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Field study: The Baltic States and the Implementation of ILO Core Conventions.

– One region – three different countries

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This report was commissioned by the Council of Nordic Trade Unions as part of the NFS project: ***An analysis of the Baltic States: Determining whether any given legislation or practice complies with the ILO Core Conventions and Convention 144 on Social Dialogue.***

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1 Introduction

This report was commissioned by the Council of Nordic Trade Unions NFS as part of the project: ***An analysis of the Baltic States: Determining whether any given legislation or practice complies with the ILO Core Conventions and Convention 144 on Social Dialogue.*** The project was initiated in 2016 with the aim of strengthening workers' rights in the Baltic States by examining the implementation and practice of ILO core conventions and convention 144 on Social Dialogue in Estonia, Latvia and Lithuania. The objective is to analyse the current situation in these countries and develop a future strategy for developing workers' rights in the region.

The specific objective of this report, which is the third within the scope of the project, is to describe how the implementation of ILO core conventions and convention 144 on Social Dialogue function in practice in Estonia, Latvia and Lithuania. The report is based on interviews conducted with governments, employers' organisations and trade unions in the three countries and strives to describe how the different parties perceive current practice in the countries as it relates to the conventions.

1.2 ILO conventions

The main focus of the field study was the implementation of ILO conventions 87, 98 and 144:

- Convention 87: "Freedom of Association and Protection of the Right to Organise"
- Convention 98: "Right to Organise and Collective Bargaining"
- Convention 144: "Tripartite Consultation (International Labour Standards)".

2 Set-up and methodology

A total of nine interviews were conducted in the three different countries. Trade unions, an employers' organisation and the government were interviewed, and the full interviews form the basis of this report's content. This report seeks to highlight the most important aspects of the interviews and it is written in a general form. Names and organisations have been replaced with the following terms: the Trade Unions, the Employers' Organisation and the Government.

The interview respondents (Appendix 1) were chosen by requesting interviews with the foremost experts/civil servants in both employees' and employers' organisations as well as in governments, who, in their professional capacities, are involved with and responsible for the implementation of ILO conventions in their national contexts. The ambition was to establish a description of how the different parties perceive current practice in the countries as it relates to the conventions.

The interviews' starting point was a questionnaire (Appendix 2) sent out to the interviewees before the meeting to prepare them for the content. However, due to time limitations and other factors, the focus and priority was to have a relaxed and good dialogue, rather than rigidly follow the questionnaire.

We would like to thank everyone involved for their openness, support and hospitality.

3 One region and three countries – the most important observations

The Baltic States have a long and shared past. After entering the EU, however, their national differences are quite pronounced in terms of how the three states deal with and implement the ILO conventions and EU regulations in relation to the labour market. Especially the empirical data regarding Lithuania was more difficult to analyse than in other two countries, as Lithuania was involved in negotiating a new labour code when the interviews took place. The new labour code entered into effect on 1 July 2017, i.e. after the interviews were finished.

For this reason, the report does not give an overall conclusion for all three countries. The most important observations relating to the ILO conventions are mentioned below, and some are marked with an asterisk (*). These observations comprise what the authors think requires a closer look from a legal point of view to determine whether there are any breaches of the ILO conventions.

In addition, under each country chapter, the authors provide suggestions for possible actions for the social partners. These are the authors' own views based on their experiences and conversations with the partners in the different countries.

| Most important observations | Estonia | Latvia | Lithuania |
|---|--|--|--|
| Freedom of association and the right to organise | The Estonian Constitution safeguards the freedom of association and the right to organise. Shop stewards are protected by law. However, there are certain challenges regarding the enforcement of this law.* The parallel structure of workers' representation, with so called "trustees". | The social partners in Latvia are generally positive about how the ILO conventions regarding freedom of association and right to organise are implemented and practised in Latvia. The rights are written into the constitution, the labour law and the Trade Union law. | Lithuania has freedom of association in its labour code. The Trade Union states that the Government is the biggest employer but that it tries to replace the trade unions with work councils.* The Trade Union knows of several examples where employers harass workers or try to stop trade union activities. |
| Right to collective bargaining | The right to collective bargaining exists in Estonia, but does not apply to public officials.* More and more employees are covered by standard labour contracts, including public servants. | The right to collective bargaining in the private sector is ensured through legal regulations and ILO conventions. Sectoral collective bargaining lacks application in practise. Scope of collective bargaining in the public sector is limited by law.* | The right to collective bargaining has been legalised. The weak point is the lack of sector-level and nationwide agreements, and a large "shadow economy" poses a major obstacle to collective bargaining. |
| Right to strike | The right to strike is safeguarded in the collective agreements, but does not include public officials the police or firefighters.* Political strikes are not allowed. | There is no prohibition in the private sector against striking. There are strong restrictions in the public sector.* | The right to strike is ensured in the private sector, but limited in the public sector.* A strike is not allowed if an employer violates a collective agreement.* |
| Tripartite Consultation and the application of ILO Conventions | There is no tripartite committee. The Trade Union states that the Government does not work to encourage social dialogue.* | Latvia has an advanced tripartite institution based in a tripartite council at national level with representation of the social partners. ILO conventions 87 and 98 are implemented through the tripartite council and the nine sub-committees. | There is a tripartite council at national level. According to the two social partners, the state tried to unilaterally change the tripartite council without tripartite consultations. |

