to include international public officials as well, the reviewing experts had raised, at an initial phase, specific concerns. The main argument was that the Criminal Code does not specify the concept of a public official or an official of a public international organization. Lithuania only indicates that these subjects “..are equivalent to a state officer..”, and it does not explain what powers should be granted to a foreign public official or to an official of a public international organization to make him or her liable under this Article of the Criminal Code.

However, the additional explanations provided by the Lithuanian authorities, as cited above, were found convincing. Hence, the reviewing experts were finally satisfied that a broad definition of the public official is provided in art. 230 CC and includes foreign and international public officials. Accordingly, for the prosecution of corruption offences involving foreign and international public officials, the same articles are applied as for corruption of domestic public officials.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented Article 225 of the Criminal Code (see Annex 1).

(b) Observations on the implementation of the article

See above, under article 16, paragraph 1, of the UNCAC.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the embezzlement, misappropriation or other diversion of property by a public official is criminalized through the use of a nexus of provisions of the CC, including art. 228 on “Abuse of Office”; art. 183 on “Misappropriation of Property”; and art. 184 on “Squandering of Property”. (see Annex 1).

Lithuania provided additional clarification in response to the comments of the reviewing experts as follows:

First, it should be noted that the body of the criminal act indicated in Article 228 of the Criminal Code (CC) is a special rule of abuse of office (CC Article 228), and the said article does not establish "major damage" as a compulsory characteristic of the body of this criminal act, i.e. since the nature of the criminal acts specified in CC Articles 228 and 2281 is different, there is no need, for the purpose of attributing CC Article 2281 to the guilty party, to prove that this criminal act has caused major property or non-property damage.

As regards the criminal act (Abuse of Office) indicated in Article 228 CC, it is necessary, for the purpose of proving a specific instance of abuse of office, to identify major property or non-property damage which in each instance should be evaluated ad hoc in a specific case. It should be noted that an instance of abuse can cause both property and non-property damage, which in the body of abuse may occur as a person's physical pain, emotional experience, emotional shock, emotional depression, humiliation, inferior reputation, damaged prestige of the State, disorganisation of regular activities of the State mechanism, its institutions, offices and organisations, etc. In view of the foregoing and the provisions of Article 47 of the Convention, it should be stated that "the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position" undoubtedly causes major property damage (as abuse of office results in the embezzlement, misappropriation, diversion, etc. of any property not owned by a public official) to the State, an international public organisation, a legal or natural person (as stipulated in Article 228 CC). If for some reasons these actions caused no property damage, such actions of public officials would certainly cause non-property damage to the entities referred to in Article 228 CC (e.g. the State), i.e. such acts would lower the prestige of the State or of an appropriate institution, disorganise the regular activities of the State mechanism, its institutions, offices and organisations, etc.

Therefore, it should be stated with respect to the point in question that there is no conflict between the provisions of Article 228 CC and those of Article 17 of the Convention.

Article 17 of the Convention refers to three different acts, i.e. the *embezzlement, misappropriation or other diversion* by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

The main difference among these acts is that, *in the event of misappropriation*, the property entrusted to or held at the disposal of a public official passes into the ownership of the guilty party (later on, it can be transferred also to third parties, and any further transfer of misappropriated property remains outside the scope of a criminal act. In the event of embezzlement, any property entrusted to or held at the disposal of a public official passes into the ownership of third parties (as the property has been embezzled, and the guilty party has no property left). *In the event of diversion*, the property entrusted to or held at the disposal of a public official is simply *used* unlawfully.

Accordingly:

- *in the event of misappropriation* of any property entrusted to or held at the disposal of a public official, two CC articles are attributed to the guilty party at once (multiple offences), i.e. Article 183 (Misappropriation of Property) and Article 228 (Abuse of Office). Therefore, the misappropriated property can be afterwards transferred to third parties as well; however, this does not affect the classification of the act;

- *in the event of embezzlement* of any property entrusted to or held at the disposal of a public official, two CC articles are attributed to the guilty party at once (multiple offences), i.e. Article 184 (Squandering of Property) and Article 228 (Abuse of Office). Therefore, the misappropriated property passes into the ownership of third parties (as it has been embezzled, and the guilty party has no property left);

- in the event of diversion of any property entrusted to or held at the disposal of a public official by virtue of his or her position, only paragraph 1 of Article 228 CC is attributed to the guilty party, and the fact whether the public official used the property personally or allowed third parties to use the property unlawfully does not affect the classification of the act. Meanwhile, where a public official used the property for personal needs or allowed third parties to use the property unlawfully, seeking material or another personal gain, the act would be classified under paragraph 2 of Article 228 CC.

(b) Observations on the implementation of the article

The review team noted that the required constituent element of the perpetrator of the offence established in accordance with article 17 of the UNCAC (“by a public official”) was only enshrined in the typology of the crime of abuse of office, as prescribed in article 228 CC, and that, further, articles 183-184 CC refer to “another’s property” in general and not to property entrusted to the public official by virtue of his/her position. The Lithuanian authorities clarified that specifically for embezzlement or misappropriation of property in the public sector, the practice followed was to apply articles 183-184 in conjunction with the provision on abuse of office. In addition, the diversion of property by a public official is not criminalized as separate offence. Such an act can again be prosecuted under the provisions of art. 228 CC (abuse of office).

The reviewers argued in favour of putting in place ad hoc criminalization provisions to cover acts of embezzlement, misappropriation or diversion of property by a public official. This is also because the analogous application of art. 228 CC may lead to the establishment of

criminal responsibility for diversion of property by a public official only when the acts have caused major damage (see below), while the Convention does not foresee this requirement. In conclusion, the reviewing experts called the Lithuanian authorities to explore ways to secure that the embezzlement, misappropriation or other diversion of property made by a public official are criminalized through specific provisions;

Article 18 Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented by Article 226 of the Criminal Code, as amended in 2011 (see Annex 1).

The newly amended provision of Article 226 CC suggests a number of changes:

- Firstly, it is suggested to supplement Article 226 CC by a new paragraph 1, which would include an active part of an act (trading in influence according to the Convention), i.e. criminal liability for behaviour whereby it is sought to have another person exert existing influence (offering a bribe to an intermediary). In the light of these changes, the Draft CC also suggests to revise the title of the Article and change it into "Trading in Influence".
- Secondly, it is suggested to include the missing forms of bribery into the elements of the criminal act provided for in Article 226 CC. Furthermore, taking into account the fact that, in cases when the person without any actual social position to influence another person "sells" his alleged influence, such act should be defined as trading in influence but not as swindling, the disposition of the aforementioned Article is supplemented by trading in alleged influence (paragraph 2 of Article 226 CC, also applicable to paragraphs 4, 5 and 7).
- Thirdly, "low value bribe" as a qualifying element of the offence is eliminated from paragraph 5 of Article 226 CC, by specifying in the disposition of the paragraph in question that a criminal misdemeanour in trading in influence means a bribe of the amount lower than 1 MSL (1MSL = LTL 130 or EUR 37.6).
- Fourthly, Article 226 CC distinguishes between the qualified elements of passive trading in influence and active trading in influence by the value of the bribe object (paragraphs 3 and 4 of Article 226 CC). The sanctions of the new Article 226 CC are revised and made more severe accordingly in line with the sanctions of the relevant paragraphs of Articles 225 and 227 CC.

- Fifthly, similarly to Article 227 CC, it is suggested to provide for an opportunity to release from criminal liability in cases of trading in influence in paragraph 6 of amended Article 226 CC (paragraphs 1, 3 and 5 of Article 226 CC which is amended by the Draft CC).

It should be noted that Article 226 CC (like Articles 225 and 227 CC) contains no direct indication of potential results and effects of influence, which should not be important for incrimination, which by itself means that in order to incriminate under this Article, they do not have to be substantiated and such effects have no relevance at all to the qualification of the offence.

In its response to the self-assessment checklist, Lithuania referred to the attached Overview of Corruption Cases of Prosecutor General's Office. According to this document, during 2008 there was only criminal case with regard to a criminal act of bribery of an intermediary (in Panevezys county).

(b) Observations on the implementation of the article

The 2011 amendments of CC included changes in the wording of art. 226 CC to address shortcomings regarding the criminalization of trading in influence. In its new wording, art. 226 CC establishes criminal liability for trading in influence involving the use of one's social position, office, powers, family relations, acquaintances or any other kind of possible influence, the latter covering both real and supposed influence. The amended provision also introduces an explicit reference to "third party beneficiaries".

The reviewing experts raised the issue whether Article 226 CC, in its new wording, contains an indication of potential results and effects of influence and whether instances of abuse of not only "real", but also "supposed" influence, in line with article 18 of the UNCAC, are covered as well.

In response, the Lithuanian authorities clarified that Article 226, as amended, reads as follows: "use his social position, office, powers, family relations, acquaintances or any other kind of **possible** influence". The Lithuanian language version of "any other kind of possible influence", which is an official one, contains the word "tikėtina", of which there is no exact and precise translation into English. A Lithuanian-English dictionary provides for the following meanings of the word "tikėtina": *credible, likely, reliable, believable, plausible, presumptive, probable* and all these meanings are in fact included in the Lithuanian term "tikėtina". It is the understanding of the national authorities that the Lithuanian word "tikėtina" covers both "real" and "supposed" influence and therefore fully implements the optional provision of the Convention.

The review team found these explanations satisfactory and, consequently and as a general conclusion, were of the view that the newly amended domestic legislation on the criminalization of trading in influence was in line with the requirements of article 18 of the UNCAC.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented by Article 228, 228(1) and 229 of the Criminal Code (see Annex 1).

It was indicated that the effectiveness of the measures adopted to criminalize active bribery of national public officials had been assessed. In this regard, Lithuania referred to two supporting documents:

- Supreme Court Case Overview (see Annex 2 pt 3);
- Overview of corruption cases carried out by the Prosecutor General's Office (see Annex 3 pt 3).

The parts of these documents relating to the implementation of the provision under review are reflected in Annexes 2 and 3.

Lithuania provided the following additional clarifications/information in the course of the desk review:

Paragraph 1 of Article 228 provides for criminal liability solely of a civil servant or a person equivalent thereto who abuses his official position or exceeds his powers. However, Article 228 CC does not stipulate the purpose of obtaining an undue advantage personally (i.e. for a public official) or for any other person or entity. In view of that, it should be stated that the act regulated by paragraph 1 of Article 228 CC is wider than that required under the provisions of the Convention (i.e. paragraph 1 of Article 228 CC implements the provisions of the Convention in full), as in accordance with criminal law, a person would be liable in any event, i.e. irrespective of whether the purpose of abuse of functions was to obtain an undue advantage or not (for example, a person would be held criminally liable under paragraph 1 of Article 228 CC even if the act had no purpose of obtaining an undue advantage).

However, abuse of office, which incurred the consequences provided for in paragraph 1 of Article 228 CC, and if there were no characteristics of bribery, shall be classified under paragraph 2 of Article 228 CC, where it is established that the offence was committed *with the aim of material or any other personal gain*. It is to be noted that the aim of material gain under paragraph 2 of Article 228 CC shall be understood as the purpose to obtain material gain of any nature for own benefit, as well as for the benefit of own relatives, family members, etc., whereas the aim of other personal gain shall be understood as the aim of gain of non-property nature for own benefit or for the benefit of third parties (such a conclusion was also drawn in the “Summary Review of the Court Practice concerning the Criminal Cases of Crimes and Misdemeanours against the Civil Service and Public Interest (Articles 225, 226, 227, 228, 229 CC)“ which was published by the Supreme Court of Lithuania on 4th January, 2007). With respect to the aforementioned, it is to be stated that if a public official who has abused his official position or exceeded his powers had the aim of obtaining an

undue advantage (under paragraph 2 of Article 228 CC – material or personal gain) *for own benefit or for the benefit of another person or entity*, and if there were no characteristics of bribery, such an act would be classified under paragraph 2 of Article 228 CC.

(b) Observations on the implementation of the article

The review team, bearing in mind the optional wording of article 19 of the UNCAC, noted, that the notion of “damage” was not a constituent element of the offence, as described in article 19. This additional restriction of the domestic legislation may result in non-criminalization of acts of abuse of office by which no damage was caused. It may further hamper the effective implementation of art. 228 CC, as demonstrated in the overview of Prosecutor General’s Office in Criminal Cases of Corruption heard by Courts in 2008 (dated 23 January 2009), where it was expressly stated that the main reason for the increase of acquittals in 2008 was the “insufficient assessment of committed acts from a legal application point of view” and the fact that the “key qualifying feature of big damage was insufficiently identified”. The review team therefore recommended exploring the possibility of construing legislation in a way that allows for the criminalization of abuse of functions regardless of the damage caused and in line with the requirements foreseen in article 19 of the UNCAC.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania reported full implementation of the provision under review, referring inter alia to Art 72 and Art 220 of the Criminal Code (see Annex 1).

According to the Lithuanian legislation, confiscation of property is applied only in respect of property used as an instrument or a means to commit a crime or as a result of a criminal act. There are also several amendments to Criminal Code and Criminal Procedure Code (draft laws No. XIP-2344; XIP-2345) which are currently considered by the Seimas (Parliament) of the Republic of Lithuania. Their main aims are to enable expanded confiscation of property. The amendments of the Criminal Code seek to:

- remove deficiencies of the current legal regulation, which do not allow a wide application of confiscation of property used as an instrument or a means to commit a crime or as the result of a criminal act, especially in those cases where the property is hidden invoking a third party;
- establish a new institution of extended confiscation of property, which enables to confiscate the property which is apparently disproportionate to the income of that person, and it is clear that it (property) could not be obtained in a legitimate way;
- establish criminal responsibility for the disposal of high-value property, which cannot be based on legitimate personal income.

Lithuania further indicated that statistics on the implementation of this provision is collected through the electronic system of declaration of income and assets administered by the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania.

In response to the comments of reviewing experts, Lithuania indicated that article 20 of the Convention had been implemented through Article 189-1 of the Criminal Code (adopted on 2 December 2010) (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the explanations provided by the Lithuanian authorities, upon their request, that the conduct of illicit enrichment is criminalized through art. 189-1 CC, which was adopted on 2 December 2010

(c) Successes and good practices

- The adoption of legislative measures to criminalize illicit enrichment as an initiative taken within the broader context of criminalizing a wide array of corruption-related acts.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented by Articles 227 and 230 (especially para. 3) of the Criminal Code (see Annex 1).

Lithuania further indicated that this matter had been reviewed in the 3rd evaluation round of GRECO. It also referred to the following supporting documents (see Annex 2):

- i. Overview of Corruption Cases by Prosecutor General's Office (Overview of the Summary of Court Practice in Criminal Cases of Crimes and Misdemeanours against the Civil Service and Public Interests);
- ii. Supreme Court Practice.

(b) Observations on the implementation of the article

The reviewing experts took into account the fact that the passive and active bribery in the private sector are criminalized by the same provisions as those on bribery of public officials (the Criminal Code states “a public servant or a person of equivalent status”). In this connection, they recognized the commitment of the Lithuanian authorities to curb corruption in both the public and the private spheres.

(c) Successes and good practices

Although there was no data or jurisprudence available to assess the effectiveness of the incrimination of bribery in the private sector, the review team was of the opinion that theoretically the approach followed in the Lithuanian legislation to criminalize by the same provisions bribery in both the public and private sectors was an asset in the fight against corruption. The strengths of this approach relate to the decreased possibility of loopholes when determining the provisions applicable to private sector entities in charge of a public service or public-private partnerships.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review has been implemented through Articles 183 and 184 of the Criminal Code (see Annex 1).

(b) Observations on the implementation of the article

Article 183 and 184 of the Criminal Code foresees the liability of a person (physical or legal) who misappropriates or embezzles somebody’s property or a property title entrusted to him. The review team found that the provisions of the national legislation were in compliance with article 22 of the UNCAC.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented by Article 189 of the Criminal Code (see Annex 1).

Following the request by reviewing experts, Lithuania provided the Law of the Republic of Lithuania on the Prevention of Money Laundering and Terrorist Financing (in English).(see Annex 1)

The following additional information/ clarifications were provided by Lithuania in response to the outcome of the desk review:

It should be stressed that the information on the implementation of Article 23 of the Convention provided by the Republic of Lithuania contains some minor errors leading to an appropriate lack of clarity. Therefore, we would like to revise the above information regarding compliance of the provisions of the Criminal Code with those of Article 23 of the Convention.

First, it is noteworthy that items (i) and (ii) of subparagraph (a) of paragraph 1 of Article 23 of the Convention *are only implemented in Article 216 CC* (see Annex 1) (i.e. Article 189 CC *does not implement* item (i) of subparagraph (a) of paragraph 1 of Article 23 of the Convention (as stated in the information provided by the Republic of Lithuania earlier).

Second, we would like to note that Article 216 CC in its present wording *only partially* implements the provisions of items (i) and (ii) of subparagraph (a) of paragraph 1 of Article 23 of the Convention. Therefore, to eliminate the shortcomings of the body of the criminal act specified in Article 216 CC, the Government has prepared and on 15 November 2010 submitted to the Parliament a draft Law supplementing and amending the relevant articles of the Criminal Code (No. XIP-2562), which has been mentioned before and which improves the provisions of Article 216 CC. The amendments and supplements proposed by the Government are expected to be passed at the 2011 spring session of the Parliament. Accordingly, the above draft Law proposes a new wording of Article 216 CC:

"Article 216. Money Laundering

1. A person who, seeking to conceal or legalise the property of his own or of another person or a part thereof or proceeds from such property or a part thereof, knowing that they have been obtained by criminal means, has held such property or a part thereof or has performed financial operations with such property or a part thereof or with proceeds from such property or a part thereof, has used the same in economic, commercial, financial or other activities, had entered into transactions or otherwise obtained or transferred such property or a part thereof or proceeds from such property or a part thereof, or has concealed the origin, source, location, movement or property rights of such property or a part thereof or of proceeds from such property or a part thereof, or has altered the legal status of such property or a part thereof or of proceeds from such property or a part thereof, shall be punished by imprisonment for a term of up to seven years.

2. A legal entity shall also be held liable for the acts provided for in this Article."

Third, Article 189 CC *only implements* item (i) of subparagraph (b) of paragraph 1 of Article 23 of the Convention.

(b) Observations on the implementation of the article

The current provision of the Criminal Code on money-laundering (art. 216) only partially implemented the relevant UNCAC requirements, as it lacked – or partially covered - some of the objective elements prescribed in article 23 of the Convention (conversion or transfer of property; concealment or disguise of nature, source, movement or ownership of property). It was noted that, in order to cope with existing shortcomings, a draft Law supplementing and amending art. 216 CC was expected to be adopted. The deadline initially indicated for the enactment of the new law (2011 spring session of the Parliament) was not met and during the country visit the review team drew the attention of the Lithuanian authorities to the need for appropriate follow-up action to ensure the timely enactment of the new legislation supplementing and amending the existing provision of the CC on money-laundering.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review has been implemented through Article 216 of the Criminal Code (see Annex 1).

According to the self-assessment, Lithuania's measures have proven to be fully successful. This matter was addressed by the Moneyval report on Lithuania. Please refer above.

See information under Subparagraph 1 (a) (i) of Article 23 of the Convention.

(b) Observations on the implementation of the article

See observations under subparagraph 1 (a) (i) above.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the Article 189 of the Criminal Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts concluded that Lithuania only partially implemented the provision under review. See observations above.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated in its self-assessment that the provision under review had been implemented through the Articles (21,) 22, 24 and 25 of the Criminal Code (see Annex 1).

According to the self-assessment, Lithuania's measures have proven to be fully successful and this was also confirmed by the Council of Europe's Greco assessment report during the 3rd round evaluation.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Fourth, point (b) ii) of paragraph 1 of the Article 23 of the Convention („participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences”) and complex analysis of the provisions of Lithuanian Criminal Code allows to state that Article 21 of the Code (Preparation for Commission of Crime) is not related to the content of the provisions of point (b) ii) of paragraph 1 of the Article 23 of the Convention, since the latter is related to complicity and attempt to commit a criminal act, therefore the cited Article of the Code (Article 21 of Criminal Code) should not be mentioned as implementing the provisions of point (b) ii) of paragraph 1 of the Article 23 and only these articles of Criminal Code: Article 22 (Attempt to Commit a Criminal Act), Article 24 (Complicity and Types of Accomplices), Article 25 (Forms of Complicity) should be quoted next to the named point of the Article 23.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the relevant provision of the UNCAC has been implemented adequately at the domestic level.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (a)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review has been implemented. Predicate offence may be any offence listed in the Criminal Code.

(b) Observations on the implementation of the article

Based on the information provided above, Lithuania implemented the provision under review.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review has been implemented. Predicate offence may be any offence listed in the Criminal Code.

(b) Observations on the implementation of the article

Please see observations under subparagraph 2 (a) above.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only

when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review has been implemented through articles 5, 7 and 8 of the Criminal Code (see Annex 1).

(b) Observations on the implementation of the article

It appears that Lithuania has implemented the provision under review.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that it had furnished copies of relevant laws to the Secretary-General of the United Nations.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that fundamental principles of its domestic law require that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

It was further stated that according to national legislation, all of such offences would have to be prosecuted.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

The predicate offence may be any criminal offence provided for in the Criminal Code (“all offences approach”).

(b) Observations on the implementation of the article

Lithuania indicated that fundamental principles of its domestic law require that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the article under review has been implemented through Articles 189, 237 and 238 of the Criminal Code (see Annex 1).

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

In the terms of the implementation of Article 24 of UNCAC, Article 189 of the Criminal Code can be applicable. Article 189 of the Criminal Code provides for punishment for the acquisition or use of (any) property obtained in a criminal manner, which would at least partly correspond to the concept of "continued retention". Article 189 of the Criminal Code does not link criminalisation of the acquisition and retention of property items acquired in a criminal manner to the degree of severity of the earlier committed offence, therefore this Article would be applicable for any predicate crime committed and the liability provided in Article 189 of the Criminal Code would arise irrespective of the gravity of the offence in the commission whereof such assets have been obtained.

The concept "concealment or permanent retention of the assets obtained in a criminal manner" is closer by its meaning and sense to the use (and at the same time “retention”) of the assets obtained in a criminal manner referred to in Article 189 of the Criminal Code. Usage of the property can be either open or covert in order not to show such assets to other persons, which would at the same time mean concealment (use while concealing). As an intent to conceal (hide) the offence and/or the person who has committed is not a pre-requisite for liability under Article 189 of the Criminal Code, it is easier to prosecute such cases.

Moreover, Article 237 of the Criminal Code would be applicable in cases when the person does not acquire or use the property but there is an aim to conceal the offence or the offender.

Article 237 of the Criminal Code prohibits not only the concealment of offence traces, instruments or means, but also of things acquired in a criminal manner and other items related to the offence concealed which are of evidentiary relevance. Thus, it would also include in

principle the concealment of any property items acquired in a criminal manner as specified in Article 24 of UNCAC ("concealment (...) of property when the person involved knows that such property is the result of (...) the offences").

The prerequisite for liability under Article 237 of the Criminal Code is that the offence concealed should be grave or very grave, which means that this Article is applicable only in cases of concealment of grave and very grave offences, i.e. it does not cover the concealment of negligent offences, minor offences or offences of medium seriousness. This limitation is introduced due to the opinion of the legislator that application of criminal liability for the concealment of minor or medium offences would be a disproportionate measure.

For the liability provided for in Article 237 of the Criminal Code to arise it is necessary to ascertain that the person has an intention to conceal the offence or the person who has committed it, where he has become aware of the offence *post factum* – after the commission of the offence.

However, no examples of relevant case-law in relation to Article 237 of the Criminal Code are available.

(b) Observations on the implementation of the article

The reported provisions of the CC (articles 189, 237 and 238) were not found to fully cover the requirement of the “concealment or continued retention of property obtained as a result of offence”, as prescribed in art. 24 of the UNCAC (optional provision). The review team noted that the conduct of “acquisition or handling of property obtained by criminal means” (art. 189 CC) did not necessarily correspond, even partially, to the concept of “continued retention” of property. In addition, art. 189 CC may be applicable for any predicate offence committed prior to certain acts of money laundering (acquisition, possession or use of property knowing that such property is the proceeds of crime), but does not seem to cover the concealment of the predicate offence as such regardless of money laundering schemes. Moreover, the review team maintained its doubts regarding the clarification provided by the Lithuanian authorities that art. 237 CC covers cases of concealment of not only offence traces, instruments or means, but also items acquired in a criminal manner or items related to the offence concealed which are of evidentiary relevance. These doubts were corroborated by the lack of relevant case-law in relation to the scope of application of art. 237 CC. Furthermore, the review team noted that art. 237 CC did not seem to cover cases of persons who, based on prior arrangement, help conceal property or money (for example, bankers).

