

## **Information prepared by the Prosecutor General's Office of the Republic of Lithuania**

### ***The Legal Framework and Measures***

Lithuania is a party to the United Nations Convention against Corruption (of 2003), ratified in 2006, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (of 1990), the European Convention on the International Validity of Criminal Judgements (of 1970). It also implements Framework Decision (FD) 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, FD 2003/577/JHA on the execution in the EU of orders freezing property or evidence; FD 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders; FD 2007/854/JHA on the exchange of information and cooperation between Asset Recovery Offices.

The assistance of the Eurojust national member allows Lithuania coordinating investigations among the competent authorities in the Member States as the Eurojust assists the Member States in facilitating the execution of international MLA and the implementation of other requests.

In Lithuania, a confiscation generally follows a criminal conviction. The Article 151 of the Criminal Procedure Code of Lithuania states that – with a view to securing a civil claim, possible confiscation of assets, or extended confiscation of assets – a prosecutor may impose a provisional restraint of ownership rights upon a suspect, or a natural person or persons who, according to the law, are materially liable for the actions of a suspected person, and who are in possession of criminal proceeds.

The Article 94 (5) of the Criminal Procedure Code of Lithuania establishes that on the grounds and procedure provided for in the international treaty of the Republic of Lithuania, when applying a foreign state institution, the court may decide that after the verdict comes into force, the objects and values obtained in a criminal way may be transferred to a foreign state institution so that it would return to the legitimate owners, if these are established, and if this does not violate the legitimate interests of other persons. The items that are forbidden to trade are not transmitted to a foreign state institution.

The legal act disciplining the disposal of confiscated assets is the Resolution of the Government of the Republic of Lithuania No. 634 dated 26 May 2004 “On Approval of Rules for Transfer, Accounting, Safekeeping, Selling, Returning and Recognizing as Waste of Unowned Assets, Assets subject to Confiscation, Assets Inherited by the State, Assets Transferred as Revenue to the State, Material Evidence, Treasures and Findings”. On the basis of it, the disposal option available in Lithuania is sale. Confiscated assets are accounted and sold whereas pecuniary funds received are transferred to the state budget.

If a case involves mutual recognition of a foreign confiscation order, the confiscated assets are repatriated from Lithuania to the requesting Member State based on Framework Decision 2006/783/JHA.

The Resolution No. 219 of 13 March 2013 of the Government of the Republic of Lithuania establishing the rules on transferring the court decisions of the Republic of Lithuania on confiscation to other Member States for their execution stipulates that the assets (excluding execution and other related expenses) received upon execution of the court decision on confiscation adopted by other Member State, which has been recognized by the Lithuanian court following the procedure determined in the Article 365-3 of the Criminal Procedure Code, shall be divided in the following way: if they do not exceed the amount of 10 000 euros – the assets are transferred to the budget of the State Tax Inspectorate; if they exceed the amount of 10 000 euros – half of these assets are transferred within 10 days from the day the assets were received to the Member State whose court has adopted a decision on confiscation and other half – to the budget of the State Tax Inspectorate.

In practice, the European Judicial Network in Criminal Matters is often used for the purpose of assistance provided by the EJM Contact Points covering a wide area from the mutual legal assistance and the European Arrest Warrant to the most recent instruments giving effect to the principle of mutual recognition. The assistance is provided in preparation of the MLA requests, execution of the MLA requests, execution of

an EAW, issuance of a freezing order, execution of a freezing order, preparation of the issuance of a confiscation order, execution of a confiscation order and etc.

It must be noted that the Prosecutor General's Office of the Republic of Lithuania has appointed the prosecutors as its contact points to the Asset Recovery Network. The contact point of the Prosecutor General's Office receives inquiries regarding the assets recovery from the Asset Recovery Office. The targeted cooperation among the contact points in this area accelerates and improves the process of finding and recovering the assets.

In addition, the Prosecutor General's Office and the Lithuanian Criminal Police Office designate the contact points on the CARIN platform where the designated persons maintain the mutual cooperation in the field of asset finding and recovery.