**Possible breach of ILO convention(s): There has been no legal assessment of these potential breaches of ILO conventions, which will be necessary before any further action is taken.*

4 Estonia

4.2 Freedom of association and the right to organise

In general, Estonian regulations safeguard the freedom of association and the right to organise, as these are included in the Constitution. Union density is low, and the three social partners have different explanations of this. The Government claims that a cultural change from a collective to an individualistic mindset may be the reason, the Employers' Organisation asks for more training of managers in labour relations, while the Trade Union claims that employment protection is weak and organising can be seen as a threat by employers, at the same time that people are reluctant to organise as the benefits of organising are not clear.

In Estonia, there is a parallel structure of worker representation involving so-called "trustees". The trustees are elected among the employees to represent workers and discuss practical issues with the employers, e.g. issues in line with Occupational Health and Safety regulation (OHS). Wages are not negotiated. The trustee is protected against being dismissed, and the employer cannot decline to meet with a trustee. Trustees have legal rights but not decision-making rights.

Shop stewards are protected by law, but according to the Trade Union this protection does not function in practice. The Government admits that there are certain challenges regarding the enforcement of this law.

4.3 Right to collective bargaining

The right to collective bargaining exists in Estonia. Most agreements are at company level, and only two or three at sector level. A minimum wage is negotiated between the Employers' Organisation and the Trade Union at national level.

Previously, civil servants were covered only by the Civil Service Act, which, in accordance with the Employers' Organisation, is a "maximum" law. Now, more and more are covered by standard labour contracts, thus increasing their freedom to organise and enter into collective agreements.

The Employers' Organisation points to the lack of professional trade unionists, together with a shortage of labour to explain the low rate of organisation and low coverage of collective agreements.

4.4 Right to strike

The right to strike is ensured in the collective agreements, but does not include political strikes. The Public Service Act does not grant public officials the right to strike, but as more public employees now work under standard labour contracts, this right is ensured to a greater extent than before. The police and firefighters do not have the right to strike, and public officials do not have the right to strike as they are not covered by a collective agreement.

4.4 Tripartite consultation and the application of ILO conventions

There is no tripartite committee. The exception is the committee for the unemployment fund. There is also a tripartite committee for healthcare, but this includes actors other than the social partners. Both the Trade Union and the Employers' Organisation would like to have tripartite consultations to make policymaking and legislative processes more organised and formalised, rather than the consultations which today feel ad hoc and unpredictable. The Government does not see the same need, as they assert that consultations take place on a regular basis. In addition, the Government has an unresolved position, with internally conflicting points of view on the relevance of the tripartite committee, mainly due to elections and changes in government.

Over the past year, the Trade Union and Employers' Organisation have had monthly meetings to discuss labour-market issues, foreign workers, the health system, sustainability, etc., to strengthen their position towards the government.

Regarding the implementation of ILO conventions, there is an ILO council that examines the ratification of conventions. The Trade Union claims that the Government does not work to encourage social dialogue, while the Government claims that the Trade Union fails to respond when consulted on ILO reporting.

4.5 Possible actions

- 1) The Government should establish solid tripartite institutions and fora that will last irrespective of the change of governments/political parties and contribute to sound social dialogue at both bipartite and tripartite level.
- 2) The Trade Union and the Employers' Organisation both stated the need for strong social partners and more training. Training of managers and shop stewards in labour relations is vital for building strong organisations and having a good social dialogue at bilateral level, including focusing on negotiations skills, OHS regulations, etc. This is also in the interest of the Government, which should support this kind of training.