Therefore the reviewing experts invited the Lithuanian authorities to explore the possibility of giving more precise description of the act of concealment and, thus, ensure more effective implementation of art. 24 of the UNCAC at the domestic level;

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through article 233 of the Criminal Code (see Annex 1).

Lithuania provided the following example of implementation.

Lawyer A.K., seeking to avoid possible criminal liability for the abuse of office, exertion of influence on a witness and a victim, obstructing a pre-trial investigation officer to carry out investigation of a criminal case, i.e. for criminal acts provided for in CC Article 24(4) (complicity), Article 228(2) (abuse of office), Article 231(1) (hindering the activities of the pre-trial investigation officer) and Article 233(1) (influence on a victim, witness, expert, translator), with which A.K. is charged in a criminal case (No.) heard by the County Court, acted intentionally and having the aim to exert influence on witness M.L., during the meetings which took place from April 2009 to 20 June 2009 persuaded and influenced witness M.L. to have M.L. make a false testimony in a criminal case (No.) to improve the legal situation of A.K.

By acting in this way, A.K. committed the crime provided for in Criminal Code Article 233(1).

The case is currently pending in the County Court.

(b) Observations on the implementation of the article

The provisions of the Lithuanian Legislation on the criminalization of obstruction of justice (articles 231 and 233 CC) were found to fully meet the requirements of article 25 of the UNCAC.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 231 of the Criminal Code of the Republic of Lithuania (see Annex 1).

(b) Observations on the implementation of the article

The provisions of the Lithuanian Legislation on the criminalization of obstruction of justice (articles 231 and 233 CC) were found to fully meet the requirements of article 25 of the UNCAC.

The experts noted that statistical data and examples from judicial practice related to the cited provisions were necessary for assessing the effectiveness of the implementation of this article.

Article 26 Liability of legal persons

Paragraph 1

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through articles 20, 43, 216 (see paragraph 2), 225 (see paragraph 5), 226 (see paragraph 3), 227 (see paragraph 5) and 228 (see paragraph 3) of the Criminal Code (see Annex 1). The recently introduced art. 20 of the CC encompasses the criminal responsibility of legal persons which covers most corruption offences as well as money-laundering. A legal entity shall be held liable for criminal acts committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he/she, while occupying an executive position in the legal entity, was entitled to represent the legal entity or take decisions on behalf of the legal entity or control activities of the legal entity. Legal persons may also be liable for criminal acts for their benefit by an employee or authorized representative due to insufficient supervision or control by the responsible person.

Lithuania indicated that these provisions were subject to the review by the 2nd evaluation round of the Group of States against Corruption (GRECO) of the Council of Europe.

(b) Observations on the implementation of the article

Lithuania has recently introduced in its legal system (art. 20 CC) the criminal responsibility of legal persons which covers most corruption offences as well as money-laundering. A legal entity shall be held liable for criminal acts committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he/she, while occupying an executive position in the legal entity, was entitled to represent the legal entity or take decisions on behalf of the legal entity or control activities of the legal entity. Legal persons may also be liable for criminal acts for their benefit by an employee or authorized representative due to insufficient supervision or control by the responsible person.

(c) Successes and good practices

- The establishment of criminal liability of legal persons involved in the commission of UNCAC-based offences can be commended as a good practice.

Article 26 Liability of legal persons

Paragraph 2

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

Offences established in accordance with this Convention invoke criminal liability of legal persons in Lithuania - Criminal Code of the Republic of Lithuania, article 20; article 43; article 216 (see paragraph 2); article 225 (see paragraph 5); article 226 (see paragraph 3); article 227 (see paragraph 5); article 228 (see paragraph 3) (see Annex 1).

It was further indicated that this matter had been addressed by the Council of Europe's GRECO 2nd round evaluation report.

The following additional information/clarifications were provided by Lithuania in response to the outcome of the desk review:

First of all it should be mentioned that Lithuania is a member of the Council of Europe Civil Law Convention on Corruption.

Secondly, the liability of legal persons is also foreseen in the Civil Code. (Please find attached in Annex 1 some Articles from the Civil Code related to the responsibilities of legal persons (Art 1.78, 1.80, 2.50, 6.246, 6.248, 6.249 and 6.251; Art 6.263 and 6.271 on non-contractual (delict liability).

Attention should be drawn to the fact that under the provisions of Article 107 of the Code of Criminal Procedure of the Republic of Lithuania voluntary compensation for damage is available, i.e. a suspect or an accused, or a person financially responsible for his actions may, at any stage of the proceedings, compensate voluntarily to a victim for the damage caused by a criminal act. Upon receiving a motion from a victim that he has been compensated for the damage caused by a criminal act, a civil action in a criminal case shall not be instituted and, where instituted, it will be terminated and an interim restriction of property rights related to this shall be revoked.

It should also be noted, that, according to the Articles 109-119 of the Code of Criminal Procedure of the Republic of Lithuania, a victim who has sustained damage to his property, physical or moral damage shall be entitled to bring a civil action in a criminal case against the accused or the persons who bear financial responsibility for the actions of the accused, and the civil action shall be heard by a judge or the court together with the criminal case. A natural or a legal person who requests, in a criminal case, compensation for damage to his property, physical or moral damage caused to him by the act of a suspect or the accused shall be held the plaintiff. The person shall be held the plaintiff by a decision of the prosecutor or by a court order. Parents, guardians, foster parents and other persons as well as enterprises, institutions and organizations which, under law, bear financial responsibility for damage caused by the criminal act committed by the suspect or the accused, may be held the plaintiffs in a civil action. A person shall be held the plaintiff in a civil action by a decision of the prosecutor, or an order of the judge or the court. A civil action shall be brought by filing a claim with the prosecutor or the court at any stage of the proceedings but not later than before

the commencement of the trial. The victim who has failed to file a civil action in a criminal case shall be entitled to enter a claim under the civil procedure. A civil action entered in a criminal case shall be exempt from the stamp duty. Dismissal of a civil action by a judgment in a criminal case shall forfeit/ deprive the plaintiff of the right to bring the same civil action under the civil procedure. Dismissal of the action under the civil procedure shall forfeit the plaintiff of the right to bring the same action in a criminal case. When rendering a conviction, the court shall, with account of the admissibility of the grounds and amount of the claim, grant the claim filed, in full or in part, or dismiss it. When granting the civil action, the court may not adhere to the extent of the claim if its amount does not affect the qualification of the offence and the magnitude of the penalty. When rendering an acquittal the court : 1) shall reject the civil action unless participation of the accused has been proved in committing a criminal act; 2) shall not proceed with the civil action where the accused is acquitted on the grounds of absence of elements of a criminal act. If the civil action is not proceeded with, the plaintiff shall be entitled to re-enter it in the civil procedure. Related Articles of the Code of Criminal Procedure of the Republic of Lithuania are Article 107. and Articles 109 – 118 (see Annex 1).

(b) Observations on the implementation of the article

Lithuania demonstrated that in addition to criminal liability, legal persons can be subject to civil liability.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

In Lithuania both natural person and legal persons are held criminally liable. For offences established in accordance with this Convention - Criminal Code of the Republic of Lithuania, article 20; article 43; article 216; article 225; article 226; article 227; article 228 (see Annex 1).

With regard to the assessment of the effectiveness of measures taken, Lithuania indicated that this matter had been addressed by the 2nd evaluation round of GRECO.

(b) Observations on the implementation of the article

Based on the above it can be concluded that Lithuania implemented the provision under review.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through articles 20 and 43 of the Criminal Code (see Annex 1).

With regard to the assessment of the effectiveness of measures taken, Lithuania indicated that this matter had been addressed by the 2nd evaluation round of GRECO.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

It should be pointed out that, pursuant to the CC, a legal entity shall be held liable solely for the criminal acts the commission whereof is subject to liability of a legal entity as provided for in the Special Part of the CC. The penalties to which legal entities are subject are not specified in the sanctions of article of the Special Part of the CC for the purpose of enabling courts to properly implement one of the key principles of criminal liability, i.e. appropriate individualization of penalties. In imposing a penalty upon a legal entity, a court shall refer to the list of penalties specified in Article 43(1) of the CC. Under Article 43 of the CC, *in term of severity*, penalties are classified into a fine, which is considered to be the least severe penalty for legal entities but, under Article 47(4) of the CC, may amount to 50 000 MSLs (1 MSL = LTL 130), restriction of operation of the legal entity and liquidation of the legal entity. In imposing a relevant penalty on both legal entities and natural persons, the court definitely has discretion to select a penalty adequate and proportional to the criminal act committed by the offender, as each time the penalty imposed must be individualized. However, Article 54 of the CC sets forth the basic principles of imposition of a penalty, *which are binding on courts* when imposing a penalty on both natural persons and legal entities. These basic principles are the levers *restricting the sole discretion of judges to impose and properly individualize penalties*, thus administering justice. Pursuant to Article 54(2) of the CC, when imposing a penalty, a court shall take into consideration the following criteria: (1) the degree of dangerousness of a committed criminal act; (2) the form and type of guilt; (3) the motives and objectives of the committed criminal act; (4) the stage of the criminal act; (5) the personality of the offender; (6) the form and type of participation of the person as an accomplice in the commission of the criminal act; (7) mitigating and aggravating circumstances. *In view of the foregoing, it can be stated that when imposing a penalty specified in the General Provisions of the CC, i.e. Article 43 of the CC, on a legal entity, a court must evaluate the first criterion for the imposition of a penalty set forth in Article 54 of the CC, i.e. the degree of dangerousness of a committed criminal act, and therefore legal entities that have committed more serious crimes must be imposed more severe penalties.*

See also the related articles of the Criminal Code of the Republic of Lithuania (Art 20, 43, 47 and 52-54 (see Annex 1)).

(b) Observations on the implementation of the article

Lithuania has introduced in its legal system (art. 20 CC) the criminal responsibility of legal persons which covers most corruption offences as well as money-laundering. The reviewing experts identified as a good practice the fact that there is a wide array of sanctions of criminal nature against legal persons resulting from the far-reaching recognition of their criminal liability (see below).

It was noted by the review team, however, that there was no clarity in the domestic legislation as to the imposition of sanctions to legal persons for specific offences, which, in turn, prevented the reviewing experts from assessing whether such sanctions were “effective, proportionate and dissuasive” in accordance with art. 26 para. 4 of the UNCAC. In particular, the – reported by the Lithuanian authorities - general requirement for a court to take into consideration the degree of dangerousness of a committed criminal act was found not to be adequately supported by either the thresholds of the penalties for the legal persons depending on the seriousness of the crimes or by appropriate indicators for application of a certain type of penalty in a case where a legal person can be held liable for a criminal offence. As follows from art. 54 para. 1 CC, “a court shall impose a penalty according to the sanction of an article of the Special Part of this Code providing for liability for a committed criminal act and in compliance with provisions of the General Part of this Code”. Meanwhile the sanctions of articles of the Special Part of CC do not specify the penalties to which legal entities are subject to. What is foreseen, instead, in art. 43 CC is that “in imposing a penalty upon a legal entity, a court shall refer [to] the list of penalties specified in paragraph 1 of this article”. Moreover, there are no clear rules in the General Part of the CC for courts which would help them choose between the different types of penalties in this list or guide courts how to adjust the size of the specific penalty to the merits of the case. Consequently, there seems to be a imbalance between the provisions regulating the imposition of penalties on natural and legal persons. For instance, while there is a clear grading for the fines to be imposed on natural persons depending on the gravity of the offence (see art. 47 CC), there is no such grading for a legal person and only a top amount of fine is established (art. 47 para 4 CC). In addition, there is no requirement for the courts to take into consideration the size or the financial situation of the legal person when imposing a penalty.

In response, the Lithuanian authorities confirmed that the criteria for the imposition of penalties upon a legal entity were provided in the judicial practice and cited relevant examples from jurisprudence as follows:

“When imposing a penalty upon a legal entity <...> one should take into consideration the nature of committed crimes, the attenuating circumstance, the fact that the company has in fact been and still is engaged in actual activity, and that the period of the criminal offence was brief and it was caused by economic difficulties at the beginning of operation. In light of that, the court considers that the most lenient penalty should be imposed upon the company, i.e. a fine provided for in Article 43 of the CC regulating the types of penalties upon legal entities. In establishing the amount of fines, one should take into consideration the nature of committed criminal acts, the amount of damage caused to the State and the aforementioned circumstances.”

(The Judgement of the Criminal Case Division of Vilnius County Court of 29 October 2010 in criminal case No. 1-252-66/2010);

“When imposing a penalty upon a legal entity, the court must follow the basic principles of imposition of a penalty (Article 54 of the CC) and take into consideration the essence and the

purpose of the penalty (Article 41 of the CC). Paragraph 1 of Article 54 of the CC stipulates that a court shall impose a penalty according to the sanction of an article of the Special Provisions of this Code providing for liability for a committed criminal act and in compliance with provisions of the General Provisions of this Code. In accordance with Article 54(2) of the CC, when imposing a penalty the court shall take into consideration the degree of dangerousness of the committed criminal offence, the form and type of guilt, the motives and objectives of the criminal act as well as other specified circumstances.

Article 20(1) of the CC specifies that a legal entity shall only be liable for criminal acts that are subject to criminal liability of a legal entity in accordance with the Special Provisions of the present Code. Pursuant to Article 43(1) of the CC, the following penalties may be imposed upon a legal entity having committed a criminal act: 1) a fine; 2) a restriction of operation of the legal entity; 3) liquidation of the legal entity. Article 43(3) of the CC stipulates that solely one penalty may be imposed upon a legal entity for one criminal act.”

The reviewing experts welcomed these examples and invited the Lithuanian authorities to continue to pursue further clarity on this issue, especially with regard to the criteria of choosing between different types of sanctions against legal persons, including the size or the financial situation of the legal person.

(c) Successes and good practices

- The wide array of sanctions of criminal nature against legal persons as a result of the far-reaching recognition of their criminal liability.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Article 24 paragraph 2 of the Criminal Code (see Annex 1) of the Republic of Lithuania: Accomplices in a criminal act shall include a perpetrator, an organiser, an abettor and an accessory.

(b) Observations on the implementation of the article

The reviewing experts were of the opinion that, based on the above, Lithuania has generally implemented the provision under review.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through article 22 (1) of the Criminal Code (see Annex 1).

As regards the assessment of the effectiveness of the measures taken, Lithuania referred to the attached document on Supreme Court Practice (see Annex II).

(b) Observations on the implementation of the article

The reviewing experts were of the opinion that, based on the above, Lithuania has generally implemented the provision under review.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through

Criminal Code Article 21(1): Preparation for the commission of a crime shall be a search for or adaptation of means and instruments, development of an action plan, engagement of accomplices or other intentional creation of the conditions facilitating the commission of the crime. A person shall be held liable solely for preparation to commit a serious or grave crime.

Criminal Code Article 11(5): a serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the duration in excess of six years, but not exceeding ten years of imprisonment. Paragraph 6 of the said Article provides that a grave crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years.

The abovementioned requirements are currently included in the sanction of the Criminal Code, Article 225 (Bribery) Paragraph 3, which lays down that a civil servant or a person equivalent thereto who, for own benefit or for the benefit of other persons, directly or indirectly accepts, promises or agrees to accept a bribe in the amount exceeding 250 MSLs, demands or provokes giving it for a lawful or unlawful act or omission in exercising his powers, shall be punished by imprisonment for a term of two up to eight years.

It should be noted that a draft amendment to Articles 225-228 of the Criminal Code of the Republic of Lithuania was submitted to the Lithuanian Parliament, Seimas. If these amendments are approved, the sanctions provided therein would be closer to the provisions of Article 27 paragraph 3 of the Convention. For example, Article 225 (Bribery) paragraph 2 provides for punishment by imprisonment for a term of up to 7 years, paragraph 3 - imprisonment for a term of 2 to 8 years, Article 226 (Trading in Influence) paragraph 3 provides for punishment by imprisonment for a term of up to 7 years, paragraph 4 - imprisonment for a term of up to 8 years, Article 227 (Graft) paragraph 3 provides punishment by imprisonment for a term of up to 7 years and Article 228 (Abuse of Office) paragraph 3 provides punishment by imprisonment for a term of up to 7 years.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Apart the information provided in the self – assessment, it should be pointed out that the provisions of Article 27(3) of the Convention (based on which the comment has been presented) *are not binding* on the Member States. Therefore, the States implementing said provisions are free to choose the method of transposition of this provision of the Convention. Whereas the means of criminal law must be seen as *ultima ratio* means, the CC provides for criminal liability for preparation for commission of only the most dangerous crimes to the public, i.e. serious or very serious crimes (*it should be noted once again that the majority of the sanctions for the criminal acts provided for in the CC drafts submitted to the Parliament, which are also stipulated in the Convention, are to be toughened*), as Lithuanian believes that stipulation of criminal liability for preparation for commission of less dangerous crimes (e.g. for minor crimes) would be disproportionate to and incompatible with the purpose of criminal law as an *ultima ratio* measure.

(b) Observations on the implementation of the article

The reviewing experts took into account that, with regard to the criminalization of preparation of UNCAC offences, the current legislative status criminalizes the preparation of only a grave or especially grave crime. The Lithuanian authorities clarified that the 2011 amendments of the CC sought to raise penalty levels for certain offences and consequently some of these offences have fallen into the category of grave crimes, thus automatically criminalizing also an act of preparation for such crimes under the provisions of art. 21, para. 1 CC. This relates to the following offences: Aggravated bribery (paras 2 and 3 of art. 225 CC), which is now punishable by imprisonment of up to 7 and 8 years accordingly; aggravated trading in influence (paras. 3 and 4 of art. 226 CC), up to 7 and 8 years accordingly; aggravated graft (para. 3 of art. 227), up to 7 years; and aggravated abuse of office (para. 2 of art. 228), up to 7 years.

The review team welcomed the explanations of the Lithuanian authorities which were found to be in compliance with the provision of the Convention under review.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision had been implemented through Article 20 of the Code of Criminal Procedure of the Republic of Lithuania (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts took note of the reported provision of the domestic legislation (article 20 CPC) on the admissibility of evidence in criminal proceedings. Paragraph 4 of the said article, in particular, stipulates that “judges shall assess the evidence according to their inner conviction based on a thorough and objective review of all the circumstances of the case in accordance with the law”.

The reviewing experts were of the opinion that, based on the above, Lithuania has generally implemented the provision under review.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code Article 95(2) lays down that the statute of limitations shall be calculated from the commission of a criminal act until the passing of a judgement.

Article 95(4) lays down that where the person who has committed a criminal act hides from pre-trial investigation or a trial, the calculation of the statute of limitations shall cease. The calculation of the statute of limitations shall resume from the day when the person is arrested or when he appears before the officer of pre-trial investigation, the prosecutor or the court. However, a judgement of conviction may not be passed where twenty five years have lapsed since the commission of the crime by the person and thirty years have lapsed since the commission of a crime relating to a premeditated homicide and calculation of the statute of limitations has not ceased due to commission of a new premeditated criminal act.

Criminal Code Article 96(2): The statute of limitations for execution of a judgement of conviction shall be calculated from the coming into effect of the judgement until the commencement of execution of the judgement.

Article 96(3): Where, after a judgement becomes effective, the convicted person evades the serving of the sentence, the calculation of the statute of limitations shall cease. In this case, the calculation of this period shall resume from the day the convicted person arrives to serve the sentence or is arrested. However, a judgement may not be executed where fifteen years have lapsed since its coming into effect, and twenty years have lapsed in the case of imposition of a custodial sentence for a period exceeding ten years or of a life imprisonment, and calculation of the statute of limitations has not ceased due to commission of a new criminal act.

Article 96(4): Where the convicted person commits a new criminal act before the expiry of the statute of limitations for execution of a judgement of conviction, the calculation of the statute of limitations shall cease. In this case, calculation of the statute of limitations for execution of the judgement of conviction shall commence from the commission of a new crime or misdemeanour.

In its Evaluation Report of Incriminations the Council of Europe's Group of States against Corruption (Greco) issued a recommendation for Lithuania on the increasing of flexibility of the statute of limitations.

This recommendation was addressed by the Republic of Lithuania the Law on the Amendment and Supplement of Article 95 of the Criminal Code of the Republic of Lithuania, on the Supplement of the Code by Article 1702 and on the Supplement of the Annex to the Code No. XI-901 of 15 June 2010.

The amendments to the Criminal Code introduced by this law in presented in a response given with respect to applicable measures and laws adopted to implement the provision of the Convention. (see above)

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

There is additional information concerning the statute of limitations which was not provided in the self-assessment report:

On 15 June 2010, the Parliament adopted the Law amending and supplementing Article 95 of the Criminal Code, whereby general statutes of limitation in respect of all offences covered by the CC are extended. The draft of the above-mentioned Law was presented to the Parliament by the President of the Republic of Lithuania. The Explanatory Letter notes one of the reasons behind this draft: "The instances of impunity of well-known persons who have committed serious or large scale offences are detrimental to public peace, confidence of citizens in law enforcement institutions and crime prevention interests. It is in particular true about corruption-related criminal offences, which are subject to relatively short periods of statute of limitations, not always adequate in terms of the scope and complexity of investigation of these widely spread offences, which cause substantial damage to the interests of the state and the public; the existing regulation of the statute of limitations is also noted as one of the obstacles in the fight against corruption in the Report of the Third Evaluation Round of the Group of States against Corruption of the Council of Europe, Theme I - Incriminations (Criminal Law Convention on Corruption). The purpose of this amendment of the Law is to improve the regulation of the statute of limitations of a judgment of conviction by establishing longer periods of the statute of limitations, which would be adequate for the severity of offences of relevant categories, their damage and the interest of the state and the society to disclose such criminal acts even after a longer period of time, as well as define the exceptions to the statute of limitations for most dangerous offences. The Draft also aims at solving the problems identified in the Report of the Third Evaluation Round of the Group of States against Corruption of the Council of Europe in relation to the application of the statute of limitations in the investigation of corruption-related criminal acts. It is expected that this objective will be achieved by extended periods of the general statute of limitations: these amendments will change the periods of the statute of limitations applicable for the offences

provided for in Chapter XXXIII CC from 5 years to 8 years and from 8 to 12 years." In addition, Article 95 CC has been supplemented by new paragraphs 3, 5 and 6 (the periods of the statute of limitations specified in paragraph 4 have also been extended) regulating the suspension of the statute of limitations during the case hearing at court (see Annex 1).

In this context, Article 11 CC should be mentioned. According to the term of imprisonment specified in the sanctions of relevant crimes, the Article defines the level of seriousness of the relevant crime, which is used to determine the statute of limitations of a judgment of conviction in accordance with paragraph 1 of Article 95 CC. Mention should also be made of Article 12 CC, which defines a misdemeanour (see Annex 1).

(b) Observations on the implementation of the article

The Lithuanian authorities reported that new legislation was adopted in June 2010 extending the statute of limitations in respect of all criminal offences (art. 95 CC). The new extended time limits appear to be adequate enough to preserve the interests of the administration of justice. The amended art. 95 CC further provides for the suspension of the statute of limitations during the case hearing at court. Although the legislator has decided not to introduce a suspension of the period of limitation upon the institution of criminal proceedings, the review team was satisfied that the new legislation appeared to be conducive to a more effective implementation of the anti-corruption legislation.

(c) Successes and good practices

- The streamlining of legislation on the statute of limitations;

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

Article 225 – 228 of the currently effective Criminal Code of the Republic of Lithuania (see Annex 1).

Sanctions range from fine to imprisonment with a possibility of an additional punishment of deprivation of the right to do a certain job or hold a certain position. Specifically with regard to the offences of active and passive bribery and trading in influence, the Lithuanian authorities specified during the country visit that recent amendments in the legislation foresaw a complete overhaul of the penalties available. As a result, some of the qualified corruption offences have now been included in the category of “serious offences” which, in turn, translates into an extension of the applicable statute of limitations (art. 95 CC).