According to the Resolution No. 178 (of 4 March 2009) of the Government of the Republic of Lithuania "On the Implementation of the Council Decision 2007/845/JHA of 6 December 2007 on cooperation between the Member States' Asset Recovery Offices in the field of tracing and identification of proceeds from crime and other related assets" the Prosecutor General's Office and the Lithuanian Criminal Police Office carry out the functions of the national asset recovery offices. Exercising these functions the Prosecutor General's Office and the Lithuanian Criminal Police Office have appointed the contact persons that, in this area, maintain contact with the partners in foreign countries.

Various recommendations by the Prosecutor General were approved as important tools for the investigation and recovery of assets.

The Prosecutor General of the Republic of Lithuania by the order No. I-73 of 19 March 2013 has approved the Recommendations for Financial Investigation. These guides establish the receipt of information for the assets investigation from the main registers: the register of legal entities, the population register, the real estate (including rights thereto) register, the registers of addresses relating to objects whose geographical position does not change, the registers of legal acts, the mortgage registers. It also provides the legal regulation on property confiscation, the confiscation of property belonging to other persons, extended confiscation of property.

The inter-institutional working group has been recently set up which has drafted the new Guidance on Assets Investigation. These new guides replacing the Recommendations for Financial Investigation should be approved by the Prosecutor General in the near future.

The Prosecutor General of the Republic of Lithuania by the order No. I-8 of 11 January 2013 has approved the Recommendations for pre-trial investigation on legalization of money or property obtained by criminal means, covering the issues of qualification, tactics and application of coercive measures in pre-trial investigation of criminal acts related to the legalization of proceeds from crime (the Article 216 of the Criminal Code of the Republic of Lithuania – "Money, Property Laundering").

The Prosecutor General of the Republic of Lithuania by the order No. I-115 of 3 June 2014 has approved the Recommendations on the establishment and operation of Joint (combined) international investigation teams, providing when a joint investigation team may, in particular, be set up: pre-trial investigations into criminal offences conducted by the Republic of Lithuania are complex and require a substantial amount of efforts and time and have links with other States where coordinate pre-trial investigation action must be taken; a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate the coordinated and concerted actions in the States involved, and there is a request submitted by these States, or Eurojust board, or the Eurojust national member of Lithuania, asking to conclude an agreement on the setting up of a team.

In addition, the international inter-institutional (the German Bundeskriminalamt, the Polish Central Criminal Police Office, the Prosecutor General's Office of the Republic of Lithuania, the Vilnius District Chief Police Commissariat, the Financial Crime Investigation Service, the Customs Criminal Service, the Special Investigation Service, the State Border Guard Service) project "The Financial Investigation and Enhancement of Tracing the Assets Obtained by Criminal Means and Management Capacity for Professional Operation and Organized Crime Prevention" was accomplished, the purpose of which was to investigate the assets necessary to secure the confiscation of property and extended confiscation

of property, as a tool for damages, to define the "unlawful enrichment" and "legalization of property obtained by criminal means".

Based on this project, in 2016 the publication "Assets Investigation Methodology" was published and distributed to pre-trial investigators and prosecutors along with the training to officers.

### *Experiences and best practices*

The prosecutor's office of Lithuania may share the best practices and experience as to information requested in limited volume since such cases involving the recovery of vast quantities of assets or the setting up of shell companies are rare. Usually, such criminal proceedings are complex and of large volume involving not only the corruptive crimes but also the other crimes committed.