5 Latvia

5.1 Freedom of association and the right to organise

The social partners in Latvia are generally positive about how the ILO conventions regarding freedom of association and the right to organise are implemented and practised. There are no obstacles in the regulations to organising. However, both the Government and the Employers' Organisation point to the high number of SMEs in Latvia as an obstacle to organising (94% of Latvian companies have fewer than 10 employees). The Trade Union, on the other hand, suggests that employers can be hesitant about worker organising, as they fear the consequences (higher wages, the fight for workers' rights, additional costs and more difficulties regarding hiring and firing).

All social partners emphasise the importance of international cooperation and funding to promote social dialogue and organising.

5.2 Right to collective bargaining

The right to collective bargaining in public and private sector is ensured through constitution, legal regulations and ILO conventions. There are few sectoral collective agreements - for railway workers, education and health sectors. None of the collective agreements regulates wages. Social dialogue is not functioning properly at company or sector level. With the support of the government the social partners in Latvia started implementation of the ESF projects aiming to promote collective bargaining on sectorial level. The objective of the projects is to sign five sectorial collective agreements in five economy sectors – telecommunications, wood processing and forestry, road transport, chemistry and construction. This pilot project is the main platform to develop sectorial collective bargaining in Latvia. Collective bargaining in the public sector is limited by law. The law defines which issues can be negotiated, mentioning 8 or 9 issues. However, the Latvian Trade Union does not consider this to be the main challenge. The Latvian Government underlines the fact that collective agreements in the public sector are financed by taxes and that remuneration for public employees is defined by law and limited to budget prepared by the Government and adopted by the Parliament. Pay rise in public sector therefore is negotiated through tripartite sub-structures.

5.3 Right to strike

There is no prohibition in the private sector against strikes. The public sector has strong restrictions. The Government claims that the restrictions regarding the right to strike in the public sector are in keeping with ILO conventions. This is not a high priority for the Trade Union, however, as they, together with the other social partners in Latvia, emphasise that they do not have a mentality to strike and that “they are very patient”. There have been strikes in the educational, healthcare and border guards sectors.

5.4 Tripartite consultation and the application of ILO conventions

Latvia has an advanced tripartite institution based in a tripartite council at national level with representation of the social partners. The participants are the prime minister, other ministers from the Government, and presidents from employers’ organisations and trade unions, including sector unions. This tripartite council deals with a wide range of issues such as minimum wage, education, healthcare, labour law reforms and national tax reforms. More detailed work is done in nine working groups, discussing wages, trade agreements, transport, social welfare, etc.

Budget negotiations are held each year, and the parliament can only vote on the budget after it has been evaluated by the tripartite council. There is a long-standing agreement between the Employers' Organisation and the Trade Union about some social aspects, economic aspects and tax policies.

According to the Trade Union, the Latvian labour law is one of the best in Europe. Latvians are proud of the fact that they have managed to keep some of the laws at a higher standard than the ILO conventions, e.g. in the case of dismissals of employees-trade union members, the trade union must be consulted. ILO conventions 87 and 98 are implemented through the tripartite council and the nine sub-committees.

5.5 Possible actions

- 1) Although there is a solid tripartite dialogue at national level, there is low coverage by collective agreements at sector and company level. The Trade Union and the Employers’ Organisation need to develop a solid bipartite dialogue at sector union level, and focus on the training of shop stewards and managers on labour relations, focusing on negotiating skills and the modernisation of the collective agreements.
- 2) The Government, as an employer in the public sector, should consider establishing collective agreements that include negotiations on wages for its employees, including teachers, nurses, etc.

6 Lithuania

6.1 Freedom of association and right to organise

Lithuania has freedom of association in its labour code.¹

There are several obstacles to organising. Almost all Lithuanian enterprises are SMEs (according to the Employers’ Organisation around 99%). The Trade Union claims that there have been several incidents where employees have been harassed into not organising by their employers, or they have been given incentives if they do not organise. The Trade Union and Employers’ Organisation have divergent views on whether the Government supports organising. The Employers’ Organisation told of a governmental proposal to give a one percent contribution per person to trade unions. The Trade

¹ Both in the old and the new, that entered into force on 1 July 2017.

Union states that the Government is the biggest employer, but that they try to substitute the trade unions with work councils.

6.2 Right to collective bargaining

The right to collective bargaining is ensured by law. Three per cent of the collective agreements are signed with the trade unions, 20% are signed with the work councils. Only a third of the enterprises are covered by collective agreements, as the majority are small. Collective agreements exist mainly in the bigger companies.