The sanctions that may be imposed upon a legal entity for the commission of a criminal act range from fines and restriction of operation of the legal entity to its liquidation. The penalties

against legal entities are not specified in the Criminal Code so that the courts are enabled to properly implement the principle of individualization of penalties. Art. 54 CC sets forth the basic criteria considered by the court when imposing a sanction against a legal person, which include: the degree of dangerousness of a committed criminal act; the form and type of guilt; the motives and objectives of the committed criminal act; the stage of the criminal act; the form and type of participation of the person as an accomplice in the commission of the criminal act; the personality of such person; and potential mitigating and aggravating circumstances.

With regard to the assessment of the effectiveness of the measures taken, Lithuania indicated that this matter was reviewed by the Council of Europe's GRECO 3rd round evaluation.

(b) Observations on the implementation of the article

The sanctions applicable to natural and legal persons involved in most of the corruption-related offences appear to be adequate and dissuasive. Specifically with regard to active and passive bribery and trading in influence, it was specified during the country visit that recent amendments in the legislation foresaw a complete overhaul of the penalties available.

(c) Successes and good practices

- The strengthening of sanctions against some of the qualified corruption offences.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

For example, Republic of Lithuania Law on Prosecution, Article 12(3) lays down that pre-trial investigation concerning a criminal act committed by the prosecutor may be started only by the Prosecutor General. Paragraph 4 of the said Article lays down that the residential or business premises of the prosecutor may be entered, examination, search or seizure therein or in his personal or official car or any other personal vehicle may be carried out, also his personal examination or body search, examination or seizure of his personal belongings and documents may be performed only with the prosecutor's consent or provided that the Prosecutor General has started pre-trial investigation relating to the criminal act committed by the prosecutor. The above provision shall not be applicable where the prosecutor is caught *in flagrante delicto* or immediately after it.

Article 17(1) of the Republic of Lithuania Law on Special Investigation Service lays down that a pre-trial investigation against an officer of the Special Investigations Service may be instituted only by the Prosecutor General of the Republic of Lithuania or his Deputy. Paragraph 2 of the said Article lays down that in the course of their official duties, the officers

of the Service may not be taken to the police or detained, and the body search and the search of their personal effects and their means of transport shall be prohibited, without participation of the head of the appropriate Special Investigations Service unit or a person authorised by him, with the exception of cases when the officer is detained in *flagrante delicto*.

The judicial immunity is regulated by Article 47 of the Republic of Lithuania Law on Courts.

A few examples when immunity was lifted:

a) Members of Parliament

Investigation of fraud in a political party funding case. Started in 16 May 2006.

- On 25 January 2007, suspect V.U. was registered as a candidate member in regional municipality. On the same day Deputy Prosecutor General addressed the Chief Electoral Commission (CEC) asking it to allow prosecute V.U. as a candidate to municipal council. CEC issued such permission on 26 January 2007.

- On 4 September 2007, V.U. was registered as a candidate member of the Parliament. On 5 September 2007, Deputy Prosecutor General addressed the CEC, asking it to allow prosecute V.U. as a candidate Member of the Parliament. On 6 September 2007, CEC lifted the immunity.

On 14 April 2008, the criminal case along with the indictment was submitted to court.

- On 10 September 2008, V.U. and another suspect V.G. were registered as candidates to the members of the Parliament. On 23 September 2008, the court which heard the case, requested by the prosecutor, addressed the CEC asking it to allow prosecute V.U. Such permission was granted.

- On 12 October 2008 during the elections to the Parliament, for the term of office from 2008 to 2012, V.U. and V.G. were elected as Members of the Parliament. On 17 November 2009, during the first session of the Parliament, V.U. gained immunity. On 19 November 2008, the court which heard the case, as requested by the prosecutor, tasked the Prosecutor General to address the Parliament with a request to allow prosecute Members of the Parliament, V.U. and V.G. On 26 November 2008, Prosecutor General addressed the Parliament asking it to allow prosecute members of the Parliament, V.U. and V.G. On 9 December 2008, Seimas lifted the immunities for both of the defendants.

- On 7 June 2009, V.U. was elected into the European Parliament and gained legal immunity identical to the immunity of a member of the Lithuanian Parliament, Seimas.

On 29 June 2009, the court which heard the case, as requested by the prosecutor, tasked the Prosecutor General to address the European Parliament asking for its permission to prosecute Member of the European Parliament, V.U. On 14 July 2009, Prosecutor General addressed the President of the European Parliament asking it for a permission to prosecute V.U. On 7 September 2010, the European Parliament lifted the immunity of V.U.

On 11 October 2010, the court renewed the judicial hearing of the case. Admittedly, the decisions taken by the CEC to lift the immunity were appealed by the court and the court rejected these appeals.

b) Judges

Pre-trial investigation against chairpersons of three district courts was started on 11 July 2003 following an official statement made the acting Prosecutor General.

On 17 July 2003, Prosecutor General addressed the President of the Republic of Lithuania with a request to allow prosecute judges, detain them or otherwise restrict their liberty.

On 17 July 2003, the President of the Republic of Lithuania passed a decree, No. 162, whereby it allowed to prosecute, detain or otherwise restrict the liberty of said persons. The

case was submitted to court on 4 February 2004 and the sentence of conviction was passed on 9 June 2006.

c) Prosecutors

- On 18 October 2007, the Prosecutor General took the decision to start investigation against the head of the district prosecution office, S.S. On 20 June 2008. the case with an indictment was submitted to court and on 29 January 2010 the court passed the judgement of conviction.

- Pre-trial investigation against deputy chief prosecutor G.M. of the county prosecution office was started following an official statement of the Prosecutor General on 6 June 2007. On 14 July 2008 the case was submitted to court. On 29 May 2008, the judgement of conviction was passed.

- Pre-trial investigation against prosecutor E.V. of the Prosecutor General's Office was initiated on 19 June 2010 following the decision taken by the Prosecutor General. On 14 September 2010 the case with an indictment was submitted to court. Investigation is on-going.

It was further indicated that information on relevant official inquiries or reports was very extensive and not available in English.

With regard to the assessment of the effectiveness of measures taken, Lithuania referred to the 1st evaluation round of the Group of States against Corruption (GRECO) of the Council of Europe.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Immunities from investigation, prosecution and adjudication for corruption offences

According to the Lithuanian Constitution, the following categories of official persons benefit, from immunities in criminal proceedings:

- members of Parliament (Seimas);
- the President of the Republic;
- the Prime Minister and ministers;
- judges.

Members of Parliament (MP) may not be prosecuted for speeches and votes cast in Parliament (except insult or slander) (non-liability). This immunity is unlimited in time and cannot be lifted.

Secondly, MP's enjoy immunity from criminal liability, arrest or any other restriction of personal freedom, except in case of flagrante delicto. This immunity may be lifted by Parliament (Art.62 of the Constitution and Art.22 of the Statute of the Seimas).

The President of the Republic, may neither be arrested nor charged with criminal or administrative proceedings, while in Office (inviolability immunity). This immunity may not be lifted. The President may, however, be prematurely removed from Office for gross violations of the Constitution and dismissed following impeachment proceedings (Article 86 of the Constitution).

The Prime Minister and ministers may not be prosecuted, arrested or have their freedoms restricted in any other way (inviolability immunity). This immunity may be lifted by Parliament, or if it is not in session, by the President of the Republic (Art.100 of the Constitution).

Constitutional Court judges enjoy the same inviolability immunity as MPs (Article 104 of the Constitution), which accordingly may be lifted by Parliament.

Judges may not have legal actions instituted against them, nor may they be arrested or restricted of personal freedom without the consent of Parliament, or in the period between sessions, of the President of the Republic (Art.114 of the Constitution).

It is the task of the Prosecutor General to notify the offence to the Seimas, which after the hearing of the Prosecutor General, shall form an investigation commission for the consent to institute criminal proceedings or shall initiate preliminary actions of impeachment proceedings. Legal action, in accordance with impeachment proceedings may be instituted against Members of Parliament, the President of the Republic, the Chairman and judges of the Constitutional Court, the Chairman and judges of the Supreme Court and the Chairman and judges of the Court of Appeal. Immunities may be lifted with the consent of more than half of all MP's. For impeachment there is a need of a 3/5 majority.

Without the consent of the Central Electoral Committee (CEC), during campaigning as well as until the first meeting of a newly elected body, a candidate to the Seimas, the local government or the President may not be found criminally liable, arrested, neither may administrative penalties be imposed on him/her for the actions performed in the course of campaigning. The decision of the CEC may be appealed to the court.

Criminal cases against ordinary judges, prosecutors and STT staff can be initiated only by the Prosecutor General.

According to the Vienna Convention, a Lithuanian diplomat may be prosecuted by the Lithuanian competent authorities, without taking the decision to lift the immunity. Lithuania as a sending state, however, may waive the immunity from jurisdiction of its diplomatic agents and persons in case of corruption as in any other criminal offence.

It should also be noted that under the provisions of Article 3 of the Code of Criminal Procedure of the Republic of Lithuania the criminal procedure may not be instituted, and, if instituted, must be terminated where a criminal act is committed by a person who, under international law, has immunity from criminal jurisdiction or, where there is no authorisation of a competent body for prosecuting the person when, under law, such an authorisation is obligatory.

(b) Observations on the implementation of the article

The reviewing expert took into account the information provided by the Lithuanian authorities on the issue of immunities. According to the Lithuanian Constitution, immunity from prosecution is accorded to the members of Parliament (Seimas), the President of the Republic, the Prime Minister and ministers, and judges. Legal action, in accordance with impeachment proceedings may be instituted against Members of Parliament, the President of the Republic, the Chairman and judges of the Constitutional Court, the Chairman and judges of the Supreme Court and the Chairman and judges of the Court of Appeal. Immunities may

be lifted with the consent of more than half of all MP's. For impeachment there is a need of a 3/5 majority.

Based on this information, the review team concluded that the domestic legal framework and practice were in compliance with the provision of the UNCAC under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 1 of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

The criminal process in Lithuania is governed by the CPC and is based on a typical continental/civil law system. Corruption offences are processed in the same manner, and before regular criminal courts, as all other criminal offences. The criminal justice system of Lithuania is based on the principle of mandatory prosecution and the prosecutor does not have discretion whether to proceed with the case when probable cause exists. The independence of the prosecution services is strongly emphasized in legislation (Law on the Prosecutor's Office; Law on the Judiciary; CPC).

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Articles 119, 120 and 139 (1) of the Criminal Procedure Code.

CPC Art. 119 prescribes that provisional measures may be employed with a view of securing the presence of a suspect, defendant, or convict during the proceedings, unhindered pre-trial investigation, judicial hearing, the execution of the judgment, and prevention of commission of new criminal acts.

CPC Art. 120 prescribes forms or provisional measures, namely: detention, home arrest, obligation to reside separately from the victim, bail, seizure of documents, injunction to report periodically to the police, and a recognizance not to leave <...>.

Art. 120(2) prescribes that provisional measures may be imposed only if sufficient data is available that the suspect did commit the criminal act.

Art. 120(3) prescribes that several provisional measures may be imposed if such measures are less strict than detention.

Art. 120(4) prescribes that a pre-trial investigation officer, a prosecutor, a judge or the court, when deciding whether is a need to employ a provisional measure and selecting its type, must take into account the gravity of the criminal act committed by a suspect, his personality, whether he has a permanent residence and a job or any other legal source of living, his age, condition of his health, his marital status and other circumstances which might be pertinent when determining this issue.

CPC Art. 139(1) prescribes that the provisional measure imposed shall be withdrawn if it becomes no longer necessary, or is changed into a more severe or less severe measure when the circumstances of the case make it necessary. The provisional measure shall be withdrawn or modified by a prosecutor's decision or a court ruling.

(b) Observations on the implementation of the article

It appears that Lithuania has implemented the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

The provision is implemented through CC Art.77 (see Annex 1).

Penitentiary Code (PC) Article 140(4) prescribes that convicts who had proven by their faultless behaviour and hard work that they had reformed, can be suggested in the procedure specified by Lithuanian laws for conditional release or for having the remaining unserved part of their punishment of imprisonment changed with a less strict one.

Provisions for conditional release are specified in the art. 157 PC. A court of the territory in which the correctional institution is located shall pass a ruling in respect of conditional release further to an application of the institution enforcing the punishment if the convict has undertaken to prove by fair behaviour and hard work that he shall reform

(b) Observations on the implementation of the article

It appears that Lithuania has generally implemented the provision under review through Article 77 of the Criminal Code.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

The provision is implemented through CPC Art. 157(1) (see Annex 1).

(b) Observations on the implementation of the article

The provision under review has been implemented by Lithuania.

Article 30 Prosecution, adjudication and sanctions

Paragraph 7

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision had been implemented through Articles 9 (3) and (4) and Art. 44 (16) of the Law on Civil Service (see Annex 1).

Criminal Code Art. 42(2)(2) (types of punishment) prescribes that temporary prohibition to be employed in certain jobs or engaged in certain activities may be imposed upon a person who committed a misdemeanor.

Criminal Code Art. 45(1): a court shall impose temporary prohibition to be employed in certain jobs or engaged in certain activities in cases provided for in the special part of this Code, when the perpetrator committed a criminal act in the field of his professional activity or work or when a court concludes that the convict should not remain able to be employed in certain jobs or engaged in certain activities.

Draft amendment of the CC currently registered at the Seimas suggests the criminal law to provide for changing the punishment of prohibition to be employed in certain jobs or engaged in certain activities (also the punishment of deprivation of public rights) by a penal measure by establishing a possibility of imposition of such penal measure in addition to other punishments. Moreover, moreover, by the said draft amendments it is suggested to specify the

procedure of application of the penal measures specified in the art. 68 CC if such penal measure is imposed in addition to the punishments of imprisonment or detention.

(b) Observations on the implementation of the article

Based on the above, Lithuania has generally implemented the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

Article 30(1) of the of the Law on Public Service prescribes that a disciplinary sanction must be imposed within 1 month after the day when an act of misconduct was brought to light, excluding the time during which the civil servant was absent from work for reasons of illness, secondment, or was on vacation, and in case a criminal case was initiated or the Seimas Ombudsman conducts an investigation, or in case of official or other investigation by a competent institution - within two months from closing of a criminal case or validation of a judgment of a court, filling in of a statement by the Seimas Ombudsman, the day an official or other investigation by a competent institution was finished.

Article 30(4) prescribes that when it becomes evident that misconduct in office has elements constituting a criminal offence or administrative violation of law, the procedure of imposing disciplinary sanctions shall be suspended and the materials of investigation shall be referred to an institution competent to investigate such cases. When a decision of no criminal or administrative case is given or when the defendant is exempted from criminal or administrative liability, the procedure of imposing a disciplinary sanction shall be resumed and the sanction shall be imposed in the procedure and within the terms specified in the part 1 of this article.

(b) Observations on the implementation of the article

Based on the above, Lithuania has generally implemented the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code Art. 41(2)(4): purpose of the punishment is to affect the persons who had served the punishment so that they followed the law and would not commit crimes again.

Criminal Code Article 97(6). At the lapse of terms specified in this article previous convictions are lifted and persons are regarded as having no previous convictions.

(b) Observations on the implementation of the article

Despite the fact that no practical examples of the implementation of the measures listed above have been provided, the review team was of the opinion that the domestic legal framework was in compliance with the provision of the UNCAC under review..

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

The domestic legal framework regulates in detail the requirements and conditions for freezing, seizure and confiscation of proceeds of corruption. The Criminal Procedure Code allows for the imposition of coercive interim measures enabling tracing, identification, seizure and temporary limitation of property rights pending investigation. The use of confiscation is regulated by art. 72 Criminal Code, as recently amended,. It is usually considered separately from the sentencing of the offender, without being dependent on his/her conviction (*in rem* confiscation), and is imposed regardless of the sanction. The burden of proof in relation to the proceeds from crime lies with the prosecution. In exceptional cases of the so called “*extended confiscation*” (art. 72 Criminal Procedure Code) against illegally obtained property found to be disproportionate to the lawful income of the offender, the offender is obliged to furnish facts proving the lawfulness of the acquisition of this property. The possibility of non-conviction-based confiscation and the reversed burden of proof in cases of extended confiscation were deemed by the reviewing team to be among Lithuania’s good practices in its efforts undertaken to facilitate the prosecution or adjudication of corruption-related offences.

Criminal Code Article 72 (4)(1) lays down that the court shall order compulsory confiscation of criminal proceeds or other material valuables acquired through a criminal act. Part 5 of the said article lays down that in the case of the property which is subject to confiscation having been concealed, used up or sold, or having disappeared for some other reason and thus not being available to be taken in kind, the court shall recover from the defendant, his accomplices or other persons the court shall order confiscation of a sum of money equivalent to the value of the property from the perpetrator, his accomplices, or other persons specified in paragraph 4 of this article.

(b) Observations on the implementation of the article

The domestic legal framework regulates in detail the requirements and conditions for freezing, seizure and confiscation of proceeds of corruption. The CPC allows for the imposition of coercive interim measures enabling tracing, identification, seizure and temporary limitation of property rights pending investigation. The use of confiscation is regulated by art. 72 CC, as recently amended. It may be ordered with regard to proceeds of crime, instrumentalities and means of crime. It is usually considered separately from the sentencing of the offender, without being dependent on his/her conviction (*in rem* confiscation), and is imposed regardless of the sanction. The burden of proof in relation to the proceeds from crime lies with the prosecution. In exceptional cases of the so called “extended confiscation” (art. 72 CPC) against illegally obtained property found to be disproportionate to the lawful income of the offender, the offender is obliged to furnish facts proving the lawfulness of the acquisition of this property.

The reviewing experts were satisfied that the domestic confiscation regime was coherent and in compliance with the requirements of article 31 of the UNCAC. Specific features of this regime were identified as good practices (see below).

There were only two issues which were found by the review team as matters requiring further attention in relation to proceeds of corruption. These two issues will be presented below under article 31 paragraph 6 and article 31, paragraph 9, of the UNCAC respectively.

(c) Successes and good practices

- The possibility of non-conviction-based confiscation; and
- The extended confiscation against illegally obtained property found to be disproportionate to the lawful income of the offender and the relevant obligation of the offender to furnish facts proving the lawfulness of the acquisition of this property (reversed burden of proof)

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code Article 72(2) lays down that the court shall order compulsory confiscation of money or other material valuables used in committing a criminal act.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Attention should be paid to the fact that Article 72 of the Criminal Code has been amended, therefore the information provided by Lithuania in the self-assessment is not relevant. Moreover, the new Article 72-3 on Extended Confiscation of Property was also adopted, therefore Article 31 of the Convention should be analysed in the light of the new wording of Article 72 of the Criminal Code together with new Article 72-3 (see Annex 1).

(b) Observations on the implementation of the article

See comments to subparagraph 1 (a) above.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code Art. 116 prescribes that during the proceedings, a pre-trial investigation officer, a prosecutor or the court must invoke remedies for the pending civil action: to discover property belonging to a suspect or an accused, or persons who bear financial responsibility for the actions of the accused and impose attachment on the property.

Criminal Procedure Code Art. 151(1) prescribes that with a view of securing a civil claim or a likely confiscation of property, a temporary limitation of the property rights of a suspect or a natural person who is financially responsible for the actions of the suspect, or of other natural persons who have possession of the property received or acquired in a criminal way may be imposed by a decision of a prosecutor. A temporary limitation on the property rights may be imposed together with a seizure or search.

Part 2 of said article prescribes that a temporary limitation of the property rights of a legal person may be imposed 1) in order to ensure a likely confiscation of the property in the cases provided for by article 72 of the criminal Code of the Republic of Lithuania; 2) in order to secure a civil claim where there is a sufficient ground for bringing a civil action against a legal person.

(b) Observations on the implementation of the article

See comments to subparagraph 1 (a) above.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

26 May 2004 Resolution No. 634 of the Government of the Republic of Lithuania “On the Rule of Transfer, Registration, Keeping, Realization, Return, and Acknowledgement as Waste of Derelict, Confiscated Property, Property Inherited by the State, Transferred to the National Income, Also of Material Evidence and Found Property “.

Criminal Procedure Code Art. 151(4). The property with respect to which a temporary limitation of property rights is being imposed shall, at the prosecutor’s discretion, be transferred into the custody of a representative of the municipal institution, or of the owner of the property or member of his family, or his close relative, or other person. It must be explained to the aforesaid persons that they are liable under Article 246 of the Criminal Code of the Republic of Lithuania for embezzlement of this property or concealment thereof. For this purpose, a written promise shall be taken to that effect. In the event of a necessity, this property may be taken from them. Where a temporary limitation is imposed on bank deposits, all transactions involving them shall be suspended provided the decision on a temporary limitation of the property rights does not provided otherwise.

Criminal Code Article 246 provides for criminal liability for a person who hid, destroyed, or damaged levied or arrested property or property trusted onto him when temporary limitation of property rights was imposed on such property, or for a person who surrendered such property to another person (public labour or a fine, or detention, or imprisonment of up to three years).

This matter was addressed in a Review of the Compliance of the Lithuanian Legal and Institutional Framework Against Corruption carried out by the UNDP Lithuanian Office.

The national authorities also made reference to the relevant information contained in the Council of Europe GRECO Second Evaluation Round Evaluation Report for Lithuania. Thus, it was reported that rules on the management of seized property are contained in the CCP as well as in the “Provisions on register of property seizure”, “Rules on accounting, preservation, transfer to the court and return of material evidence and other items, monetary valuables and securities” and instructions on “Procedure for accounting, preservation, return and sale of objects seized or taken from other persons, money, other valuables and securities”. The general rule is that the seized property should be kept together with the investigation file or, if that is not practical, in a place indicated by the pre-trial investigation officer, prosecutor or the court (article 92 CCP). Items of diminishing value or those involving excessive expense shall, unless otherwise prescribed by law, be transferred to the State Tax Inspectorate for realization (article 93 CCP). In certain cases, the owner may be reimbursed the value of the sold/transferred or destroyed items. Where temporary limitation of property rights is involved, the prosecutor shall decide who should preserve the property and warn the person in charge about the criminal liability for embezzlement or concealment thereof. A financial institution is entrusted with executing decisions on limitation of monetary deposits. In all cases, the principles of proportionality and proper administration should apply.

(b) Observations on the implementation of the article

Based on the above, the reviewing experts concluded that the Lithuanian legal framework and practice were in compliance with the provision of the UNCAC under review.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

This matter was addressed in a Review of the Compliance of the Lithuanian Legal and Institutional Framework Against Corruption carried out by the UNDP Lithuanian Office.

Criminal Code Art. 72(4): Property transferred to other natural or legal persons may be confiscated regardless of whether or not criminal proceedings are instituted against the said persons, if: 1) when transferring the property to the offender or other persons, this person was aware, or ought to have been aware and could have been aware that this property will be used for the commission of a criminal act prohibited by this Code; 2) the property was transferred to this person by way of forming a simulated transaction; 3) the property was transferred to this person as a family member or close relative of the offender; 4) the property was transferred to a legal person, in which the director or a member of the managing body or participants, who hold by the right of ownership at least fifty percent of the issued shares (portion of shares owned by a shareholder, contributions, etc.), are the offender, his family members or close relatives; 5) when acquiring the property, this person or other persons, while occupying an executive position in the legal entity and entitled to represent it, to take decisions on behalf of the legal entity or to control the activities of the legal entity, were aware, or ought to have been aware and could have been aware that this property was used as an instrument or a means to commit a crime or as a result of a criminal act prohibited by this Code.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

See Art 72 and 72³ of the Criminal Code of the Republic of Lithuania (see Annex 1).

Case-law: The requirements of Article 72 of the CC are also met by such cases when confiscation is applied to the assets into which the property obtained from criminal activities is converted, for example, the property seized is sold, that is, the monetary expression is obtained instead of the property in kind. The Chamber of Judges of the Supreme Court of Lithuania has held that it can be seen from the case-file data that R. Č. stole the amplifier and the speaker from the outdoor kitchen of V. B. and sold these things to S. J. for LTL 140. Thus, the court has ascertained rightly that the Appellant in Cassation obtained LTL 140 from this criminal offence and did not infringe the provisions of law in the application of subparagraphs 3 and 5, paragraph 2 of Article 72 of the CC (cassation case No. 2K-308/2005). It also includes the opposite cases when confiscation is applied to the property acquired by the offender from the money received in a criminal manner. Vilnius Regional Court, following Article 72(2)(3) of the CC, confiscated from I. G. who was sentenced under Article 189 of the CC the car Ford Mondeo she bought for LTL 5 000 which she received from M. G., knowing that the money had been stolen (criminal case No. 1-65/2007).

