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**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

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II. Executive summary

Lithuania

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 (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.

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.

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.

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

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

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 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 pretrial 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.