One example of such best practices is the case in which, in December 2017, the Klaipėda Regional Court has convicted eight natural persons and two legal entities found guilty of legalization of proceeds from crime (Article 216 of the Criminal Code of the Republic of Lithuania), abuse of office and exceeding the powers (Article 228 of the Criminal Code of the Republic of Lithuania), giving a bribe (Article 227 of the Criminal Code of the Republic of Lithuania), bribery (Article 225 of the Criminal Code of the Republic of Lithuania), forgery of a document or possession of a forged document (Article 300 of the Criminal Code of the Republic of Lithuania), fraud in the acquisition of high value assets (Article 182 of the Criminal Code of the Republic of Lithuania) and other crimes. Three of them were convicted to the long-term imprisonment sentences. In the course of the pre-trial investigation the unreasonable transfers of funds were found that were made to a Swiss-based company. From these funds the bribes were paid, as well as the contracts between Lithuania and two Swiss-based companies were falsified. The loss-making to the state contract was signed, in which the Lithuanian company has acquired the special conditions for the transshipment of oil products. One of the defendants being the sole shareholder of the Lithuanian company and managing it had the actual knowledge that his acquired and actually managed companies in Alaska, the USA and Switzerland did not provide any forwarding, customers and cargo search services, market research services, and acting in an organized group with other individuals falsified the contracts, invoices, work - transfer acts. One of the companies set up in Lithuania for investment activities was found guilty of "money laundering". Some part of the proceeds from crime was legalized. The defendant has bribed another person in order to receive the confidential information and favourable decisions, and has given him a bribe of over 3 250 000 Euros and 175 500 US Dollars which he accepted and later legalized the money laundered. Having received a bribe the other defendant carried out various financial transactions: he has transferred the funds to the fixed-term deposits, cashed them out, made the payments to other accounts, purchased the securities, entered into the transactions and used the funds in the commercial activities, in this way legalizing the money received from the criminal activity. These circumstances were confirmed by the documents received from the Swiss bank. The damage to one of the companies set in Lithuania exceeded 20 000 000 Euros. As a result of the damage to the state, over 2 300 000 Euros was awarded to be paid jointly by the defendants. Also, the court decided from the defendants to recover the value of the property to be confiscated - over 11 500 000 Euros, and joint damages - over 20 200 000 Euros. The judgment has not come into force and has not been executed yet as it was appealed to the Court of Appeal.

In another resonant case of bankruptcy of a bank, the provisional restraint of ownership rights of the suspects' assets in about 10 foreign countries including those in offshore jurisdictions amounts to about 170 000 000 Euros. The law enforcement institutions in these foreign countries where the assets were restrained require the verdict by the court to be in force in order to return these large-scale assets to Lithuania. In 2011 the pre-trial investigation was initiated by the Prosecutor General's Office on the indications of the criminal offences provided in the Article 184 of the Criminal Code of the Republic of Lithuania (exhaustion of property), the Article 216 (legalization of proceeds from crime), the Article 222 (fraudulent management of accounts), the Article 228 (abuse of office and exceeding the powers) and the Article 300 (forgery of a document or possession of a forged document). The basis for the pre-trial investigation to initiate was the announcement of the Bank of Lithuania regarding the possible actions of the suspected bank managers and

shareholders possibly exhausting the bank's assets, counterfeiting and using the documents related to the accounting of securities belonging to the bank in various foreign banks, possible legalization of money laundering by forming a share capital of the bank, potentially fraudulent accounting, possible abusing of the office by the bank managers for the purpose of assets or other personal gain. In the course of the investigation it became clear that shareholders of the bank were potentially absorbing the bank assets of a high value, the investigation was also initiated pursuant to the Article 183 (misappropriation of assets) and the Article 209 (criminal bankruptcy) of the Criminal Code of the Republic of Lithuania. Over the pre-trial investigation by the decision of the prosecutor the main shareholders of the bank and other persons acting in an organized group were recognized as suspects. This resonant case is due to be referred to the court.