The position of the court of cassation on the relation between property confiscation and compensation of the damage caused by a criminal offence is also relevant to the topic in

question. Once the victim's civil claim regarding the seized property has been satisfied, the provisions of Article 72 of the CC should not be applied except when the seized property has been sold or otherwise used and yielded material gain. In such a case the provisions of Article 72(5) of the CC should be applied (e.g., cassation case No. 2K-632/2004, 2K-70/2005). It follows that the things or other property newly acquired by the offender should be also confiscated when their value exceeds the value of the property obtained directly from the criminal act.

(b) Observations on the implementation of the article

Based on the above, the reviewing experts concluded that the Lithuanian legal framework was in incompliance with the provision of the UNCAC under review.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code Article 72(5): In the case of the property which is subject to confiscation having been concealed, used up or sold, or having disappeared for some other reason and thus not being available to be taken in kind, the court shall recover from the defendant, his accomplices or other persons the court shall order confiscation of a sum of money equivalent to the value of the property from the perpetrator, his accomplices, or other persons specified in the parts 2, 6, and 4 of this article.

(b) Observations on the implementation of the article

Based on the above, it appears that the provision under review has been implemented by Lithuania.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

See the reply to the Art. 31 part 5)

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Relevant extracts from the Criminal Code of the Republic of Lithuania are provided in the response to the question concerning Paragraph 4 of Article 31 of UNCAC.

(b) Observations on the implementation of the article

At an initial stage, the reviewing experts drew the attention of the national authorities to the lack of clarity in the legislation regarding the confiscation of income and other benefits derived from corresponding proceeds of crime or property, i.e. added value of such property, as required in art. 31 para. 6 of the UNCAC, in particular, whether “property received **directly or indirectly** from a criminal act”, as set forth in art. 72 para. 2 CC, covers instances of confiscation of secondary proceeds of crime.

The Lithuanian authorities provided assurances that amendments in art. 72, para. 2, CC have introduced a definition of the proceeds of crime which include both direct and indirect proceeds. To their understanding, this clarification is sufficient to cover all property that must be confiscated according to the rules of Article 31(6) of UNCAC.

However, the review team was of the view that it is not self-evident that the word “indirectly” would cover specifically the instances of confiscation of secondary proceeds of crime. It may mean, in particular, the property received (acquired) by a third party from a perpetrator of the crime. It may also cover the situation when the property was not directly obtained from the crime but was saved due to the commission of the crime (for example, in case of smuggling an offender may save on the customs duties which otherwise would be paid to the budget).

Furthermore, and upon relevant request, the Lithuanian authorities provided at a subsequent stage of the review process an example of recent jurisprudence of the appeal court, whereby reference was made to “other property of economic value newly derived from assets [directly obtained from the criminal offence]”.

The reported case-law was as follows:

Court of Appeal of Lithuania, Ruling of 24 January 2012, criminal case No. 1A-198/2012⁴:

*"(...) The result of a criminal act referred to in paragraph 2 of Article 72 of the Criminal Code is the assets obtained from a criminal offence and it is understood as property benefit, which the offender obtained after commission of the criminal act. It can be the assets directly obtained from the criminal offence or the property items, money **or other property of economic value newly derived from such assets**. Following the requirements of paragraph 2(3) of Article 72 of the Criminal Code, the court must confiscate the money and other items of material value which have been obtained from a criminal act (...)"*

It should be noted that criminal material benefit may be construed not only as the acquisition of assets of any form but also as the avoidance or elimination of a material obligation (saving of costs). Such conclusion follows from the case-law formulated, for example, in the criminal cases regarding bribe-taking, trading in influence or bribe-giving. The object of such criminal offences – a bribe – is understood as the remuneration obtained unlawfully or sought to be

⁴ The commercial database <http://www.infolex.lt> was used to examine the case-law.
Case source: <http://www.infolex.lt/tp/338545>

obtained, i.e. as any assets, *inter alia*, property services, for example, free repairs of a vehicle or a house, granting of interest-free loans, reduction of taxes, etc. (Overview of the case-law in criminal cases regarding offences and criminal misdemeanours against civil service and public interests (Articles 225, 226, 227, 228, 229 of the CC). Case-Law 26). The Supreme Court of Lithuania has pointed out that the content and legal form of a bribe may vary, including fake or real civil contracts with the person being bribed (cassation case No. 2K-7-48/2009). The benefit of this nature obtained by the offender includes the features of the assets derived from a criminal act, therefore, should be subject to confiscation pursuant to the imperative provision of Article 72(2)(3) of the CC. Whereas the benefit at issue is the avoidance of a property obligation, the court should invoke Article 72(5) of the CC and recover from the offender the amount of money equivalent to its value."

Overview of the case-law of the Supreme Court of Lithuania in the application of property confiscation (Article 72 of the Criminal Code) No. AB-32-1, cat. 1.1.9.6.; Case-Law 32; 18 February 2010.

The reviewers welcomed the above jurisprudence and favoured its consistent development on this matter. Thus, they recommended that the national authorities develop consistent jurisprudence to provide clarity regarding the confiscation of income and other benefits derived from corresponding proceeds of crime or property, i.e. added value of such property, as required in art. 31 para. 6 of the UNCAC, in particular, whether "property received directly or indirectly from a criminal act", as set forth in art. 72 para. 2 CC, covers instances of confiscation of secondary proceeds of crime.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

See the reply to the Art. 31 part 2 (parts 2 and 3 of the reply) and art. 40.

Also: Criminal Procedure Code Art. 145(1), Art. 147(1) and Art 155(1): (see Annex 1).

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Concerning the provision of information under the Law on Banks of the Republic of Lithuania

Article 55 of the Law on Banks of the Republic of Lithuania defines secret of a bank and indicates possibilities to receive information which is considered a secret of the bank:

"1. The secret of a bank shall be all data and information known to the bank on:

1) accounts held in the bank by the bank's client, the balance of funds in these accounts, the client's operations performed with the funds in his account, the terms of the contracts on the opening of the accounts by the client;

- 2) *liabilities of the bank's client to the bank and terms of the contracts wherefrom these liabilities have arisen;*
 - 3) *other financial services provided to the bank's client and terms of the contracts on the provision of the financial services;*
 - 4) *the financial situation and assets of the bank's client, activities, operating plan, liabilities to third parties or transactions concluded with the third parties, commercial (industrial) or professional secrecy of the client.*
2. *A bank, the bank's employees and any third parties being in the possession of the information which is considered a secret of the bank's may not divulge such information for an indefinite period of time, except in the cases referred to in paragraphs 3-5 of this Article, paragraph 2 of Article 58 of this Law and in other laws.*
 3. *The information which is considered a secret of a bank may be divulged only to the bank's client whereto the information which is considered a secret of the bank is related or upon his written request specifying to whom and what information must be divulged.*
 4. *A bank shall have the right to divulge the information which is considered a secret of the bank to courts or third parties where this is necessary to protect the legitimate interests of the bank and only to the extent this is necessary to protect the bank's interests.*
 5. *A bank shall provide the information which is considered a secret of the bank to the institutions referred to in the Law on the Prevention of Money Laundering, also to third parties according to the procedure set forth by laws where, according to the laws, the bank must provide such information thereto."*

Concerning the provision of information under the Code of Criminal Procedure of the Republic of Lithuania

As indicated in the explanatory letter of the Prosecutor General of the Republic of Lithuania of 3 June 2008 (ref. No. 7.2-2442 "Regarding the acquisition of information which constitutes a secret of a bank"), data concerning the financial situation of a person, transactions carried out by him and the financial obligations which derive from these transactions, as well as other financial operations, belongs to the category of information which concerns the private life of a person (except for the cases, when this person performs financial operations in the course of performance of work functions or assignments). As indicated in the Paragraph 3 Article 22 of the Constitution of the Republic of Lithuania, information concerning the private life of a person may be collected only upon a justified court decision and only according to the law.

This provision of the Constitution of the Republic of Lithuania is included in the Article 155 of the Code of Criminal Procedure of the Republic of Lithuania ("The Prosecutor's Right to Examine the Information"), which indicates that a prosecutor, upon passing a decision and having obtained consent of an investigating judge, to come to any State or municipality institution, public or private agency, enterprise or organisation and request to be provided for the examination of the necessary documents or any other appropriate information, make recordings or make copies of documents or receive written information if this is necessary for the investigation of a criminal act. A pre-trial investigation officer, under the prosecutor's instruction, may also examine the information in the manner specified in this Article.

Also, Article 147 of the Code of Criminal Procedure of the Republic of Lithuania ("Seizure") provides for a possibility to affect the seizure of tangible objects or documents relevant for investigation, under a reasoned order of the pre-trial judge.

In case when the participant of the pre-trial investigation consents that the information on the financial operations carried out by him would be provided in this investigation, a bank or any other credit institution may be required to provide this information under Article 97 of the

Code of Criminal Procedure of the Republic of Lithuania (“Obtaining Objects and Documents Relevant for Investigation of a Criminal Act”) without having obtained consent of an investigating judge. In such cases a written consent of the participant of the pre-trial investigation shall be attached to the request.

It is recommended to comply with the same requirements when seeking to obtain information which is known to a bank or any other credit institution and which contains a commercial secret of this institution or its client, when such information is relevant for the investigation of a criminal act.

Under Article 97 of the Code of Criminal Procedure of the Republic of Lithuania, officials of law enforcement authorities have the right to obtain information concerning facts if a certain natural or legal person is a client of a bank or any other credit institution (i.e. if a bank account was opened by this client, what type of account, it’s number, if any financial services have been provided to this person (renting safe boxes, awarding a loan)) without disclosure of conditions and content of the services.

Concerning the provision of information under the Law of the Republic of Lithuania on the Prevention of Money Laundering and Terrorist Financing

Articles 5, 8, 14, 17 of the Law of the Republic of Lithuania on the Prevention of Money Laundering and Terrorist Financing establish the obligation for cooperation and exchange of information between competent authorities. Paragraph 9 Article 20 of the aforementioned Law provides that “submission of the information specified in this Law to Financial Crime Investigation Service shall not be viewed as disclosure of industrial, commercial or bank secret”.

(b) Observations on the implementation of the article

Lithuania seems to be in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania reported partial implementation of the provision under review.

The draft law on amending Article 216 (Money or Property Laundering) of the Code of Criminal Procedure, which has been registered in the Seimas (Parliament), provides for the following:

1. Any person who, seeking to conceal or legalise money or property of his own or another person or proceeds or a part thereof obtained from such property while being aware that they have been obtained by criminal means, kept them or performed financial transactions with the said property or a part thereof or with the proceeds obtained from the property of a part

thereof, used them in economic, commercial, financial or other activity, concluded transactions or otherwise obtained or transferred the said property or a part thereof or the proceeds, source, location, movement, property rights obtained from such property or a part thereof or concealed the origin of the property or a part thereof or the proceeds obtained from the said property or a part of the proceeds, or has changed legal status of such property or a part thereof or of the proceeds obtained from such property of a part thereof, shall be punished by imprisonment for a period of up to seven years.

2. A legal person shall also be held liable for the acts provided in this article.

Moreover, the Law on the Declaration of Assets of Residents of the Republic of Lithuania determines the declaration of assets belonging to residents by the right of ownership and monetary funds held by them (hereinafter referred to as the “assets”) as well as the declaration of assets (including income received) when giving donations to political parties or participants of a political campaign, when applying for state guaranteed legal aid, state pecuniary social grant, or state aid when procuring or renting a flat.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

See Criminal Code of the Republic of Lithuania (Article 72, Article 72³, Article 189¹, see Annex 1)

In addition, please find attached to this letter the Law of the Republic of Lithuania on the prevention of money laundering and terrorist financing (in English).

(b) Observations on the implementation of the article

In exceptional cases of the so called “*extended confiscation*” (art. 72 CPC) against illegally obtained property found to be disproportionate to the lawful income of the offender, the offender is obliged to furnish facts proving the lawfulness of the acquisition of this property. This was identified as **good practice** by the reviewers.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code Art. 72 (4)(1): property transferred to other natural and legal persons shall be confiscated irrespective whether these persons have been prosecuted, if when obtaining the property they knew or should and may have known that this property, or newly acquired valuables for these funds have been obtained from a criminal act.

(b) Observations on the implementation of the article

The reviewing experts noted the need for additional clarity regarding the definition and nature of “good will” of third parties to ensure that their rights are not prejudiced.

The Lithuanian authorities clarified, without nevertheless further explanations as required, that the outcome of the property acquired in good faith was to be resolved in accordance with the provisions prescribed in the Civil Code (Art. 4.34. Protection of possession; Art. 4.96. Vindication a thing from an acquirer in good faith).

The reviewing experts recommended that the national authorities pursue action, including through the consistent development of relevant jurisprudence, to secure that the concept of “good will” of third parties is applied in a manner that is not prejudicial to their rights in confiscation procedures.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

Republic of Lithuania Law on Protection of Participants of Criminal Proceedings and Operation Activities, Officials of Judicial Authorities and Law Enforcement Institutions from Criminal Influence (hereinafter - the law) Article 4(1) prescribes that means of protection from criminal influence may be applied in respect of persons who participate in criminal proceedings: witnesses, aggrieved persons, experts, specialists and defenders (attorneys), attorneys at law, suspects, defendants, convicts, acquitted persons, persons in respect of whom a case (a pre-trial investigation) has been cancelled, as well as these persons’ parents (adoptive parents), children (adopted children), brothers, sisters, grandparents, grandchildren, spouses, and cohabitants,

Article 5 of this law prescribes that protection means may be applied if, when performing operative actions or a pre-trial investigation or adjudicating criminal cases with respect to Article 225(2) (Bribery), Article 227(2) (Graft), Article 228(2) (Abuse of Office) or upon completion of an operative activity or criminal proceedings, credible information is received from public or confidential sources stating that: 1) lives or health of persons are at real risk; 2) property of the persons may be destroyed or damaged.

With respect to the persons listed in Article 4(1) of this law, except experts, specialists and defenders (attorneys), the means of protection against criminal influence are applied if these persons actively cooperate with officials of judicial authorities and law enforcement institutions, if they have helped to establish criminal act or provided other valuable information to the officers of justice and law enforcement institutions

On 14 September 2010, Chief Adviser to the President of the Republic presented a decree of the President which suggests a draft law supplementing the Code of Criminal Procedure,

providing for a new institution of partial anonymity and offering additional guarantees to secret witnesses reporting offences of corruption.

According to the Adviser to the Present, the purpose of these amendments is “to implement the duty of the state to defend its conscientious citizens who decide to act in the manner encouraged by the state, i.e. inform the law enforcement bodies about the criminal acts known to them and increase the level of detection of corruption criminal acts, simplify the process of a comprehensive and objective investigation of such offences and in this way reduce the number of persons charged with corruption offences yet avoiding criminal liability due to the insufficiency of evidence.”

The currently effective provisions of the Code of Criminal Procedure dealing with anonymity may be applied only in cases where there is a threat to the life, health, freedom or property of a witness, victim, his or her family members or close relatives, i.e. the application of anonymity is primarily associated with the threat of physical coercion.

The Code has been also supplemented with a new article with a view to introducing a new protection measure, which is applied in several other states and is known by the science of criminal procedure, i.e. partial anonymity: possible non-disclosure of the person’s date of birth, personal number, residential address, occupation, place of work and education, relationships, relation with the parties to the proceeding and other persons, as well as some other personal data of the witness or the victim (with the exception of their first and last names).

Upon adoption of the draft law after submission to the Seimas, it will be then considered by the principal committee, the Committee on Legal Affairs, and the additional committee, the Committee on Budget and Finance. The preliminary date for consideration in the sitting of the Seimas is 23 November.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

See Article 28 (of the Criminal Procedure Code) the Victim (see Annex 1).

(b) Observations on the implementation of the article

The review team noted that Lithuania has comprehensive legal and other measures in place for the protection of different categories of witnesses, victims and other participants in criminal proceedings from potential retaliation and intimidation. This was identified as **good practice** by the reviewers.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

Republic of Lithuania Law on Protection of Participants of Criminal Proceedings and Operation Activities, Officials of Judicial Authorities and Law Enforcement Institutions from Criminal Influence Article 7 prescribes that the following means of protection from criminal influence may be applied in respect of a protected person: 1) physical protection of a person and his or her property; 2) temporary transfer of the person to a safe location; 3) setting of a special regime according to which data is provided about the person from state or departmental registers and information systems; 4) change of the place of residence, working place of place of study of the person; 5) change of the person's identity and biography data. 6) performing of a plastic surgery which changes the person's appearance; 7) issuing of a firearm, special means to the person; 8) financial aid.

(b) Observations on the implementation of the article

Based on the above, it can be concluded that Lithuania implemented the provision under review.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

Code of Criminal Procedure Art. 183(4): during a pre-trial investigation a witness in respect of whom means of protection from criminal influence are applied may be questioned by video and audio distance communication means. Such possibility also provided when adjudicating a case in court (Code of Criminal Procedure 279(6)).

Moreover, Article 199 of the Code of Criminal Procedure provides that if: 1) in the event of imminent threat to life, health, freedom or property of an aggrieved person, a witness or family members or close relatives thereof; 2) evidence of the aggrieved person or the witness are important in a criminal procedure; 3) the aggrieved person or a witness participates in the process related to grave, serious and less serious crimes, anonymous witness status may be granted to them i.e. their identity data is classified.

The law supplementing Article 199 of the Code of Criminal Procedure, which has been registered in the Seimas (Parliament), suggests to envisage that the status of an anonymous witness may be granted in the procedure that is taking place in relation to a criminal act of

corruption nature, if due to subordination of a witness or an aggrieved person or close relatives thereof to a person against which they testify, or if due to administrative powers, or functions of a government representative vested in such person or other circumstances related to such person's service or powers vested in him, a threat arises upon rights, service or business interests or other or legally protected interests of the witness or his or her family members or close relatives and if the circumstances provided in items 2 and 3 of Paragraph 1 of this Article exist.

Furthermore, the Code of Criminal Procedure is now supplemented by article 1991 (partial anonymity), which provides that when grounds provided in Article 199 of this code exist, as well as in other cases when there is available information that divulging of certain data of the witness or the aggrieved person may have considerable negative consequences and when it is obvious that it is sufficient to classify a part of data about the witness or the aggrieved person in order to ensure the rights and legally protected interests of the witness or the aggrieved person or their family members or close relatives, then a partial anonymity may be applied.

(b) Observations on the implementation of the article

The reviewing experts took note of the information provided by the Lithuanian authorities, and particularly the developments related to a law supplementing the CPC, in force since December 2010. This law provides for partial anonymity of witness testimony and offers additional guarantees to secret witnesses who report offences of corruption. The objective of the law is to widen the scope of application of anonymity to cases beyond those related to threats to the life, health, freedom or property of a witness, victim, family members or close relatives.

It appears that Lithuania is generally in compliance with the provision under review.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

In 1996 the Baltic Sea Task Force on Organised Crime was established. In the context of regional activities question on the protection of witnesses and victims was particularly taken into account. Being actively involved in witness and victims protection a clearing house on the witness and victims protection within the Task Force have been entrusted to Lithuania. As a consequences of the activities carried out within the Task Force international treaties and other activities on witness protection were practically carried out in several Baltic Sea region states.

(b) Observations on the implementation of the article

Lithuania has entered into arrangements with regard to the protection of witnesses and victims in the framework of the Baltic Task Force on Organised Crime. The provision of the UNCAC under review has been implemented domestically.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

See response given under Article 32 Subparagraph 1

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the provision of the UNCAC under review, on the understanding that the status of victims in criminal proceedings is afforded not only to natural, but also to legal persons (see below under article 35 of the UNCAC).

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code Article 183(1) prescribes that prior to questioning of a witness, a prosecutor or a pre-trial investigation officer verifies the witness' identity, finds out the necessary data about the witnesses personality and his relations with the suspect <...> warns [the witness] of his or her liability in accordance with Article 235 of the Criminal Code of the Republic of Lithuania for giving a false testimony. All this is included in the protocol which is certified by the signature of the witness.

Furthermore, Criminal Procedure Code Article 184 (4) prescribes that in cases when the witness is questioned by a pre-trial investigation judge, the prosecutor must advise the suspect and his defender about the time and location of the questioning. An arrested suspect is delivered to the location of questioning. The suspect and his or her defendant have the right to participate in such questioning, to ask the questioned person questions, when the questioning is finished the defendant and the suspect have the right to familiarize themselves with the questioning protocol and provide their comments as to the questioning protocol. Paragraph 5 of this Article prescribes that failure of the suspect and his or her lawyer, who are at large, to appear at the questioning of a witness does not prevent the questioning from taking place

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Article 28 (of the Criminal Procedure Code). The Victim (see Annex 1).

(b) Observations on the implementation of the article

See the observations under paragraph 4 above.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Discrimination against employees is prohibited by Article 2(1)(4) of the Labour Code (hereinafter “the LC”) and Article 7(6), (8) of the Law on Equal Opportunities. Pursuant to Article 11(2) of the LC, should there be contradictions between the provisions of labour regulatory acts, the provision which is more beneficial for the employee shall apply. Article 32 of the LC obliges the State Labour Inspectorate and other institutions to control compliance by employers with the regulatory provisions the LC, labour laws, other regulatory acts and collective agreements and to perform prevention of infringements of the said acts. Pursuant to Article 35(1) of the LC, while exercising their rights and fulfilling their obligations, employers, employees and their representatives must comply with laws, respect the rules of communal life and act in good faith, adhere to the principles of reasonableness, equity and fairness. Abuse of one’s right is prohibited. Article 36(1) of the LC provides that employment rights must be protected by laws, except in cases when the rights are exercised inconsistently with their purpose, public interests, peaceful work, good usages or the principles of public morals. Article 36(2) stipulates ways of protection of employment rights by a court or any other dispute resolution body in accordance with the procedure established by laws. In addition, Article 36(6) of the LC stipulates that a person whose right has been infringed may claim damages, unless otherwise established by labour laws.

The LC provides for not only the key principles of protection of the rights of parties to an employment relationship but also contains specific provisions on the regulation of individual aspects of labour relations, which also ensure adequate protection of employees. Articles 93-95 of the LC stipulate the conditions and content of an employment contract, i.e. the scope of the rights and obligations of parties to legal employment relationships. In addition, pursuant to Article 94(2) of the LC, the parties may not establish working conditions which are less favourable to the employee than those provided by the LC, laws, other regulatory acts and a collective agreement. If the conditions of the employment contract contravene the LC, a law or a collective agreement, the provisions laid down in the LC, laws, regulatory acts or the collective agreement shall apply. Any dispute concerning the application of the conditions of the employment contract shall be settled by labour dispute resolution bodies. Articles 120 and 121 of the LC specify the cases and procedure for amending the conditions of an employment contract as well as provide for the protection of employees’ interests and prevent groundless and unilateral amendment of an employment contract. Article 124 of the LC provides an exhaustive list of grounds for the expiry of an employment contract. Therefore, an employment contract may not expire on grounds other than those laid down in the LC. Article 129, which provides for the termination of an employment contract on the initiative of an employer without any fault on the part of an employee, is particularly relevant in the case of

protection of an employee who has reported possibly illegal actions of an employer from illegal sanctions. Pursuant to Article 129(3)(3), participation by an employee in proceedings against an employer charged with violations of laws, other regulatory acts or a collective agreement, as well as application to administrative bodies shall not be a legitimate reason to terminate employment relationships.

Both the LC and case law place the burden of proving that an employment contract has been terminated on the grounds set out in the LC and in strict accordance with the procedure laid down in the LC on employers.

Articles 227-244 of the LC define labour discipline, a breach of labour discipline, a gross breach of work duties, stipulate the procedure for imposing disciplinary sanctions on employees and disciplinary liability. Articles 245-258 of the LC specify the cases of emergence and the procedure for the application of material liability. Chapter XIX of the LC details the individual labour dispute resolution procedure.

The Law on Civil Service (hereinafter “the LCS”) ensures the protection of civil servants who have reported illegal acts of employers from illegal actions of employers. Requirements for recruitment to the civil service are set forth in Article 9 of the LCS. Articles 15 and 16 specify the rights and obligations of civil servants. Article 17 defines activities incompatible with the civil service. Article 19 of the LCS stipulates the cases and procedure for transferring civil servants to other posts. Article 22 of the LCS governs the procedures for the appraisal of civil servants’ performance and possible decisions of the person appointing a civil servant after carrying out the performance appraisal of civil servants whose positions are abolished as well as guarantees in other cases provided for by the law. Article 44(1) of the LCS provides an exhaustive list of cases of dismissal from the civil service. The clearly defined imperative procedures for recruitment to the civil service, performance of civil servants’ functions, performance appraisal and dismissal from the civil service create sufficient preconditions for protecting civil servants from the imposition of illegal sanctions in the civil service.

Legal protection of speakers is also stipulated in the Law on Provision of Information to the Public which provides for confidentiality of the source of information. Pursuant to Article 8 of this law, producers or disseminators of public information, their participants and journalists shall have the right to maintain the confidentiality of the source of information and not to disclose it, except for the cases where a court decides that it is necessary to disclose the source of information for vitally important or otherwise significant public interests, as well as in order to ensure the protection of constitutional rights and freedoms of a person and administration of justice.

With regard to the assessment of the effectiveness of the measures taken, it was indicated that this subject matter was subject to evaluation by the Council of Europe GRECO 2nd evaluation round.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Apart the information provided in the self-assessment, Lithuania is submitting additional information which might be useful for evaluators to ascertain the implementation of the requirements of the present Article of the Convention:

1. From the systemic point of view, the legal standards set forth in the self-assessment check list provide for measures to protect the rights and legitimate interests of whistleblowers and therefore, in Lithuania's opinion, prove the existence of the measures discussed in Article 33 of the Convention. As far as the protection and defence of the legitimate interests of whistleblowers is concerned, it is also important to mention the constitutional right of persons to defend their rights and legitimate interests in court (Pursuant to Article 30(1) of the Constitution, "A person whose constitutional rights or freedoms are violated shall have the right to apply to court.").
2. Bill No XIP-2459 on the Protection of Whistleblowers was registered at the Parliament of the Republic of Lithuania on 30 September 2010. The purpose of the law is "to ensure the protection of whistle-blowers and promote disclosure of information on corruption crimes." Thus, Lithuania is also considering the possibility of introducing additional measures to protect whistleblowers, as required by Article 33 of the Convention.
3. The wording "is considering the possibility" in Article 33 of the Convention cannot be treated as an obligation to adopt any special legislation.

In view of the foregoing, Lithuania believes that the provisions of Article 33 of the Convention have been implemented.

(b) Observations on the implementation of the article

The reviewing experts noted that despite the existence of a nexus of provisions of labour law and civil servants legislation on the protection of reporting persons, there is still no ad hoc legislation in Lithuania ensuring their protection, as set forth in art. 33 of the UNCAC (non-binding provision). Lithuania is considering the possibility of introducing additional measures to protect whistleblowers and a draft law on the Protection of Whistleblowers was registered on 30 September 2010, but, as reported during the country visit, there is a need to review all possible aspects of such protection before proceeding with the adoption of this specific legislation.

Lithuania is recommended to reconsider the need for appropriate follow-up action to complete the internal consultation process and adopt specific legislation on the protection of reporting persons, ensuring that procedural and non-procedural witness protection measures are applied to whistleblowers in corruption cases.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

For instance, the Code of Criminal Procedure Article 112(1) prescribes that a civil claim is made by submitting the claim to the pre-trial investigation officer, the prosecutor or the court at any time during the process, however not later than prior to investigation of evidentiary material in court. The aggrieved person who failed to lay a civil claim in a criminal case, shall have the right to lay the claim in accordance with the order of the civil procedure.

Article 6.145 of the Civil Code. The grounds for applying restitution

1. The restitution is applied when a person must return property, which he or she obtained illegally, to another person <...>.

Article 6.246 of the Civil Code Illegal actions

1. Civil liability arises <...> in the event of committing actions which are forbidden by laws or by a contract (illegal operation), or in the event violation of general duty to behave attentively and carefully

Lithuania has additionally referred to the articles of the Civil Code that provide for corruption as a relevant factor in rendering transactions null and void.

Article 1.66. Conditional transaction

„4. A transaction shall be null and void if the arising, modification or extinguishment of rights and duties is conditioned by the parties upon the fulfillment of an unlawful condition or a condition incompatible with the public order or good morals, or upon the performance of unlawful actions.“

Article 1.81. Nullity of a transaction contradicting public order and good morals

“1. A transaction that is contrary to public order or norms of good morals shall be null and void.”

Article 6.145. Grounds for restitution

“1. Restitution shall take place where a person is bound to return to another person the property he has received either unlawfully or by error, or as a result of the transaction according to which the property has been received by him being annulled *ab initio*, or as a result of the obligation becoming impossible to perform because of a superior force.“

Article 6.246. Unlawful actions

“1. Civil liability shall arise from non-performance of a duty established by laws or a contract (unlawful refrainment from acting), or from performance of actions that are prohibited by laws or a contract (unlawful acting), or from violation of the general duty to behave with care.”

Article 6.225. Absolute and relative nullity of a contract

“1. A contract shall be absolutely voidable (null contract) where a violation of the main principles of the Contract law made in forming a contract has conditioned violation not only of the interests of a party of the contract, but also that of the public interests.”

(b) Observations on the implementation of the article

The civil system of Lithuania enables annulment of contracts and compensation for damages in cases of corruption. The consequences for acts of corruption and compensation for damages are addressed through the Civil Code and the Civil Procedure Code – in addition to the criminal legislation – and the civil system enables annulment of contracts and compensation for damages in cases of corruption. Lithuania is also a party to the Council of Europe Civil Law Convention on Corruption which covers these matters.

Consequently, the reviewing experts found the domestic legal framework to be in compliance with the provision of the UNCAC under review.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

The article is implemented through the following provisions: Criminal Code Article 69, (see Annex 1), Code of Criminal Procedure Article 44(10), Code of Criminal Procedure Article 46 (2) (see below).

Code of Criminal Procedure Article 44(10): any person who has been recognized as an aggrieved party, shall have the right to demand that a person who committed the criminal act be identified and justly punished, to receive compensation of damages incurred due to criminal the criminal act and in cases provided by law - also a compensation from the Crime Victim's Fund as well as, to receive for free legal aid guaranteed by the state in accordance with the procedure established by law.

Code of Criminal Procedure Article 46 (2): in the event a person, who has been recognized as the aggrieved party, incurred damage due to a crime of violence, the pre-trial investigation officer or the prosecutor, subsequent to recognizing the said person as the aggrieved party, must immediately advise the said person about his or her right to receive compensation in accordance with the Law of the Republic of Lithuania On Compensation of Damages Inflicted by Crimes of Violence.

The issues of compensating damages inflicted by a criminal act are regulated by the whole separate Chapter II of the Code of Criminal Procedure (Articles 107-118).

(b) Observations on the implementation of the article

The consequences for acts of corruption and compensation for damages (art. 34, 35 of the UNCAC) are addressed through the Civil Code and the Civil Procedure Code – in addition to the criminal legislation – and the civil system enables annulment of contracts and compensation for damages in cases of corruption. Lithuania is also a party to the Council of Europe Civil Law Convention on Corruption which covers these matters.

The review team raised the issue of whether the rights afforded to victims, as set forth in art.

28 CPC, are restricted only to natural persons or also extended to legal persons. The Lithuanian authorities clarified that, pursuant to the CPC, the status of victims was afforded only to natural persons and that there was no provision in the CC extending explicitly the status of victim to legal persons. It was the view of the national authorities that a systematic analysis of the provisions of the CC could lead indirectly to the conclusion that legal persons may be considered as victims (see arts. 38 and 234 CC). They further noted that legal persons having suffered harm as a result of a criminal act may take part in the criminal proceedings as a civil plaintiff. However, the review team argued in favour of domestic action (either at the legislative level or through appropriate interpretation in the jurisprudence) to ensure in an explicit manner that the status of victims in criminal proceedings is afforded to legal persons as well. A pertinent recommendation was made in this regard.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

The main anti-corruption body in Lithuania is the Special Investigation Service established in 1997. Special Investigation Service of the Republic of Lithuania (further - STT) is an anti-corruption agency accountable to the President and the Seimas of the Republic of Lithuania, whose mission is to reduce corruption as a threat to human rights and freedoms, the principles of the rule of law and economic development.

In pursuit of the aim to reduce the level of corruption STT acts in accordance with the laws of the Republic of Lithuania and international treaties, detects corruption-related offences, contributes to the development of the anti-corruption policy, carries out corruption prevention, coordinates anti-corruption activities of state and municipal institutions and agencies and encourages the public to show intolerance towards and engage in an active fight against corruption. The operation of STT rests on three main pillars: law enforcement, corruption prevention, anti-corruption education and awareness raising of the public. STT has 237 employees, including 213 statutory officials and civil servants. The main legal act regulating the operation of STT is the Law on the Special Investigations Service. STT has five field offices in the major towns of Lithuania: Vilnius, Kaunas, Klaipeda, Siauliai and Panevezys.

The Prosecutor General's Office of the Republic of Lithuania has an Organized Crime and Corruption Investigation Department, whereas five major county prosecution offices (in Vilnius, Kaunas, Klaipeda, Šiauliai and Panevezys) have Organized Crime and Corruption Investigation divisions.

Police and customs have specialised units which are engaged in the fight against corruption within the police and customs respectively.

Lithuania cited the following measures taken to ensure the independence of the above-mentioned bodies (see Annex 1):

- Law on the Special Investigation Service Article 2. "Definitions", Article 16. Independence of the Officers of the Special Investigations Service;
- Constitution of the Republic of Lithuania Article 118;
- Republic of Lithuania Criminal Code Article 231. "Hindering the Activities of a Judge, Prosecutor, Pre-trial Investigation Officer, Lawyer or Bailiff".

The effectiveness of the activities of the Special Investigation Service and prosecution offices are analyzed in the annual reports which are presented to the Parliament and the President for consideration. The activities of specialised customs and police divisions is analysed in their performance reports.

The activities of these anticorruption bodies is also constantly subject to public scrutiny (media, NGOs, etc.).

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Law on the Special Investigations Service can be accessed under the following address: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=110823

(b) Observations on the implementation of the article

The review team noted that Lithuania has put in place a comprehensive institutional framework to address corruption. The main anti-corruption body is the Special Investigation Service (SIS), an independent body accountable to the President of the Republic and the Parliament (Seimas), which was established in 1998 and in 2000 received a broad anti-corruption mandate.

Other specialized anti-corruption bodies in the field of corruption are the Chief Institutional Ethics Commission (CIEC); the Seimas Anti-corruption Commission (SACC); the Interdepartmental Commission for Coordinating the Fight against Corruption (ICCF); and the Department of Organized Crime and Corruption within the Prosecutor General's Office (DOCC).

The reviewing experts underlined that the diversity of law enforcement institutions and their different institutional placement contributed to the system of checks and balances among anti-corruption services with extensive powers. They further noted that none of the existing institutions directly or indirectly involved in the field of anti-corruption law enforcement could per se be identified as weak, ineffective or lacking adequate powers. In addition, most relevant institutions enjoy a high level of independence.

The review team noted the key role of the STT as a specialized anti-corruption body, which appears to have sufficient powers for effective law enforcement. The review team welcomed and corroborated the argument that the STT has been one of the most successful "copies" of the Hong Kong's Independent Commission Against Corruption model.

Both elements highlighted above (diversity of law enforcement institutions; and the key role of the STT as a specialized anti-corruption body) were identified by the reviewers **as good practices**.

The review team recommended that the Lithuanian authorities consider the allocation of additional resources to strengthen the efficiency and capacity of law enforcement bodies and agencies.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania stimulates persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

The key examples of such stimulus (incentives):

1. Mitigating circumstances (see a response provided to Article 37(2));
2. In certain cases it can serve as the grounds for releasing from criminal liability (see a response under Article 37(3));
3. Legislation providing for giving incentives to persons who have furnished valuable information (see a response given under Article 39(2)).
4. Public education and information encouraging them to report offences of corruption (see a response under Article 39(2)).

Furthermore, Lithuania has developed draft legislation, which is currently being considered, on the creation of whistleblower protection mechanisms (see a response given under Article 37(4)).

Regarding the examples of the successful implementation of the above-mentioned measures, Lithuania referred to answers given under Article 37 (2, 3 and 4) and Article 39 (2).

The effectiveness of these measures is assessed as follows:

1. The activities of the Special Investigation Service of the Republic of Lithuania with respect to public information and information are assessed in the annual reports of the agency.
2. Lithuanian Supreme Court. Overview of the Summary of Court Practice in Criminal Cases of Crimes and Misdemeanours against the Civil Service and Public Interests (Criminal Code Articles 225, 226, 227 and 229) of 4 January 2007 (see Annex 2)
3. A paper prepared by the Special Investigation Service of the Republic of Lithuania on the effectiveness of the institution of effective regret (please see Annex IV).

(b) Observations on the implementation of the article

The reviewing experts noted that the domestic legislation provides incentives to persons who have participated in the commission of an offence established in accordance with the UNCAC to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds. Such incentives include the recognition of mitigating circumstances or grounds for providing immunity from prosecution. Furthermore, agreements with Estonia and Latvia in this field have been reported.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code. Article 59. Mitigating Circumstances (see Annex 1)

(b) Observations on the implementation of the article

See the comments to paragraph 1 above.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

See Criminal Code Article 39(1) on the Release from Criminal Liability When a Person Actively Assisted in Detecting the Criminal Acts Committed by Members of an Organised Group or a Criminal Association, Article 40. on the Release from Criminal Liability on Bail and Article 227 (4) on Graft (see Annex 1).

With regard to the evaluation of the effectiveness of the measures taken, Lithuania cited the following documents:

1. Lithuanian Supreme Court. Overview of the Summary of Court Practice in Criminal Cases of Crimes and Misdemeanours against the Civil Service and Public Interests (Criminal Code Articles 225, 226, 227 and 229) of 4 January 2007 (see Annex 2)

2. A paper prepared by the Special Investigation Service of the Republic of Lithuania on the effectiveness of the institution of effective regret (please see Annex 4).

(b) Observations on the implementation of the article

See the comments to paragraph 1 above.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The provision has been implemented through the following legislation and agreements:

1. Article 198 – 203 of the Criminal Procedure Code of the Republic of Lithuania (see also Art 11 Criminal Code on the definition of crime) – see Annex 1;
2. Art 125 and 233 of the Criminal Code (see Annex 1).
3. Agreement between the Government of the Republic of Lithuania, the Government of the Republic of Estonia and the Government of the Republic of Latvia on Co-operation in Protection of Witness and Victims (ratified in 2001)
4. 2004 Interagency Agreement between the Police Department under the Ministry of the Interior of the Republic of Lithuania and Polish Police on Co-operation in the area of Witness Protection.
5. Draft International Agreements on Witness Protection of the Lithuanian Police with the Slovak Republic and Republic of Bulgaria.
6. Draft Law on Whistleblower Protection pending in the Parliament. The purpose of the law is to ensure protection of whistleblowers and encourage persons to report offences of corruption.

(b) Observations on the implementation of the article

See the comments under paragraph 1 above.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with

their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

The following example of agreement is provided:

Agreement between the Government of the Republic of Lithuania, the Government of the Republic of Estonia and the Government of the Republic of Latvia on Co-operation in Protection of Witness and Victims (ratified in 2001)

Article 2

Directions of Co-operation

The Parties shall co-operate as follows:

5) by discontinuing criminal prosecution or reducing criminal liability to persons who provided assistance to the law enforcement of another Party and helped disclose a serious crime if that crime is more dangerous than the crime committed by that person.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

1. An example of the relevant provision from the Agreement between of Lithuania, Latvian and Estonian Governments on co-operation in witness and victim protection is presented in self-assessment (please refer to the answer given under Article 37 Paragraph 5).
2. Currently, the Draft on the Agreement between the Ministry of Interior of the Republic of Lithuania and the Ministry of Interior of Slovak Republic on the co-operation the witness protection provision, the Draft of Understanding and Co-operation Agreement between the Police Department under the Ministry of Interior of the Republic of Lithuania and Witness Protection Bureau of “Security” Directorate General of Ministry of Justice of the Republic of Bulgaria on the protection and support of witness and other members of criminal procedure. (Information source: <http://www.policija.lt/index.php?id=2607>)

According to Article 37 Paragraph 5 of UNCAC, where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Respectively, in implementation of this provision it is not required to draw relevant agreements. Nevertheless, Lithuania has the provision in the Agreement with the Governments of Latvia and Estonia. Furthermore, it is deliberated to conclude similar agreements with Slovakia and Bulgaria. Consequently, in the opinion of Lithuania, this provision is considered implemented.

(b) Observations on the implementation of the article

See comments to paragraph 1 above.

Article 38 Cooperation between national authorities

Subparagraph (a)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

The pillar of anti-corruption education is one of the key pillars of anti-corruption activities of the Special Investigation Service, the main anti-corruption body of Lithuania. See also the Republic of Lithuania Law on Corruption Prevention Article 10 (see Annex 1).

Statistics on anti-corruption education of civil servants during the first six months of 2010

Seminars and workshops

In ministries and bodies accountable to the ministries (2)
municipalities (10)
police (21);
health care bodies (13);
other bodies (6).

The total number of anti-corruption seminars organised during the first six months of 2010 totalled 52.

Statistics on anti-corruption education of civil servants during 2009

In ministries and bodies accountable to the ministries (22)
municipalities (12)
county administrations (3);
police (17)
military (6)
other bodies (10).

The total number of anti-corruption seminars organised during 2009 totalled 70.

Statutes regulating the work of public officials (of the Ministry of the Interior, including the Police, Special Investigation Service) provide for the duty on the part of public officials to take immediate action upon receiving information about planned or committed offence.

Law on Public Administration.

Article 23. Acceptance and Consideration of a Complaint

4. If an entity of public administration does not have the powers to adopt a decision on administrative procedure concerning the issue referred to in the complaint, it shall, within 5

working days, transfer the complaint to an entity of public administration that has the required powers and shall inform the person about it. If it transpires after the initiation of the administrative procedure that the court has started to consider the complaint on the same issue, the administrative procedure shall be suspended until the court investigates the complaint and shall inform the person about it.

Republic of Lithuania Code of Criminal Procedure Article 171 (see Annex 1).

For example, *Law on the Approval of the Statute of the Internal Service*

Article 3. Main Principles of the Internal Service

9. Pursuant to the principle of constant fulfilment of the officer's general duties, an officer must fulfil the following duties:

2) upon finding out about an offence which is being arranged or committed, as well as when being a witness, take immediate measures to prevent the offence which is being arranged or committed;

3) upon obtaining information about the committed offence, notify immediately the police or any other competent institution, or agency, take immediate measures to secure the scene of an accident, to identify witnesses, provide first aid or any other necessary assistance to the persons who suffered from the accident.

(b) Observations on the implementation of the article

Based on the results of the discussions during the country visit and with the intention to assist the national authorities in their efforts to strengthen the effectiveness of law enforcement against corruption, the review team recommended that the Lithuanian authorities strengthen inter-agency coordination and cooperation in the field of law enforcement against corruption, as well as the exchange of information among competent bodies, with a view to avoiding, to the extent possible, conflicting jurisdictions at the institutional level.

Article 38 Cooperation between national authorities

Subparagraph (b)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented by the following laws:

1. Code of Criminal Procedure Article 155 (see Annex 1)
2. Law on the Special Investigation Service Article 6 (see Annex 1)

3. Republic of Lithuania Law on Police Activities Article 6 (see Annex 1)

(b) Observations on the implementation of the article

See comments to subparagraph (a) above.

Article 38 Cooperation between national authorities

(Please include here only what was not mentioned in paragraphs (a) and (b).)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania cited the following implementing measures:

1. Anti-corruption education of civil servants.
2. Co-operation between different stakeholders in implementing the National Anti-Corruption Programme
3. Interagency Anti-Corruption Working Group under the Government set up to develop proposals on the reduction of preconditions of corruption.

Examples of successful implementation provided by Lithuania:

1. Monitoring of Implementation of the National Anti-Corruption Programme
<http://www.stt.lt/lt/menu/nacionaline-kovos-su-korupcija-programa/programos-priemones/>
2. Systematised presentation of proposals to the Interagency Working Group for elimination of pre-conditions of corruption.
<http://www.lrv.lt/veikla/komisijos/antikorpucine-grupe/>
3. Corruption Prevention Law

Article 11. Provision of Information to the Registers of Civil Servants and Legal Entities.

1. The Register of Public Servants shall be provided the information about public servants who, by a final and effective court judgement, have been charged with the commission of corruption-related criminal acts, or against whom administrative or

disciplinary proceedings have been initiated for serious misconduct in office, related to the violation of the provisions of the Law on the Adjustment of Public and Private Interests in the Public Service and committed in pursuit of illegal gain or privileges for themselves or other persons.

2. The Register of Legal Entities shall be provided the information about legal entities who, by an effective court judgement, have been charged with the commission of corruption-related criminal acts, or whose employee or an authorised representative has, by an effective court judgement, been found guilty of corruption-related criminal acts while acting for the benefit or in the interests of the legal entity concerned.

3. A state or municipal agency which has made or revoked a decision that the acts specified in paragraphs 1 and 2 of this Article have been committed shall, within 14 days from the date of entry into force of the decision, notify the administrators of the Registers of Public Servants and/or Legal Entities.

4. The information specified in paragraphs 1 and 2 of this Article shall be one of the grounds for judging about the credibility of a natural or legal person. The persons who have lost their credibility may be subject to the restrictions provided for in this and other laws.

5. The procedure for the provision of the register data shall be established by the regulations of the appropriate register.

The implementation of the National Anti-Corruption Programme is assessed in annual reports of the stakeholders involved.

(b) Observations on the implementation of the article

See comments under paragraph (a) above.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated in its response to the self-assessment checklist that the provision under review had been implemented through the Law on Prevention of Money Laundering and Terrorist Financing and the Corruption Prevention Law.

Law on Prevention of Money Laundering and Terrorist Financing (Article 14, Article 17), see Annex 1;

Corruption Prevention Law (Article 16), see Annex 1.

(b) Observations on the implementation of the article

Lithuania has measures in place providing for the implementation of the provision under review.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the following measures:

1. Hotline established in the main anti-corruption body, the Special Investigation Service, operating 24 hours a day.

<http://www.stt.lt/en/>

2. Resolution No. 75 of the Government of the Republic of Lithuania of 21 January 2003 "On Rewarding for Valuable Information about Criminal Offences which Caused Damage to the State" (Official Gazette, 2003, No. 9-298; 2010, No. 12-567). Amendments of 20 January 2010 provide for an opportunity to reward for valuable information about certain corruption offences.

1. To lay down that:

1.1. Persons who provide information to the law enforcement authorities about criminal offences against the economy, business structure and/or financial system, corruption offences (hereinafter referred to as valuable information) may be rewarded by a single cash payment.

1.2. Such a single cash payment may be made if:

1.2.1. on the basis of such valuable information a criminal offence is detected and a judgement of conviction is passed or pre-trial investigation is not initiated or discontinued;

1.2.2. due to such valuable information the state restitutes the property damage which was caused to it by the criminal offence or funds are recovered into the state or municipal budgets.

1.3. The amount of a single cash payment constitutes up to 10 per cent of the property damage caused to the state and cannot exceed LTL 100,000.

Lithuania further referred to the Performance Report of the Special Investigation Service 2009 as an example of the successful implementation of measures taken to comply with the provision under review (see Annex 3 pt 4; also available at http://www.stt.lt/documents/planavimo_dokumenatai/2009_angl_ataskaita.pdf)

As regards the evaluation of the effectiveness of the above-mentioned measures, Lithuania cited the following reports:

Performance Report of the Special Investigation Service 2009:
http://www.stt.lt/documents/planavimo_dokumenatai/2009_angl_ataskaita.pdf

Performance Report of the Special Investigation Service 2008:
http://www.stt.lt/documents/ataskaita_eng_2008.pdf

(b) Observations on the implementation of the article

The reviewing experts were satisfied that Lithuania has measures in place providing for the implementation of the provision under review.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the following laws:

Law on Banks, Article 55(5): A bank shall provide the information which is considered a secret of the bank to the institutions referred to in the Law on the Prevention of Money Laundering, also to third parties according to the procedure set forth by laws where, according to the laws, the bank must provide such information thereto.