Another the bankruptcy of a bank case of 2013 includes the exhaustion of assets of a high value in accordance with the Article 184 (exhaustion of assets), the Article 228 (abuse of office and exceeding the powers), the Article 209 (criminal bankruptcy) and the Article 216 (legalization of proceeds from crime) of the Criminal Code of the Republic of Lithuania. The prosecutor in 2013 has decided to impose the provisional restraint of ownership rights on the foreign company's large-value building in London, United Kingdom. Later, in 2014, the information from the UK law enforcement agencies was received that this real estate was sold out for 21 000 000 GBP. The assets of the company registered in England in order to secure the assets confiscation and extended assets confiscation were subjected to the provisional restraint of ownership rights of 18 195 000 GBP. Since this case has not been referred to the court yet (it is foreseen in the near future) and there is no verdict by the court passed yet the English law enforcement agencies are not in a position to transfer and return the potential for the confiscation assets to Lithuania under the UK's laws.

#### **Information prepared by the Special Investigation Service of the Republic of Lithuania**

1. Special Investigation Service of the Republic of Lithuania (hereafter – STT) does not possess any practical examples and practices on criminal and civil measures and remedies to enhance international cooperation and asset recovery related to corruption, when it involves vast quantities of assets. However, STT has procedures, which could facilitate in the aforementioned cases.

In cases with cooperation of foreign authorities, where such measures would be needed, the common rules of MLA of the Code of Criminal Procedure of the Republic of Lithuania (hereafter – CCP) would apply.

Confiscation of property and extended confiscation of property of natural and legal persons is subject to the rules and conditions laid down in Articles 72 and 72<sup>3</sup> of the Criminal Code of the Republic of Lithuania (hereafter – CC).

In accordance with Article 72(5) of CCP, in cases where the property subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in Paragraph 4 of this Article (i.e. natural persons or legal entities to whom property subject to confiscation belongs) the amount of money equivalent to the value of the property subject to confiscation.

If the assets cannot be traced but it is determined during the investigation that the property of the offender or part thereof is not proportionate to the legitimate income of the offender and there are reasonable grounds to assume that this property has been derived from criminality, this gives basis for application of extended confiscation of property in accordance with Article 72<sup>3</sup> of CC.

STT as well as other Lithuanian central law enforcement agencies use various tools for facilitating international cooperation, e.g. the SIENA, EPE, various templates (MLA, EIW, JIT), as well as internal explanatory notes, recommendations on international cooperation in criminal cases.

In order to facilitate international cooperation process between law enforcement institutions STT together with other Lithuanian criminal justice institutions use proactive measures, such as organizing periodical meetings with the countries with whom Lithuania has bilateral/tripartite international treaties (e.g., Poland, Latvia, Estonia, United States of America, etc.) to discuss the relevant matters. Lithuanian law enforcement authorities also actively participate in various trainings organized by the Eurojust, Europol, CEPOL, International Anti-Corruption Academy, etc.

**2.** STT currently does not possess any practical examples in the identification of legal and natural persons, involved in the establishment of corporate entities, including shell companies, trusts and other similar arrangements which may be abused to commit or conceal crimes of corruption or to hide, disguise or transfer their proceeds of corruption to countries that provide safety to the corrupt and/or their proceeds. However, STT has an instrument which could facilitate in the aforementioned cases.

The newly amended Law on the Special Investigation Service (2017-12-19 No. XIII-938) has established the new function of the STT – Analytical Anti-Corruption Intelligence (hereafter – AAI). Para. 1-3 Art. 8 of the Law provide for the right of the STT to obtain information resources, data and documents as well as other information necessary to carry out its functions. While Art. 9 of the Law on the Special Investigation Service foresees that information collected and processed during the Analytical Anti-corruption Intelligence may be provided to the state or municipal authorities and officials authorized to take decisions that are significant in terms of reducing corruption, in order to neutralize the threats and risks of corruption before they become criminal acts. Thus, the newly institutionalized mechanism also allows to detect and/or prevent possible risks, breaches and irregularities in the establishment of corporate entities (legal and natural persons involved), which may be abused to commit or conceal crimes of corruption. The AAI also allows to conduct network analysis and, thus, detect and prevent risks regarding nepotism, favouritism, etc. by providing this information to the public authorities (decision-makers) responsible for strengthening institutional anti-corruption environment.