Law on Prevention of Money Laundering, Article 3 (see Annex 1)

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Provision of information which is considered a secret of the bank is not limited to money laundering offences only. More detailed information was provided in the response to the question concerning Paragraph 7 Article 31 of UNCAC.

Articles 5, 8, 14, 17 of the Law of the Republic of Lithuania on the Prevention of Money Laundering and Terrorist Financing establish the obligation for cooperation and exchange of information between competent authorities. Paragraph 9 Article 20 of the aforementioned Law provides that “submission of the information specified in this Law to Financial Crime Investigation Service shall not be viewed as disclosure of industrial, commercial or bank secret”.

A copy of the Law of the Republic of Lithuania on the Prevention of Money Laundering and Terrorist Financing was provided (in English).

(b) Observations on the implementation of the article

Also based on information received during the country visit, the review team noted that the Financial Investigation Service (FIS) cooperates with the SIS by analyzing financial information for it. When the FIS obtains well-grounded information about suspicious financial transactions involving corruption or money-laundering, it refers the case to the SIS. The FIS has a right to investigate information regarding the opening of an account but purely for intelligence purposes. Banks are obliged to provide all information about opened accounts to the FIS.

The reviewing experts concluded that bank secrecy does not seem to present an obstacle to domestic investigation. A number of legal acts (CPC, Law on SIS, Law on Prevention of Money Laundering and Law on Financial Crime Investigation Service) grant law enforcement agencies effective and prompt access to financial information falling under the bank secrecy as provided for in the Law on Banks. Bank secrecy can be lifted by court order and upon request of the prosecutor.

The domestic legal framework and practice are in compliance with the article of the UNCAC under review.

(c) Successes and good practices

- The practice of granting law enforcement agencies effective and prompt access to financial information

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the following provisions of the Criminal Code.

Criminal Code Article 27 (4) prescribes that when deciding on the recognition of a person as a dangerous repeat offender, a court shall consider the convictions for the crimes committed by the person abroad, for which liability is provided by penal laws of the Republic of Lithuania.

Criminal Code Article 97(1) prescribes that the persons convicted of commission of a crime in respect of whom a judgement of conviction passed by a court of the Republic of Lithuania has become effective shall be considered as persons having previous conviction

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

It should be noted that the provisions of Article 41 of the Convention are not binding on the State Parties, and they only urge the States to adopt the necessary measures to improve their existing regulatory framework.

It should be noted as well that the Government has prepared and on 22 March 2011 submitted to the Parliament a draft Law supplementing and amending the relevant articles of the Criminal Code (No XIP-XIP-892(2)), which improves the provisions of Article 97 CC with account of the provisions of Council Framework Decision 2008/675/JHA (reflecting the provisions of Article 41 of the Convention). The amendments and supplements proposed by the Government are expected to be passed at the 2011 spring session of the Parliament.

The said draft Law has the aim of revising the wording of Article 97 CC, which will allow the courts of the Republic of Lithuania to take into account convictions handed down also in other States.

Article 97. Previous Conviction

"1. The persons convicted of commission of a crime in respect of whom a conviction handed down by a court of the Republic of Lithuania or of another Member State has become effective shall be considered as persons having previous conviction. The persons convicted of commission of a crime in a non-Member State shall also be considered as persons having previous conviction, where information has been received under the international treaties of the Republic of Lithuania that the conviction handed down by a court of the non-Member State has become effective. The court shall take previous conviction into consideration when imposing a penalty for the commission of a new criminal act, deciding the issue of the offender's release from a penalty or criminal liability, release on parole or replacement of a penalty with a more lenient one, also when identifying the person as a repeat offender.

2. Previous conviction may be a basis for restricting only those rights and freedoms of citizens whose restriction is provided for by laws of the Republic of Lithuania.

3. The following persons shall be considered as having previous conviction:

(1) the persons given a suspended sentence – during the period of suspension of the sentence;
(2) the persons convicted of negligent crimes – during the period of serving the sentence;
(3) the persons convicted of premeditated crimes who have actually served the imposed sentence – during the period of serving the sentence and during the following period commencing after they have served the sentence or have been released from serving the sentence:

(a) for three years if convicted of a minor or less serious crime;

(b) for five years if convicted of a serious crime;

(c) for eight years if convicted of a grave crime;

(d) for ten years if they are dangerous repeat offenders.

4. The terms of validity of previous conviction following serving of the sentence or release from serving the sentence in respect of the minors convicted of the crimes provided for in subparagraph 3 of paragraph 3 of this Article shall be reduced by half.

5. The terms stipulated in subparagraph 3 of paragraph 3 and in paragraph 4 of this Article shall be calculated from fully serving of the imposed sentence or release from serving the sentence.

6. Upon the expiry of the time limits laid down in this Article, previous conviction shall expire and the persons shall be considered as having no criminal record.

7. After the lapse of a least one half of the term of conviction, a court may, at the request of the convicted person, reduce the term of conviction or expunge the conviction.

8. *Where a person who has a previous conviction commits a new crime or misdemeanour, calculation of the term until the expiry of previous conviction shall cease. In such a case, calculation of the term until the expiry of the conviction for the previous criminal act shall commence from the serving of the penalty for the new crime or misdemeanour. The person shall be considered as having previous conviction for each criminal act until the expiry of conviction for the most serious of the acts.*

9. *When imposing a penalty for the commission of a new criminal act, deciding the issue of the offender's release from a penalty or criminal liability, release on parole or replacement of a penalty with a more lenient one, also when identifying the person as a repeat offender, the court shall not take into consideration the effective conviction handed down by another State, as specified in paragraph 1 of this Article, if:*

(1) taking the effective conviction into consideration infringed fundamental human rights and/or freedoms;

(2) the act committed does not constitute a crime under this Code;

(3) at the time of commission of a criminal act, the person was not of the age at which the act committed by him becomes subject to criminal liability according to criminal laws of the Republic of Lithuania;

(4) the information received on the conviction handed down by another State is not sufficient, and the State that has forwarded such information fails to provide it within the prescribed time limit;

(5) there exist other grounds provided for in the international treaties of the Republic of Lithuania."

The amendments and supplements to Article 97 CC revise the institute of previous conviction by expanding the possibilities for applying Article 97 CC. Upon implementation of the provisions of Council Framework Decision 2008/675/JHA, as well as upon taking into account the above international commitments assumed by the Republic of Lithuania, the persons with respect to whom convictions handed down by both the Republic of Lithuania and another Member State have become effective will be considered as having previous conviction. The persons convicted of commission of a crime in a non-Member State shall also be considered as persons having previous conviction, where information has been received under the international treaties of the Republic of Lithuania that the conviction handed down by a court of the non-Member State has become effective. Given the existing differences of legal frameworks and the specific features of the EU Member States' national law in the field of criminal law, Section 6 of the Preamble to Council Framework Decision 2008/675/JHA provides for exemptions from the main commitments contained in Article 3 thereof. Article 56 of the Convention of 1970 is also important for the wording of exemptions. The aforementioned exemptions are laid down in Article 97 CC by supplementing it with the new paragraph 9 which provides for the grounds that allow not to take into consideration a conviction handed down in another State (Article 5 of the draft Law).

(b) Observations on the implementation of the article

It was reported that a draft Law supplementing and amending the relevant articles of the Criminal Code was submitted to the Parliament with the aim, upon its entry into force, to allow domestic courts to consider any convictions imposed in other States, domesticating the provisions of the EU Framework Decision on mutual recognition of criminal judgements (2008).

Article 42 Jurisdiction

Paragraph 1

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review has been implemented through Article 4 of the Criminal Code (see Annex 1).

(b) Observations on the implementation of the article

Based on the review of the above-cited provision, the reviewing expert concluded that Lithuania has implemented the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 5 of the Criminal Code (see Annex 1).

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Citizens of the Republic of Lithuania and other permanent residents of Lithuania shall be held liable for the crimes committed abroad under this Code.

It should be noted that the provisions of Article 42(2) of the Convention (based on which the comment is provided) are not binding on the State Parties, and they only urge the States to adopt the necessary measures to improve their existing regulatory framework.

It should also be noted that the Government has prepared and on 15 November 2010 submitted to the Parliament a draft Law supplementing and amending the relevant articles of the Criminal Code (No. XIP- XIP-2562), which has been mentioned before and which proposes expanding the rules of criminal jurisdiction in the Criminal Code and supplementing Article 7 CC (Criminal Liability for the Crimes Provided for in Treaties) with active and passive bribery, i.e. bribery (Article 225 CC), bribery by exertion of influence (Article 226

CC) and graft (Article 227 CC). as mentioned before, money laundering (Article 216 CC) is at present already included in Article 7 CC. Therefore, pursuant to the rules of criminal jurisdiction stipulated in Article 7 CC, a person would be liable under the Lithuanian Criminal Code, irrespective of his or her citizenship and place of residence, as well as the place where the criminal act was committed, and of the fact whether punishment for the act committed is applied in accordance with the laws of the place where the offence was committed.

Amendment to Art 7 CC:
Criminal Code Article 7.

Criminal Liability for the Crimes Provided for in Treaties

Persons shall be liable under this Code regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime where they commit the following crimes subject to liability under treaties:

- 1) crimes against humanity and war crimes (Articles 99-1131);*
- 2) trafficking in human beings (Article 147);*
- 3) purchase or sale of a child (Article 157);*
- 4) production, storage or handling of counterfeit currency or securities (Article 213);*
- 5) money or property laundering (Article 216);*
- 6) passive and active bribery (Articles 225, 226, 227)*
- 7) act of terrorism (Article 250);*
- 8) hijacking of an aircraft, ship or fixed platform on a continental shelf (Article 251);*
- 9) hostage taking (Article 252);*
- 10) unlawful handling of nuclear or radioactive materials or other sources of ionising radiation (Articles 256, 256(1) and 257);*
- 11) the crimes related to possession of narcotic or psychotropic, toxic or highly active substances (Articles 259-269);*
- 12) crimes against the environment (Articles 270, 270(1), 271, 272, 274).*

(b) Observations on the implementation of the article

Lithuania provided insufficient information regarding the jurisdiction based on the passive personality principle. The review team noted that double criminality impeded prosecution against a national who has committed an offence abroad - or a foreigner who has committed an offence and is located in Lithuania without a possibility to be extradited for some reason – where the offence at stake is not established in the CC. In response, the Lithuanian authorities reported that the recent amendments in the CC expanded jurisdiction by additionally listing in art. 7 CC (Criminal Liability for the Crimes Provided for in Treaties) active and passive bribery offences. The proposed amendment of the wording of art. 7 CC seems to expand excessively the jurisdictional limits by introducing the principle of universality without any clarification on the establishment of that principle by the international treaty per se. (“*Persons shall be liable under this Code regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime where they commit the following crimes subject to liability under treaties*”). The Lithuanian authorities underscored that such

expansion of jurisdiction should be understood in the national context and therefore it was irrelevant whether the international treaty itself required universal jurisdiction or not.

The reviewing experts recommended that the Lithuanian authorities continue to clarify the interpretation of existing legislation on criminal jurisdiction through jurisprudence to enable a more comprehensive and flexible scheme of criminal jurisdiction over corruption offences.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 5 of the Criminal Code

Article 5. Criminal Liability of Citizens of the Republic of Lithuania and Other Permanent Residents of Lithuania for the Crimes Committed Abroad

Citizens of the Republic of Lithuania and other permanent residents of Lithuania shall be held liable for the crimes committed abroad under this Code.

(b) Observations on the implementation of the article

Lithuania established active nationality principle jurisdiction through 5 of the Criminal Code, thus complying with the provision of the UNCAC under review.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 7 of the Criminal Code (see Annex 1).

(b) Observations on the implementation of the article

Lithuania has implemented the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Articles 4, 5 and 6 of the Criminal Code (see Annex 1).

(b) Observations on the implementation of the article

The review team noted that the domestic legal framework establishing jurisdiction over offences committed against the State Party (art. 42 para. 2(d) of the UNCAC) did not refer to UNCAC offences. The reviewing experts also noted that double criminality impeded prosecution against a national who has committed an offence abroad - or a foreigner who has committed an offence and is located in Lithuania without a possibility to be extradited for some reason – where the offence at stake is not established in the CC. In response, the Lithuanian authorities reported that the recent amendments in the CC expanded jurisdiction by additionally listing in art. 7 CC (Criminal Liability for the Crimes Provided for in Treaties) active and passive bribery offences. However, art. 7 CC seems to expand excessively the jurisdictional limits by introducing the principle of universality without any clarification on the establishment of that principle by the international treaty per se. The Lithuanian authorities underscored that such expansion of jurisdiction should be understood in the national context and therefore it was irrelevant whether the international treaty itself required universal jurisdiction or not.

The reviewing experts recommended that the Lithuanian authorities continue to clarify the interpretation of existing legislation on criminal jurisdiction through jurisprudence to enable a more comprehensive and flexible scheme of criminal jurisdiction over corruption offences.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 5 of the Criminal Code and Article 68 of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the level of compliance of Lithuania's legal system with the provision of the UNCAC under review. However, they noted that the existing legal framework in Lithuania (art. 68 CPC) foresees a discretion of the Office of the Prosecutor General to determine if a request of a foreign State to initiate or to take over prosecution against a Lithuanian national is based on reasonable grounds. In subsequent communication, it was clarified that this provision served the purpose of establishing the rules on the transfer of criminal proceedings.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 68 of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

See comments above under paragraph 3.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

These provisions have been implemented by ratifying the present Convention which may be directly applied.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the provision of the UNCAC under review was implemented domestically.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

This Convention will be applied directly.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the provision of the UNCAC under review was implemented domestically.

UNCAC

Chapter IV. International cooperation

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Para 3 (1) of the Article 9 (Extradition) of the Criminal Code states that:

*"3. It shall be allowed not to extradite a citizen of the Republic of Lithuania or an alien where:
1) the committed act is not regarded as a crime or misdemeanour under this Code"*

However, all the offences established in accordance with this Convention have been criminalized in Lithuania. Therefore, no practical problems with respect to this provision are envisaged.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Supplementary information about the European Arrest Warrant (EAW)

In the Schengen States where applicable, the European Arrest Warrant (EAW) replaces the previous formal extradition procedures between Member States and greatly contributes to more effective prosecution of criminals moving within EU territory. It is based on the principle of mutual recognition of judicial decisions and maintaining common standards of human rights protection.

The EAW, introduced under a Framework Decision of the Council of the EU, dated 13 June 2002, has been implemented by all 27 Member States.

The advantages of the EAW in comparison with the previous extradition system:

- the EAW is issued and executed directly by judicial authorities – the role of the executive branch (ministries, etc.) has been abolished or reduced to that of a transmission facilitator;
- the EAW is issued on the same simple form in all Member States, so that it is easy to use and translate;
- the EAW effectively addresses the issue of dual criminality for a list of 32 categories of specified serious crimes under certain conditions, thereby overcoming the problems stemming from different criminal codes in Member States;

- grounds for refusal are strictly limited by the Framework Decision that distinguishes between mandatory and optional grounds. The surrender of Member States' citizens can, for instance, no longer be refused on the grounds of their citizenship. However some Member States have added some grounds for refusal when implementing the Framework Decision into their national law;
- the time-limits for deciding on and executing an EAW are explicit, making the surrender procedure much faster than the previous extradition procedure;
- an STT alert has the same status as the original EAW, thereby simplifying the distribution of the warrants.

The EAW has proved to be an effective tool in law enforcement and has considerably improved the execution of justice within the EU. With the EAW there are no borders for the arrest warrants issued by the competent judicial authorities of the Member States.

(b) Observations on the implementation of the article

The reviewing experts noted that a two-tier system on extradition has been put in place in Lithuania. With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between EU Member States. This decision has been implemented in Lithuania by the amendments to the CC and CPC and entered into force in May 2004.

The procedural aspects of extradition, as well as the grounds for refusal and conditions for extradition are regulated in the CPC. Art. 9 para. 3 CC lists grounds for refusal of an extradition request, including lack of double criminality, territoriality, lapse of time, death penalty, ne bis in idem, political nature of the crime, as well as human rights and asylum related issues.

The reviewing experts were satisfied that the UNCAC provision under review was implemented domestically.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code Article 7. Criminal Liability for the Crimes Provided for in Treaties (para 5, see Annex 1).

Furthermore, all the offences established in accordance with this Convention have been criminalized in Lithuania. Therefore, no practical problems with respect to this provision are envisaged.

In respect of extradition, it is worth mentioning the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States of 13. June 2002. This decision has been implemented in Lithuania by the amendments to the CPC. The mentioned framework decision departs from the requirement of double criminality for offences punishable for a maximum of deprivation of liberty of at least three years (money laundering and some corruption offences fall into that category). In this respect it is relevant for art. 44.2. of the UNCAC.

(b) Observations on the implementation of the article

See comments under paragraph 1 above. In addition, the Framework Decision departs from the requirement of double criminality for offences punishable by a custodial sentence for a maximum of at least three years (money laundering and some corruption offences fall into that category).

The reviewing experts noted that in cases regulated by the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between EU Member States, the double criminality requirement is not required for a list of 32 offences, which, according to art. 2 para. 2 of the Framework Decision, should be punishable in the issuing Member State for a maximum period of at least 3 years of imprisonment and defined by the law of this Member State.

The reviewing experts were satisfied that the provision of the UNCAC under review was implemented domestically. They were also of the view that more effective and streamlined implementation would be accomplished if such relaxation in the strict application of the double criminality requirement would be pursued in extradition relations with other countries outside the EU framework.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

The offences listed in the Convention have been criminalized. Therefore, no practical problems would arise with respect to their application. A person would be extradited on the basis of the provisions of this Convention and Criminal Procedure Code Article 71.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the UNCAC provision under review was implemented domestically.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

The general provisions which are included in all extradition treaties to which Lithuania is a party state that “extradition shall be granted in respect of offences punishable under the laws of the Contracting Parties by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more Severe penalty”. All the offences listed in the UN convention fall under the above-mentioned category of offences. It should also be noted that none of the offences listed in the UN Convention cannot be treated as being of political nature/constituting a political offence.

Lithuania cited and attached an extradition treaty with the United States of America (see Annex 5).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the UNCAC provision under review was implemented domestically.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

While depositing the instrument of ratification, Lithuania made a declaration which states that present convention may be considered as legal basis for extradition

Extradition is possible only if there is an international treaty on extradition or other multilateral treaty (Convention).

The country is bound by existing multilateral treaties, such as the Council of Europe Convention on Extradition and its two Additional Protocols and the UNTOC. Lithuania has also concluded bilateral extradition treaties with U.S.A. and China. Presently, Lithuania is negotiating bilateral treaties with Algeria, Mexico and India.

The principle of reciprocity can be used for mutual legal assistance, but it does not encompass extradition cases. Such a conclusion derives from Paragraphs 1 and 2 of Article 9 of the CC. The person – either a Lithuanian national or an alien – may be extradited to a foreign state solely in accordance with a treaty to which Lithuania is a party (or a resolution of the United Nations Security Council, when the person may be surrendered to the International Criminal Court). In other words, an international treaty is the only legal base for extradition.

It should be also noted that when the person should be extradited to Lithuania from the state which is not a party to the Extradition Convention and there is no bilateral treaty between the relevant states, the extradition may be requested by the Lithuanian authorities on the basis of good will; however, such a request could not be executed in Lithuania in vice versa situations, since the principle of reciprocity is not applicable to extradition.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that it made extradition conditional on the existence of a treaty.

Pursuant to Paragraph 6 (a) of Article 44 of the Convention, the Seimas of the Republic of Lithuania declared that the Republic of Lithuania shall consider this Convention as a legal basis for cooperation on extradition with other States Parties to the Convention.

Lithuania notified the Secretary-General as prescribed in the provision under review: “[...] it is provided in subparagraph a) of paragraph 6 of Article 44 of the Convention, the Seimas of the Republic of Lithuania declares that the Republic of Lithuania shall consider this Convention a legal basis for cooperation on extradition with other States Parties to the Convention; however, the Republic of Lithuania in no case shall consider the Convention a legal basis for the extradition of Lithuanian nationals, as it is stipulated in the Constitution of the Republic of Lithuania;”

In response to the outcome of the desk review, Lithuania referred to the Law on Ratification of the UN Convention against Corruption.

(b) Observations on the implementation of the article

See the comments under paragraph 5 above.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

Extradition is possible only on the basis of the signed and ratified international treaty. See above.

(b) Observations on the implementation of the article

See the comments under paragraph 5 above.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

The conditions for extradition are provided for in Criminal Procedure Code Article 71 (see Annex 1).

The national law does not provide for a minimum period of punishment. Therefore, the provisions of international law would be followed.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the UNCAC provision under review was implemented domestically.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code Article 75 (see Annex 1).

In respect of extradition it is worth mentioning the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States of 13. June 2002. This decision has been implemented in Lithuania by the amendments to the CPC. The mentioned framework decision departs from the requirement of double criminality for offences punishable for a maximum of deprivation of liberty of at least three years (money laundering and some corruption offences fall into that category). In this respect it is relevant for art. 44.2. of the UNCAC. Accordingly, the implementation of the framework decision in the CPC is directly relevant for expediting extradition proceedings (at least in the European framework) in accordance with art. 44.9 of the UNCAC.

(b) Observations on the implementation of the article

During the country visit, the reviewing experts were provided with information about the timeframe needed to grant an extradition request. The Lithuanian authorities clarified that the duration of the extradition proceedings varies depending on whether the whereabouts of the person sought are known, the complexity of the case and the potentially parallel asylum proceedings. Despite the lack of concrete statistics, it was reported that, on average, it takes from 1,5 to 4 months for an extradition case to be completed. The EAW process has contributed to shortening the period needed for the surrender of a fugitive to another EU Member State, but no statistics were available to support this observation.

The reviewing experts invited the Lithuanian authorities to systematize and make best use of statistics, or, in their absence, examples of cases indicating the length of extradition proceedings to assess their efficiency and effectiveness; to continue to make best efforts to ensure that extradition proceedings are carried out in the shortest possible period; and to systematize and make best use of statistics, or, in their absence, examples of cases of simplified extradition.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code Article 122(5)

*Article 122. Grounds and conditions for applying detention
(...)*

5. A ground for the detention shall also be the request to extradite a person or surrender him to the International Criminal Court or under the European arrest warrant, as well as the request of a foreign state for a provisional arrest of the wanted person until a request for the person's extradition or the European arrest warrant is presented.

(b) Observations on the implementation of the article

Lithuania referred to art. 122 of CPC that provide for a possibility of provisional arrest of the wanted person.

The procedural aspects of extradition are regulated by the CPC. Requests for extradition to another State are processed through the Prosecutor General's Office or through the Ministry of Justice. Regular provisions of the CPC related to arrest and pre-trial custody are applicable to persons subject to extradition procedures unless the applicable treaty provides otherwise.

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the Article 9 of the Criminal Code and Article 68 of the Criminal Procedure Code (see Annex 1).

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

In this case, para 2 or para 3 of Article 68 of the Criminal Procedure Code will be applied respectively.

(b) Observations on the implementation of the article

Lithuania notified the Secretary-General that it considers the UNCAC as a legal basis for extradition except for the extradition of nationals. Art. 13 of the Constitution prohibits the extradition of nationals, unless an international treaty permits so. Art. 9 para. 1 CC stipulates that a national may be extradited "solely in accordance with a treaty to which the country is a party".

No specific information was provided on the practical application of article 44, paragraph 11, of the UNCAC, namely cases where domestic prosecution was triggered in lieu of extradition when the latter is denied on the grounds of nationality.

However, the reviewing experts also took note of the information provided by the national authorities on the domestication of article 42, paragraph 3, of the UNCAC. Thus, consideration was given to the fact that the existing legal framework in Lithuania (art. 68 CPC) foresees a discretion of the Office of the Prosecutor General to determine if a request of a foreign State to initiate or to take over prosecution against a Lithuanian national is based on reasonable grounds. In subsequent communication, it was clarified that this provision served the purpose of establishing the rules on the transfer of criminal proceedings.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Conditional surrender of nationals, as foreseen in art. 44 para. 12 of the Convention, is carried out within the framework of the EAW process.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

These provisions may be applied directly through this Convention. Furthermore, Lithuania is also a State Party to the Council of Europe Convention on International Validity of Criminal Judgements.

Analogous provisions are provided for in Article 44(13) of this Convention have been also included in bilateral agreements concluded by Lithuania with other foreign countries.

No specific information was provided on the practical application of art. 44 para. 11 of the UNCAC.

Pursuant to Article 365 of the Code of Criminal Procedure of the Republic of Lithuania the foreign judgements shall be enforced with the procedure under this Code. However, international treaty (either bilateral, or multilateral) to which the Republic of Lithuania and requesting state are the parties is required as legal basis. Provisions of the international treaties shall apply directly (see Annex 1).

The provisions regarding the implementation of Paragraph 13 of Article 44 of the Convention are provided for in the Treaty between the Republic of Lithuania and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Cases, signed on 26 January 1993, came into force on 18 October 1993.

Part 3 (Criminal cases)

Chapter 3 (Enforcement of the Criminal Judgements)

Articles 88-105

Article 89 Common Rule

Contracting Parties mutually undertakes pursuant to the provisions of this Agreement, if requested, to enforce criminal judgement where the courts of one Contracting Party sentenced the citizen of other Contracting Party to a custodial sentence or other compulsory measure.

Note: there is no possibility to provide more provisions in any of the requested languages, since the Treaty was concluded in Lithuanian and Polish only.

Similar provisions has been established in the Agreement on Recognition and Enforcement of Judgments in Criminal Matters Imposing Custodial Sentences or Measures Involving Deprivation of Liberty between the Government of the Republic of Lithuania and the Government of the Kingdom of Norway, which was signed on 5 April 2011, however, did not come into force yet (e.g. Article 3, 7 and 9, see Annex 1).

(b) Observations on the implementation of the article

Based on the information provided above, it appears that Lithuania has implemented the provision under review.

The reviewing experts invited the Lithuanian authorities to systematize and make best use of statistics, or, in their absence, examples of cases of enforcement of foreign criminal judgements.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania cited provisions 31 and 44 of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

Based on the information provided above, it appears that Lithuania has implemented the provision under review.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania provided the following provisions of national law:

Constitution of the Republic of Lithuania. Article 29, Criminal Code Article 9(3) (see Annex 1).

Provisions analogous to those mentioned in Paragraph 15 Article 44 of the UN Convention against Corruption, are also indicated in the multilateral and bilateral treaties to which the Republic of Lithuania is party (e.g. in the European Convention on Extradition or in the Agreement between the Republic of Lithuania and the People's Republic of China on Extradition).

(b) Observations on the implementation of the article

Article 9 (3) of the CC allows Lithuania not to extradite a person is being prosecuted for a crime of political nature, as well as on the other grounds provided for by the treaties to which the Republic of Lithuania is party.

Based on the information provided above, it appears that Lithuania has implemented the provision under review.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

The provisions of this Convention would be applied directly. In addition, Lithuania is a party to the Second Additional Protocol to the European Convention on Extradition (1978). Article 2 of the Protocol replaced article 5 of the Convention as follows:

Article 2

“Fiscal offences

- 1 *For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.*
- 2 *Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party.”*

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

No difficulty would arise with respect to the implementation of this provision. This would be looked at on a case-by-case basis.

(b) Observations on the implementation of the article

Despite the lack of practical examples of the implementation of the provision under review, the reviewing experts were satisfied with the assurances given by the national authorities that no issues of non-compliance arise in this context.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

In addition to the bilateral or multilateral agreement(s) or arrangement(s) related to extradition which have already been referred to in response to previous answers, Lithuania is also a Party to the following agreement(s)/arrangement(s):

1. Agreement between the Republic of Lithuania and the United States of America on Extradition.
2. Agreement between the Republic of Lithuania and the People's Republic of China on Extradition.

Lithuania is also a Party to

1. the Council of Europe Convention on Extradition and its Additional Protocols.
2. Framework Decision on European Arrest Warrant.

Presently, Lithuania is negotiating bilateral agreements on extradition with Algeria, Egypt, Mexico and India.

(b) Observations on the implementation of the article

Lithuania undertook efforts to conclude extradition treaties. However, the reviewing experts encouraged the national authorities to continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of extradition proceedings.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

At present, Lithuania is considering the possibility of entering into agreement with a States which are not parties to the Council of Europe Convention on the Transfer of Sentenced Persons. Those countries are: Brazil, Maroco, Peru, Argentina, Cuba, Pakistan etc.

Lithuania indicated that the provision under review had been implemented through the following bilateral/multilateral agreements:

1. BILATERAL AGREEMENTS:

Agreements on the Transfer of Sentenced Persons with Azerbaijan, Belorussia, Russia, Poland.

2. MULTILATERAL ARRANGEMENTS:

European Convention on the Transfer of Sentenced Persons and its Additional Protocol;

3. OTHER MEASURES:

At present Lithuania is considering the possibility of entering into agreement with a States which are not parties to the Council of Europe Convention on the Transfer of Sentenced Persons. Those countries are: Brazil, Morocco, Peru, Argentina, Cuba, Pakistan etc.

(b) Observations on the implementation of the article

The transfer of sentenced persons is regulated by the CPC, as well as the European Convention on the Transfer of Sentenced Persons and its Additional Protocol to which Lithuania is a party. Bilateral treaties in this field have been concluded with Azerbaijan, Belarus Poland and the Russian Federation. At present, Lithuania is considering the possibility of entering into agreements with States non-parties to the Council of Europe Convention on the Transfer of Sentenced Persons, such as Argentina, Brazil, Cuba, Morocco, Pakistan and Peru.

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC article under review.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the ratification of the United Nations Convention against Corruption. It should be mentioned that Article 138 of the Constitutions states, that "International treaties ratified by the Seimas (Parliament) of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania".

See also Article 67 Criminal Procedure Code (Annex 1).

Agreements on Mutual Legal assistance in Criminal Matters have been concluded with the following countries: Russia, Belarus, Ukraine, Poland, Latvia, Estonia, United States of America, Moldova, China, Azerbaijan, Armenia, and Kazakhstan. Lithuania is also a Party to the Council of Europe Convention on Mutual Legal Assistance and its Additional Protocol.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review (para. **Error! Reference source not found.**):

In general, certain types of mutual legal assistance could be provided in Lithuania on the basis of the norms of international reciprocity or courtesy. It depends on the nature of MLA requested and its conformity with the Constitution, the Criminal Procedure Code other laws and fundamental principles of the criminal procedure of the Republic of Lithuania. For instance, the request on service of judicial documents received via diplomatic channels and duly formulated could be executed despite the fact that there is no international treaty to refer to.

As regards the question on practical examples on use of Paragraph 1 of Article 46 of the Convention on Corruption, there is no data available to provide the exact statistics. However, we can note that recently Lithuanian judicial authorities received few requests from the Prosecutor General's Office of Egypt on judicial assistance, which are based on several Articles of the Convention on Corruption, including Paragraph 1 of Article 46. Lithuanian Prosecutor General's Office is handling these requests at the moment.

(b) Observations on the implementation of the article

Mutual legal assistance is subject to the provisions of the CPC and international agreements and can be afforded for all purposes stipulated in art. 46 para. 3 of the UNCAC, provided that this does not contravene the Constitution and the national laws and is not against the fundamental principles of the criminal procedure of Lithuania (art. 67 CPC).

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the ratification of the present convention. It should be mentioned that Article 138 of the Constitution states, that "International treaties ratified by the Seimas (Parliament) of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania".

Mutual legal assistance can be provided in compliance with Art. 67 of the Criminal Procedure Code. Legal persons are liable according to Criminal Code for the offences foreseen in the present Convention.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (a)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(a) Summary of information relevant to reviewing the implementation of the article

Mutual legal assistance is subject to the provisions of the CPC and international agreements and can be afforded for all purposes stipulate in art. 46.3 of the UNCAC.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (b)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(b) Effecting service of judicial documents;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code. Article 67(1)

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (c)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(c) Executing searches and seizures, and freezing;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code. Article 67(1) (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (d)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(d) Examining objects and sites;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 67 of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (e)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(e) Providing information, evidentiary items and expert evaluations;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 67 of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (f)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 67 of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (g)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 67 of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (h)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision of the Convention would be applied directly.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 67 of the Criminal Procedure Code (see Annex 1). Furthermore, it was stated that the Convention could be applied directly.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (j)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania referred to Criminal Code Article 72 and Criminal Procedure Code Article 151 (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The provision of the Convention would applied directly.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Implementation is pursued on the basis of concluded bilateral agreements and framework agreements concluded by respective Lithuanian authorities.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review has been implemented through the ratification. Requirements of para. 5 of Article 46 of the Convention are directly applicable.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 6

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review has been implemented through the ratification.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 7

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania is bound by the mutual legal assistance treaties. If the request is received according to any bilateral or multilateral international treaty Lithuania is a Party to, there is no difference for Lithuanian authorities according to which of them the request for mutual legal assistance was received. While executing request made pursuant to this article, Lithuania would apply the provisions of the present Convention. Additional requirement for bilateral treaty is not necessary.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

Those requirements are implemented by the Law on Banks and the Law on Prevention of Money Laundering.

Paragraph 5 of Article 55 of the Law of the Republic of Lithuania on Banks: *A bank shall provide the information which is considered a secret of the bank to the institutions referred to in the Law on the Prevention of Money Laundering, also to third parties according to the procedure set forth by laws where, according to the laws, the bank must provide such information thereto.*

Article 3 of the Law on Prevention of Money Laundering: *The Government of the Republic of Lithuania (hereinafter referred to as the Government), the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter - the Financial Crime Investigation Service), the State Security Department of the Republic of Lithuania (hereinafter - the State Security Department), the Bank of Lithuania, the Customs Department under the Ministry of Finance of the Republic of Lithuania, the Department of Cultural Heritage Protection under the Ministry of Culture of the Republic of Lithuania (hereafter the Department of Cultural Heritage Protection), the Insurance Supervision Commission of the Republic of Lithuania, the Securities Commission of the Republic of Lithuania, the State Gaming Control Commission, the Chamber of Notaries, the Chamber of Auditors, the Lithuanian Chamber of Bailiffs, the Lithuanian Assay Office and the Lithuanian Bar Association shall be the institutions responsible according to their competence for the prevention prescribed by this Law of Money Laundering and/or Terrorist Financing.*

Upon request from the reviewing experts, Lithuania provided the full text of the Law on Banks.

(b) Observations on the implementation of the article

Based on the information provided by Lithuania, bank secrecy cannot be an obstacle to the provision of MLA pursuant to the Convention.

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 9 (a)

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 67 of the Criminal Procedure Code.

Article 67. Execution of the Requests of Foreign Authorities and International Organisations for Proceedings

1. In carrying out requests of foreign authorities and international organisations, the courts, the prosecution and pre-trial investigation institutions of the Republic of Lithuania shall take proceedings set out in this Code. When executing requests of foreign authorities and international organisations in cases provided by an international agreement to which the Republic of Lithuania is a party, proceedings which are not set out in this Code may also be taken, provided this does not contravene the Constitution and the laws of the Republic of Lithuania and is not against the fundamental principles of the criminal procedure of Lithuania.

Additional information:

Each legal assistance request received is assessed on a case by case basis, in accordance with the provisions of Article 67 of the CC and the relevant international treaties.

The application of procedural measures involves a restriction of the human rights and freedoms, therefore, when a legal assistance request to apply such measures is received, it is assessed whether the act specified in the request is criminalized in Lithuania and whether the requested restriction of the person's rights and freedoms is adequate to the committed criminal act and whether or not it does not violate human rights and hence the Lithuanian Constitution, the laws and the fundamental principles of criminal procedure. The legal assistance request shall be returned to the foreign State in the event that it is established that the criminal act specified therein does not satisfy the double criminality condition and it is requested to apply procedural coercive measures.

For instance, the Prosecutor General's Office of the Republic of Lithuania refused to implement (and consequently sent back) Ukraine's legal assistance request asking Lithuania to provide the data constituting a bank secret, since this criminal act (Unlawful opening and use of bank accounts in foreign currencies abroad) is not criminalized in Lithuania.

However, if it is concluded that the provision of legal assistance does not violate human rights and is not in violation of the provisions of the aforementioned legal acts, the request may be executed, even though it is not in conformity with the principle of double criminality. One could also mention the cases when legal assistance requests to serve documents on persons have been executed, although the criminal act specified in the legal assistance requests constitutes a violation of administrative law in accordance with the laws of the Republic of Lithuania.

(b) Observations on the implementation of the article

Based on the information above, as well as clarifications provided during the country visit, the reviewing experts noted that in cases of MLA requests involving restrictions of human rights, the provision of assistance is subject to the double criminality requirement, as well as the assessment whether or not it violates the Constitution, the domestic legislation and the

fundamental principles of criminal procedure. If no violation exists, the request may be executed even in the absence of double criminality.

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 9 (b)

9.(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code. Article 67(1).

Admittedly, in carrying out mutual legal assistance in accordance with bilateral/multilateral agreements, such requests have been received and assistance has been rendered without any problems. (For instance, such requests involved service of documents, interviewing of witnesses, etc.)

(b) Observations on the implementation of the article

See above under subparagraph 9(a).

Article 46 Mutual legal assistance

Subparagraph 9 (c)

9.(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 67 of the Criminal Procedure Code (see Annex 1).

Article 67. Execution of the Requests of Foreign Authorities and International Organisations for Proceedings

1. In carrying out requests of foreign authorities and international organisations, the courts, the prosecution and pre-trial investigation institutions of the Republic of Lithuania shall take proceedings set out in this Code. When executing requests of foreign authorities and international organisations in cases provided by an international agreement to which the Republic of Lithuania is a party, proceedings which are not set out in this Code may also be taken, provided this does not contravene the Constitution and the laws of the Republic of

Lithuania and is not against the fundamental principles of the criminal procedure of Lithuania.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Article 3 part 1 para 8 of the Criminal Procedure Code (Inadmissibility of the Criminal Procedure) states that the criminal procedure may not be instituted, and, if instituted, must be terminated where a court judgement against a person for the same charge or a court order, or a prosecutor's decision to terminate the procedure for the same reason have become effective; See also para. 4 part 3 of Article 71 of the Criminal Procedure Code (para. 162 of the self-assessment).

(b) Observations on the implementation of the article

See the observations to subparagraph 9 (a) above.

Article 46 Mutual legal assistance

Paragraph 10

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision of the Convention would be applied directly.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 11 (a)

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania referred to Articles 121 and 127 of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 11 (b)

11. For the purposes of paragraph 10 of this article:

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through Article 77 of the Criminal Procedure Code (see Annex 1).

Furthermore, the provisions of the Convention (as well as bilateral agreements) can be applied directly.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 11 (c)

11. For the purposes of paragraph 10 of this article:

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(a) Summary of information relevant to reviewing the implementation of the article

The provisions of subpara 11 (c) of the present Article are directly applicable in respect of State parties of the Convention.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Subparagraph 11 (d)

11. For the purposes of paragraph 10 of this article:

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review has been implemented through the Article 66 of the Criminal Code

Article 66. Inclusion of the Period of Remand in a Penalty Imposed

1. When imposing a penalty upon a person subject to remand/arrest, a court must include this period in the term of an imposed penalty.

2. The period of remand/arrest shall be included in the term of an imposed penalty in accordance with the rules set forth in paragraph 1 of Article 65 of this Code, where one day of remand/arrest shall be held equivalent to one day of imprisonment or arrest, a fine in the amount of two MSLS, six hours of community service, two days of restriction of liberty.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the Article 70 of the Criminal Procedure Code which states that a person extradited or transferred by a foreign state may not be prosecuted and convicted, nor may he be transferred to a third country or the International Criminal Court for a criminal act committed prior to his extradition and for which he had not been extradited or transferred if there is no consent of the state which has extradited him.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to para 13 of Article 46 of the Convention, the Seimas of the Republic of Lithuania declares that the Ministry of Justice of the Republic of Lithuania and the Prosecutor General's Office of the Republic of Lithuania shall be designated as central authorities to receive requests for mutual legal assistance. Lithuania has notified the Secretary-General of the United Nations as prescribed above.

Lithuania allows that requests for mutual legal assistance and any related communications be transmitted to the central authorities designated by States Parties. Lithuania requires that such requests and related communications be addressed to it through diplomatic channels. Lithuania agrees that, in urgent circumstances, requests for mutual legal assistance and related communications be addressed to it through the International Criminal Police Organization.

(b) Observations on the implementation of the article

The UN Secretary-General has been notified regarding the name of the designated central authority. The MLA requests and any related communications can be transmitted through diplomatic channels or, in urgent circumstances, through the International Criminal Police Organization.

Direct cooperation is also possible. According to the declaration to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, the following institutions are eligible for direct cooperation: Prosecutor General's Office, district prosecutors' offices, county courts, district courts and the Court of Appeal.

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

At the same time, the reviewing experts invited the Lithuanian authorities to consider the allocation of additional resources to strengthen the efficiency and capacity of international cooperation mechanisms, including the central authority for MLA requests.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania has notified the Secretary-General of the United Nations as prescribed above.

Pursuant to para 14 of Article 46 of the Convention, the Seimas of the Republic of Lithuania declares that requests for legal assistance and documents pertaining thereto, which shall be submitted to the Republic of Lithuania, should be accompanied by respective translations into English, Russian or Lithuanian, in case the aforementioned documents are not in one of these languages

(b) Observations on the implementation of the article

The UN Secretary-General has been notified that the following languages are acceptable: Lithuanian, Russian and English.

The reviewing experts were satisfied that the UNCAC provision under review was implemented domestically.

Article 46 Mutual legal assistance

Paragraph 15

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania reported compliance with the provision under review and provided a sample request for mutual legal assistance containing all the requirements (see Annex 6).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 16

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision of the Convention could be applied directly.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review has been implemented through the Article 67 (1) of the Criminal Procedure Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other,

permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania permit hearings of individuals mentioned above to take place by video conference as described above.

The provision of this Convention can be applied directly. Moreover, the analogous provisions are foreseen in the EU convention on the Mutual Assistance in Criminal Matters.

Under Articles 183, 279, 282 of the Code of Criminal Procedure of the Republic of Lithuania, in certain cases, witnesses in respect of whom protection measures from the criminal influence are applied may be questioned in camera, using the technical means enabling the alteration of pictures or voice. Also, where the appearance of the witness whose identity is not released to the public would put at risk the life, health or liberty of the witness, his family members or close relatives, his summoning to the hearing may be dispensed with and he shall be questioned in camera, using the technical means enabling the alteration of pictures or voice, thereby preventing the parties to the proceedings from establishing the identity of the questioned person his testimony.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

As it has been already mentioned in Lithuania's response, Paragraph 18 of Article 46 of the Convention against Corruption in Lithuania can be applied directly.

There is no need for supplementary regulation of this investigation measure to be elaborated by the national law.

Analogous provisions foreseen in the EU Convention on MLA of 2000 and the Second Additional Protocol to the Convention on MLA of 1959 have been already directly applied by Lithuanian judicial authorities. There were few cases where the hearings via video link took place due to the fact that witnesses were serving their sentences in Lithuania. In other case the hearing via video conference was requested by foreign authority due to complicity and urgency of the case and the fact that 5 witnesses were to be interrogated. These requests were executed in Lithuania quite successfully.

An example of a foreign rogatory-letter on video conference which has been recently received by the Lithuanian authorities was brought to the attention of the review team.

(b) Observations on the implementation of the article

Specific provisions of CPC enable hearings of individuals by video conference. Art. 46 para. 18 of the UNCAC can apply directly and the same is valid with regard to the relevant provisions of the EU Convention on Mutual Assistance in Criminal Matters (2000) and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001).

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania cited Article 177 of the Criminal Procedure Code and Article 247 of the Criminal Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania cited Article 177 of the Criminal Procedure Code and Article 247 of the Criminal Code (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Procedure Code Article 67 (see Annex 1).

(b) Observations on the implementation of the article

Grounds for refusal of an MLA request are contained in art. 67 of CPC. The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review has been implemented through the ratification.

In the regional context, Lithuania is a party to the First Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (1978), which withdraws the possibility offered by the Convention to refuse assistance solely on the ground that the request concerns an offence which the requested Party considers a fiscal offence (article 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review is implemented through ratification and Article 67 para 3 (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through ratification.

The length of time between receiving requests for mutual legal assistance and responding to them ranges from 1 day to 4 months depending on the nature of the request. On average, it does take up to four months to execute MLA requests, depending on the assistance requested.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic practice was in compliance with the UNCAC provision under review. However, they invited the national authorities to enhance the effectiveness of MLA mechanisms and ensure the timeliness of execution of relevant requests. In particular, the Lithuanian authorities were invited to:

- Systematize and make best use of statistics, or, in their absence, examples of cases indicating the length between the receipt and execution of MLA requests for the purpose of assessing the efficiency and effectiveness of MLA proceedings; and
- Continue to make best efforts to ensure that MLA proceedings are carried out in the shortest possible period.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review would be applied directly.

(b) Observations on the implementation of the article

The reviewing experts invited the national authorities to systematize and make best use of statistics, or, in their absence, examples of cases of postponement of MLA proceedings.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the ratification and that provisions of this paragraph were applicable directly.

(b) Observations on the implementation of the article

No specific information was provided on practical cases of postponement of MLA proceedings and consultations before refusal of MLA requests. The execution of MLA requests may be postponed for objective reasons, for instance, when a person who is requested to be questioned has left Lithuania.

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the ratification and provisions of this paragraph are applicable directly. It should be mentioned that analogous provisions and requirements are included in all the bilateral or multilateral treaties on mutual legal assistance the Lithuania is a Party to.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the ratification of the Convention. The provisions of this paragraph are applicable directly.

With respect to the offences covered by the Convention, Lithuania reported that there were no examples of recent arrangements related to cases in which costs were not covered (only) by the requested State. However, there are instances when forensics were commissioned and were covered by Lithuania (as a requesting State).

(b) Observations on the implementation of the article

It appears that Lithuania has implemented the provision under review.

Article 46 Mutual legal assistance

Subparagraph 29 (a)

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the ratification of the Convention. Any information available to the general public may be provided to the Contracting Party without any restrictions. It should be also mentioned that Lithuania is a Party to the Council of Europe Convention on the Information of Foreign Law and its additional Protocol, according to which any legal information shall be provided.

(b) Observations on the implementation of the article

It appears that Lithuania has implemented the provision under review.

Article 46 Mutual legal assistance

Subparagraph 29 (b)

29. The requested State Party:

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

Such exchange of information is carried out on the basis of international bilateral or multilateral agreements.

(b) Observations on the implementation of the article

It appears that Lithuania has implemented the provision under review.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

At present, Lithuania is negotiating agreements with India, Columbia, Peru, United Arab Emirates on mutual legal assistance in criminal matters.

(b) Observations on the implementation of the article

It appears that Lithuania has given consideration to the implementation of the measures suggested by the provision under review. It was also reported that Lithuania concluded bilateral and sub-regional MLA treaties with Armenia, Azerbaijan, Belarus, Estonia, Kazakhstan, Latvia, Republic of Moldova and the Russian Federation.

The reviewing experts invited the Lithuanian authorities to continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of MLA proceedings.

(c) Successes and good practices

- The status as State party to numerous regional instruments on different forms of international cooperation per se, as well as regional and multilateral instruments on

corruption, money-laundering and organized crime, containing provisions on international cooperation in criminal matters.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

The provision under review has been implemented through the Article 68 of the Code of Criminal Proceedings (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts noted that the transfer of criminal proceedings is enabled through art. 68 CPC and the provisions of the European Convention on the Transfer of Proceedings in Criminal Matters to which Lithuania is a party. Transfer of pre-trial proceedings is also possible through art. 6 of the European Convention.

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 48 Law enforcement cooperation

Subparagraph 1 (a)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Lithuania closely co-operates with other countries, State Parties to the Convention, seeking to enhance the effectiveness of law enforcement action to combat the offences covered by the Convention. By ratifying a number of conventions and protocols, signing international agreements and national legal acts, the Republic of Lithuania has established and strengthened various channels of communication between competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information.

The main legal acts include the following:

1. Republic of Lithuania Criminal Procedure Code, Chapter IV "Communication of Courts and Prosecution Offices of the Republic of Lithuania with the Authorities of Foreign States and International Organisations" (Articles 66-77(2)) dealing with mutual assistance in criminal matters.
2. European Convention on Mutual Assistance in Criminal Matters (ratified on 4 April 1995).
3. Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ratified on 4 April 1995).
4. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ratified on 29 January 2004).
5. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union adopted by the Council in accordance with Article 34 of the Treaty on European Union (ratified on 5 February 2004).
6. Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union adopted by the Council in accordance with Article 34 of the Treaty on European Union (ratified on 5 February 2004).
7. Agreement on mutual legal assistance between the European Union and the United States of America and Protocol on the application of the Agreement on Mutual Legal Assistance between the United States of America and the European Union to the Treaty between the Government of the Republic of Lithuania and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters (ratified on 30 March 2006).
9. Bilateral agreements on legal assistance and legal relations in criminal matters with the Russian Federation (ratified on 30 July 1992), Republic of Moldova (ratified on 16 March 1993), Republic of Kazakhstan (ratified on 27 April 1995), Republic of Azerbaijan (ratified on 28 May 2002), Republic of Belarus (ratified on 29 October 1992), Republic of Armenia (ratified on 22 December 2004).
10. Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships (ratified on 20 January 1994).
11. Agreement between the Government of the Republic of Latvia and the Government of the Republic of Lithuania on Co-operation in Combating Organised Crime and Other Offences and on Joint Actions in Border Regions (ratified on 17 May 2007).
12. Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on Co-operation in Combating Organised Crime and Other Offences and on Joint Actions in Border Regions (ratified on 17 May 2007).
13. Republic of Lithuania Government Resolution No. 633 of 17 June 2009 "On Approval of the Rules of Exchange of Information between the Law Enforcement Bodies of the Republic of Lithuania and other Member States of the European Union" (Official Gazette, 2009, No. 77-3175), implementing 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 (OJ 2006 L 386, p. 89).
14. Republic of Lithuania Government Resolution No 1706 of 23 December 2009 "On Implementation of Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Bureau (Europol) (Official Gazette, 2009, No. 153-6933).

Bilateral agreements on co-operation in the fight against crime include the following:

1. Agreement between the Government of the Republic of Lithuania and the Government of the Republic of **Belarus** on Cooperation in Combating Organised Crime, Illegal Drugs and Psychotropic Substances Trafficking, Terrorism and Other Crimes (ratified on 26 June 2007).
2. Agreement between the Government of the Republic of Lithuania and the Cabinet of Ministers of **Ukraine** on Cooperation in the Fight against Crime and International Terrorism (ratified on 18 January 2008).
3. Agreement between the Government of the Republic of Lithuania and the Government of the **Slovak Republic** on Co-operation in Detecting, Investigating and Preventing Criminal Offences (ratified on 27 January 2009).
4. Agreement between the Government of the Republic of Lithuania and the Government of the **United States of America** on Enhancing Cooperation in Preventing and Combating Crime (ratified on 29 May 2009)
5. Agreement between the Government of the Republic of Lithuania and the Government of the Republic of **Uzbekistan** on Cooperation in Combating the Crime (ratified on 13 June 2002)
6. Agreement between the Government of the Republic of Lithuania and the Government of the Republic of **Kazakhstan** on cooperation in combating organised crime, illegal drug and psychotropic substances trafficking, terrorism and other crimes (ratified on 10 July 2001)
7. Agreement between the Government of the Republic of Lithuania and the Government of the Republic of **Turkey** on Cooperation in Combating Terrorism, Organised Crime, Illicit Circulation of (trafficking in) Narcotic Drugs and Psychotropic Substances and other Major Crimes (ratified on 29 June 2004)
8. Agreement between the Government of the Republic of Lithuania and the Government of the Republic of **Finland** on Cooperation in Crime Prevention (ratified on 23 September 1997)
9. Agreement between the Government of the Republic of Lithuania and the Government of the Republic of **Hungary** on cooperation in combating terrorism, illicit drug trafficking, organized crime and other major crimes (ratified on 1 October 2002)
10. Agreement between the Government of the Republic of Lithuania and the Government of the Federal Republic of **Germany** on the cooperation in combating organised crime, terrorism and other major crimes (ratified on 7 May 2002)
11. Agreement between the Republic of Lithuania and the Kingdom of **Spain** on Co-operation in Detection, Investigation and Prevention of Criminal Offences (ratified on 6 November 2008)

Lithuania further cited the following examples of successful implementation:

1. By signing and ratifying international treaties and bilateral agreements on mutual legal assistance in criminal matters the Republic of Lithuania creates the appropriate systems at national level enabling their enforcement.
2. Republic of Lithuania Government Resolution No. 633 of 17 June 2009 "On Approval of the Rules of Exchange of Information between the Law Enforcement Bodies of the Republic of Lithuania and other Member States of the European Union" (Official Gazette, 2009, No. 77-3175), implementing 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 (OJ 2006 L 386, p. 89).

With regard to the use of databases, Lithuania indicated that, being a member of Interpol, Eurojust and Europol, it had a possibility to use and provide information through their databases as well as through the Schengen Information System. Furthermore, the Republic of Lithuania is a member state of the Council of Europe Group of States against Corruption (GRECO) (http://www.coe.int/t/dghl/monitoring/greco/default_en.asp) and the European Partners Against Corruption (EU's National Police Oversight Bodies and Anti-Corruption Authorities) (<http://www.epac.at/>) which establish the best anti-corruption standards and ensure exchange of best anti-corruption practices.

No concrete examples of recent cases with respect to the offences covered by the present Convention are available. However, bearing in mind the established successful channels of communication through Interpol, Europol and Eurojust as well as taking into account that the same competent authorities, co-ordinating bodies and liaison officers are used in exchanging information about a number of serious offences we see no reason to believe that these channels could not prove successful in communicating about the offences covered by UNCAC.

Several examples of successful co-operation in carrying out joint operations on the basis of the information received through the established channels of information:

1. Officials of the Organized Crime Division of the Lithuanian Criminal Police Bureau carried out a successful long-term international co-operation with the competent bodies of the law enforcement bodies of other states and seized a yacht containing 380 kg of cocaine near St. Martin (Caribbean Sea). There were two persons on board of the yacht, one of the persons was a national of the Republic of Lithuania. The region of destination of this shipment was Europe.

<http://www.policija.lt/index.php?id=10696>

2. on 20 January 2010, officials of the Organised Crime Division of the Lithuanian Criminal Police Bureau, acting together with the officials of the Prosecutor General's Office of the Republic of Lithuania, carried out a joint operation with Latvian, US and Equador officials and detained a container in the Lithuanian seaport of Klaipėda containing about 0.5 tonnes of cocaine. <http://www.policija.lt/index.php?id=8340>

Lithuania's measures have proven to be fully successful and they are subject to constant monitoring and assessment undertaken through various trainings and workshops, international fora, etc. When difficulties occur, they are addressed on a case by case basis. For example, when the Republic of Lithuania prepared to become a member of the Schengen Area, the capacities of competent authorities to work with the Schengen Information System was assessed and workshops were organised.

Bearing in mind that the legislation listed in response to Article 48 Subparagraph 1(a) of the Convention above covers a range of criminal acts, including corruption offences, successful activities of such competent bodies in sharing a number of channels of communication with the other State Parties show that these measures are implemented effectively.

(b) Observations on the implementation of the article

The review team concluded that Lithuania seemed to have established a solid framework of law enforcement cooperation. A clear indication and example of particular value for the country's efforts to strengthen related mechanisms and networking is the membership and active participation in EU bodies such as Eurojust and Europol, aimed at facilitating interstate judicial assistance and law enforcement cooperation within the European Union.

On the other hand, the review team invited the Lithuanian authorities to continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of law enforcement cooperation.

The review team also invited the Lithuanian authorities to consider the allocation of additional resources to strengthen the efficiency and capacity of law enforcement cooperation mechanisms.

Article 48 Law enforcement cooperation

Subparagraph 1 (b) (i)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that it used the traditional channels of Interpol, Europol and Eurojust for that, and/or co-operated with other State Parties on the basis of international and bilateral treaties listed under Article 48 Subparagraph 1(a) above. In addition, Art 9¹ of the Lithuanian Criminal Code and Article 71¹ of the Criminal Procedure Code on the European Arrest Warrant were cited (see Annex 1).

There is no concrete example to show with respect to corruption crimes. An example of successful co-operation in conducting inquiries with respect to organised crime offences:

On 4 September 2009, in Bulgaria, in the region of Varna, officials of the Bulgarian Criminal Police detained a Lithuanian national H.D. on the basis of the information received from the Organized Crime Investigation Service of the Lithuanian Criminal Police Bureau and the Organized Crime and Corruption Investigation Department of the Prosecutor General's Office of Lithuania.

The suspect H.D. was detained after performing a number of intelligence search actions assisted by law enforcement officials from the United Kingdom, Norway, Spain and EUROPOL. A European arrest warrant was issued with respect to H.D. The criminal

association, which operated in 1989-2005 in Lithuania and headed by H.D., is suspected of committing a number crimes of homicide, robbery, illegal possession of firearms, swindling, unlawful deprivation of liberty and other crimes. Assistance in performing the actions of law enforcement bodies was also provided by the Lithuanian Police Attaché in Europol.

<http://www.policija.lt/index.php?id=6900>

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 48 Law enforcement cooperation

Subparagraph 1 (b) (ii)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

To address this issue, Lithuania uses a number of instruments available in accordance with the international treaties, conventions, bilateral agreements, etc. listed in response to Article 48 Subparagraph 1(a).

Additional important legal act in this respect is the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003F0577:EN:HTML>

Article 3

1. This Framework Decision applies to freezing orders issued for purposes of:

(a) securing evidence, or

(b) subsequent confiscation of property.

2. The following offences, as they are defined by the law of the issuing State, and if they are punishable in the issuing State by a custodial sentence of a maximum period of at least three years shall not be subject to verification of the double criminality of the act:

- participation in a criminal organisation,*
- terrorism,*
- trafficking in human beings,*
- sexual exploitation of children and child pornography,*
- illicit trafficking in narcotic drugs and psychotropic substances,*
- illicit trafficking in weapons, munitions and explosives,*

- **corruption,**
- *fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests,*
- *laundering of the proceeds of crime,*
- *counterfeiting currency, including of the euro,*
- *computer-related crime, etc.*

This framework decision was transposed into the Lithuanian Code of Criminal Procedure, Article 77(2) "**Acknowledgement and Execution of the Orders Freezing Property or Evidence in the Republic of Lithuania Issued by the Competent Judicial Authority of the European Union Member State**

The enforcement of the execution orders freezing property and evidence issued by the competent judicial authority of the European Union Member State is organised by the Prosecutor General's Office.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 48 Law enforcement cooperation

Subparagraph 1 (b) (iii)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

Please refer to the answer provided under Article 48 Subparagraph 1 (a) and Subparagraph 1 (b)(ii)

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 48 Law enforcement cooperation

Subparagraph 1 (c)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

Such provision of items or quantities of substances for analytical or investigative purposes is possible on the basis of conventions and bilateral/multilateral agreements dealing with cooperation in criminal matters.

(b) Observations on the implementation of the article

Lithuania declared that corresponding provisions are contained in bilateral and multilateral agreements that it concluded with other countries on criminal matters.

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 48 Law enforcement cooperation

Subparagraph 1 (d)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

Such information is exchange on the basis of international conventions and bilateral agreements referred to in the response the question under Article 48 Subparagraph 1(a).

(b) Observations on the implementation of the article

See the observations under subparagraph 1 (a) above. Additionally, it can be noted that as a member of Interpol, Eurojust and Europol, Lithuania is in a position to use and provide information through their databases as well as through the Schengen Information System.

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 48 Law enforcement cooperation

Subparagraph 1 (e)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

Please refer to the main legal acts (international conventions and agreements) mentioned in response to the question under Article 48 Subparagraph 1(a). 2. Joint task forces can be established on the basis of ratified international conventions and agreements. 3. Actions of competent authorities can be co-ordinated with the assistance of liaison officers (through, for example, Europol and Eurojust).

Lithuania cited the appointment of liaison officers in Europol and Eurojust as an example of successful implementation.

The effectiveness of the measures taken is assessed by looking at the activities of a concrete Lithuanian official in charge of co-ordination of actions (including liaison officers).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 48 Law enforcement cooperation

Subparagraph 1 (f)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The international conventions and treaties ratified by Lithuania and listed in response to the question under Article 48(1)(a), conditions have been created to exchange information and coordinate administrative and other measures.

Lithuania provided the following example of successful implementation: From July 2009 until 2011 the Lithuanian Special Investigation Service, the main anti-corruption body of the country and an authority of the European Union member state, provides support to the the Anti-Corruption Department with the Prosecutor General of the Republic of Azerbaijan within the framework of the EU-funded twinning contract.

More information about the project: Twinning Contract 2009/204728 Project “Support for the Anti-Corruption Department with the Prosecutor General of the Republic of Azerbaijan”, AZ08/PCA/JH/04

Background information:

Programme: TACIS - National Action Programme 2006
Twinning Number: AZ08/PCA/JH/04
Title: Support for the Anti-Corruption Department with the Prosecutor General of the Republic of Azerbaijan
Sector: Justice/Rule of Law
Beneficiary country: Republic of Azerbaijan
Project duration: July 2009 - July 2011
Project budget: 1 000 000 EUR

Beneficiary Country Partner: Anti-Corruption Department (ACD)
Project Leader: Kamran Aliyev, ACD Director

Member State Partner: Special Investigation Service (STT) of the Republic of Lithuania
Project Leader: Aidenas Karpus, STT Deputy Director

Other institutions providing experts for the project:

- Prosecutor General’s Office of the Republic of Lithuania
- Corruption Prevention and Combating Bureau (KNAB) of the Republic of Latvia

Summary of the project objectives:

The Twinning project Support for the Ant-Corruption Department with the Prosecutor General of the Republic of Azerbaijan aims to contribute to the on-going capacity building of the Anti-Corruption Department with the Prosecutor General of the Republic of Azerbaijan (ACD) as well as to the fulfilment of its role in the delivery of the 2007 National Strategy on Increasing Transparency and Combating Corruption and the associated National Anti-Corruption Action Plan.

The project is expected to contribute to the overall objective set out in the ENPI Azerbaijan National Indicative Programme 2007-2010 to improve the quality and efficiency of services provided by the public administration by fighting corruption.

Project activities:

Component 1 - Amendments to the regulatory base and procedural rules governing the ACD:

- 1.1. Conducting a study of administrative law and operational practices in ACD as compared with EU countries
- 1.2. Drafting of a set of consistent regulations and procedures covering all ACD activities
- 1.3. Study visits to other jurisdictions
- 1.4. Presenting the proposed amendments

to other stakeholders

Component 2 - Improvement of ACD capacity to interact with various stakeholders in fighting corruption:

2.1. Improving ACD methods for building public confidence in the fight against corruption

2.2. Support for presentation and publication of results

Component 3 - Enhancement of skills and basic knowledge of ACD prosecutors and investigators:

3.1. Conducting training needs analysis and developing a comprehensive training programme for ACD staff

3.2. Training in investigation techniques

3.3. Establishing a legal consulting point within the ACD

3.4. Improving prosecutorial skills

3.5. Training and mentoring on practical issues in instituting an intelligence-based as well as risk-based approach to law enforcement

3.6. Training and mentoring on methods of asset recovery and ways the ACD can help with the collection of damages

Component 4 - Development of training capacity of the ACD designated staff (“Train-the-Trainers”):

4.1. Conducting training needs analysis for relevant staff at the ACD, Prosecutor General’s Office and other law enforcement agencies

4.2. Developing a training toolkit

4.3. Training of trainers

4.4. Pilot training sessions to target audience (staff of other law enforcement agencies)

Component 5 - Improvement of the ACD staff capacities to participate in running international cases of corruption:

5.1. Training in handling international cases

5.2. Practical support and mentoring to ACD staff for handling international cases

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

Lithuania has applied to participate in Gemini Project in Jordan JO10/ENPAP/JH/16 „Support the Implementation of the Anti-Corruption Commission’s Strategy in Jordan“.

On 1 April, 2011 the Police Department under the Ministry of Interior of the Republic of Lithuania together with the Hungarian Police has started the implementation of the EU Gemini Project proposed by the Republic of Albania – the Modernization of Operational and Logistic capabilities of the Directorate of Witness and Special Persons Protection.

(Source: <http://www.policija.lt/index.php?id=11999>).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania referred to the following applicable measures:

1. International treaties and conventions referred to in response to a question under Article 48 Subparagraph 1 (a).
2. Agreement between the Special Investigation Service of the Republic of Lithuania and Corruption Prevention and Combating Bureau of the Republic of Lithuania (please find attached below).
3. Other bilateral agreements, between the Special Investigation Service of Lithuania and the Central Anti-Corruption Bureau of Poland as well as the Economic Crime and Corruption Agency of Kazakhstan are underway.

Furthermore, Lithuania cited the cooperation agreement between the Special Investigation Service of the Republic of Lithuania and the Corruption Prevention and Combating Bureau of the Republic of Latvia (see Annex 1).

Republic of Lithuania Law on Ratification of the United Nations Convention against Corruption provides for the following:

1. *The Republic of Lithuania will deem the Convention as the legal basis for co-operation on extradition issues with the State Parties (with an exception applied with respect to its own nationals)*
2. *The Ministry of Justice and the Prosecutor General's Office (the latter can perform pre-trial investigation) shall be appointed as central authorities to accept mutual requests for legal assistance.*

As regards the assessment of the effectiveness of measures taken, Lithuania indicated that, for instance, the direct co-operation of the Special Investigation Service of the Republic of Lithuania with respective anti-corruption bodies of other states is assessed in the sections of semi-annual and annual performance reports of the Special Investigation Service dealing with international co-operation.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

There are no obstacles for Lithuania to cooperate with other State Parties and respond to offences covered by the Convention through the use of modern technology. They can be used under a number of international and bilateral treaties signed and ratified by Lithuania. Modern technologies have been used in response to a number of corruption crimes covered by the Convention.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

- Code of Criminal Procedure Article 20. Evidence (see Annex 1).
- Criminal Code of the Republic of Lithuania. Chapter XXX. CRIMES AGAINST SECURITY OF ELECTRONIC DATA AND INFORMATION SYSTEMS, Article 196 - Article 198(2) (see Annex 1).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

Joint investigations in joint investigative teams are carried out in compliance with the recommendations adopted by the Prosecutor General's Office (see Annex 1). These recommendations list both the international agreements and provisions of the Criminal Procedure Code which serve as the legal basis for such teams. One of the legal instruments is the United Nations Convention against Transnational Organised Crime (Article 19).

In April 2010, a bilateral agreement was signed between the Lithuanian Prosecutor General's Office and the German Berlin Prosecutor's Office on joint investigation. In late 2009, a tripartite agreement was signed between Lithuanian, Estonian and Latvian prosecution offices concerning the establishment and operation of a joint investigative team.

(b) Observations on the implementation of the article

International cooperation in the field of gathering evidence through special investigative means and joint investigation teams is possible and subject to the provisions of CPC and the Law on Operational Activities. In addition, a special Recommendation on Joint Investigations has been adopted by the Prosecutor General to facilitate investigations on a case-by-case basis.

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 50 Special investigative techniques

Paragraph 1

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

Lithuania indicated that the provision under review had been implemented through the following provisions of national legislation:

- Law on Operational Activities Art 3, 10-13, 17 (see Annex 1);
- Criminal Procedure Code Art 154, 158-160 (see Annex 1).

Furthermore, the following examples of case-law were provided:

Supreme Court of Lithuania. 1 December 2007. Overview of Application of Criminal Procedure Norms Regulating Presentation of Evidence in Court Practice:

"3. Evidence in criminal proceedings means data obtained through the procedure established by, verified by procedural actions prescribed in the Criminal Procedure Code, heard in court and acknowledged by court, on the basis of which the court makes conclusions concerning the commission of criminal activities or the absence thereof, the level of guilt on the part of the person who committed the activities or innocence thereof as well as other circumstances which are relevant for a just decision of the case.

3.1. Evidence shall constitute data obtained in compliance with the procedure established by laws regulating the activities of entities obtaining evidence. Such legislation include the Code of Criminal Procedure, Law on Operational Activities, Police Activities, Law on Defence Lawyers and other regulations prescribing for the operation and organisation of law enforcement agencies. Evidence shall also constitute data obtained in compliance with the procedure provided for in international treaties ratified by the Parliament of the Republic of Lithuania."

“Judgement of the Court of Appeal of Lithuania in criminal case 1A-17/2006 of 25 January

2006:

"In fact, the main evidence corroborating the guiltiness of M.Č., E.D. and N.Š. are the data recorded in the statements on the use of technical means (emails, telephone conversations, SMS). However, in contrast to what appellants says, such evidence is also corroborated by other sources of evidence: the material obtained from USA under the technical assistance agreement (c.c. 57-74, 78-81 t. 5, 93-139 t. 6), statements on the use of technical means of controlled delivery and inspection (c.c. 82-96 t. 5, c.c. 3-15, 19-21 t. 7), record of seizure (c.c. 17-31 t. 7), special and expert opinions (c.c. 75-76, 97 t. 5), c.c. 78-79, t. 6, c.c. 16-17 t.7, c.c. 123-126 t. 27), testimonies of witnesses S. S., A. D., I. I., D. P. and other evidence discussed and properly assessed in the judgement."

Judgement of the Supreme Court of Lithuania in criminal case No. 2K-7-48/2009 of 10 February:

"Among the most informative evidence on the basis of which the judgement of conviction is based is verbatims and recordings of telephone conversations of convicted persons A. Z., A. J., A. J. and D. L. <...> The court concluded that the recordings of telephone conversations included in the case were genuine and they were admitted as evidence. This conclusion of the court includes detailed and persuasive arguments and therefore the Chamber has not grounds to doubt it. <...> The authorisation was given both to monitoring and recording of the information transmitted through telecommunications. That is sufficient to conclude the admissibility of data obtained through operative investigation. "

Lithuania also provided additional information on control of operational activities:

- Republic of Lithuania Law on Operational Activities (Chapter VII, Art 21-23, see Annex 1);
- Law on Prosecution of the Republic of Lithuania (Article 2(2)(3):

The prosecution shall, on the grounds and in compliance with the procedure established by law, supervise the activities of pre-trial investigation officers in criminal proceedings.

(b) Observations on the implementation of the article

International cooperation in the field of gathering evidence through special investigative means and joint investigation teams is possible and subject to the provisions of CPC and the Law on Operational Activities. In addition, a special Recommendation on Joint Investigations has been adopted by the Prosecutor General to facilitate investigations on a case-by-case basis.

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 50 Special investigative techniques

Paragraph 2

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

The provisions on surveillance, covert investigation and controlled delivery are included in the following international conventions and bilateral agreements:

1. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ratified on 29 January 2004).
2. 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 (ratified on 5 February 2004).
3. Agreement between the Government of the Republic of Latvia and the Government of the Republic of Lithuania on Co-operation in Combating Organised Crime and Other Offences and on Joint Actions in Border Regions (ratified on 17 May 2007).
4. Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on Co-operation in Combating Organised Crime and Other Offences and on Joint Actions in Border Regions (ratified on 17 May 2007).

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework was in compliance with the UNCAC provision under review.

Article 50 Special investigative techniques

Paragraph 3

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) Summary of information relevant to reviewing the implementation of the article

Following the principles of goodwill and reciprocity as well as bearing in mind the national law of State parties, additional international agreements can be concluded or arrangements can be made.

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.

Article 50 Special investigative techniques

Paragraph 4

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to the principles of goodwill and reciprocity as well as taking into account the provisions of the national law of State Parties such decisions are possible.

Pursuant to the Republic of Lithuania Law on Operational Activities, Article 3(21) d. controlled delivery means the authorised actions allowing illicit or suspect goods and other objects to pass into, through or out of the territory of the Republic of Lithuania under the control of an entity of operational activities with a view to the detection of criminal acts and the identification of the persons preparing, committing or having committed the acts. Controlled delivery may be carried out only on the basis of international treaties or agreements.

Additional information/ clarification provided by Lithuania in response to the outcome of the desk review:

The Law on Operational Activities can be accessed under the following address:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=179228

(b) Observations on the implementation of the article

The reviewing experts were satisfied that the domestic legal framework and practice were in compliance with the UNCAC provision under review.