According to the new labour code, companies with trade unions will not have work councils but at least a third or a quarter of the workers need to be unionised in order to not have a work council.

The weak point is the lack of sector-level and nationwide agreements, and a large informal sector poses a major obstacle to collective bargaining. There are many collective agreements now on hold due to negotiations on the new labour code.

6.3 Right to strike

The right to strike is ensured in the private sector, but limited in the public sector. There are restrictions for first-aid staff, electricians and police, etc. According to the Trade Union, the old labour code states that 50% of employees at a company need to agree to go on strike, while the new labour code proposes a softening of the regulation which says that only 25% of trade union members are needed to agree to go on strike.

According to the Trade Union, the new labour code states that it is legal for employees to strike if their employer declines to sign a collective agreement, but that it is not legal to strike if employers violate a collective agreement.²

6.4 Tripartite consultation and the application of the ILO conventions

There is a tripartite council at national level, and the Government deems that it functions well. However, the Employers' Organisation and the Trade Union agree that the previous independent secretariat was better.

The tripartite council used to have a secretariat with four members who were qualified experts on social dialogue. Without informing the Employers' Organisation and the Trade Union, the Ministry decided to close the secretariat, and to have a similar unit as a body under the Ministry. A financial officer/accountant and a secretary were kept on as staff, but the experts were dismissed. According to the two social partners, the state tried to unilaterally change the tripartite council without consulting the social partners. Now, the government has to approve who the partners in the council should be. The Employers' Organisation and Trade Union oppose this, arguing that this should not be decided by one partner alone.

6.5 Possible actions

- 1) The Government, in cooperation with the Trade Union and Employers' Organisation, according to the ILO convention, should strive to make a clear and transparent selection of partners in the tripartite council, based on representativity. To include other partners on the tripartite council that are not Trade Unions or Employers' Organisations, or who lack representativity, can fragment the organisations and weaken the dialogue within the tripartite council.

² LPSK's position in the new Labour Code in Lithuania, 26 June 2017 (Appendix 3)

- 2) The Government should establish solid tripartite institutions and fora that will last, irrespective of change of governments/political parties, and that will contribute to sound social dialogue at both bipartite and tripartite level.
- 3) The Government should establish independent institutions that can deal with labour issues and breaches of standards and regulations, e.g. a Labour Court. There is a need for a neutral place for the Trade Union to voice its concern relating to labour issues, such as harassment of workers/shop stewards.
- 4) The Government should, together with the Employers' Organisation and the Trade Union, work to combat the shadow economy and corruption, and to increase transparency, trust and sound debate.

Appendix 1: Interview references and respondents (ordered by date)

LITHUANIA

Interviews conducted by Bernt Fallenkamp and Siri Relling

- 24 May 2017: Trade Union (LPSK and Solidarumas), LPSK premises, J.Jasinskio 9, LT-01111 Vilnius.
 - Kristina Krupavičienė, chairperson, Solidarumas
 - Ričardas Garuolis, board member, Solidarumas, and chairperson of the Trade Union of Tour Guides (Solidarumas)
 - Daiva Kvedaraitė, international secretary, Solidarumas
 - Manvydas Pilka, lawyer, LPSK
 - Gražina Gruzdienė, chairperson of the Trade Union of Lithuanian Food Producers (LPSK)
 - Aleksandras Posochovas, chairperson of the Service Workers' Trade Union (LPSK)
 - Evelina Šilinytė, lawyer at the Trade Union of Lithuanian Education Employees (LPSK)

Interpreter: Diana Guogiene

- 24 May 2017: Employers, A. Vienuolio str. 8, Vilnius
 - Mr Jonas Guzavicius, Vice President of Lithuanian Confederation of Industrialists LPK

Interpreter: Diana Guogiene

- 24 May 2017: Government, Ministry of Social Security and Labour of the Republic of Lithuania, A. Vivulskio str. 11, LT-03610 Vilnius
 - Ms Eglė Radišauskienė, Vice Minister of Social Security and Labour of the Republic of Lithuania

ESTONIA

Interviews conducted by Robert Hansen and Siri Relling

- 19 April 2017: Employers, Tammsaare tee 47, Tallinn.
 - Ms Kai Realo, Peadirektor / Business Unit Leader, Estonian Employers Confederation
- 19 April 2017: Government, Ministry of Social Affairs, Gonsiori 29, Tallinn.
 - Ms Mariliis Proos, Head of Employment Relations, Ministry of Social Affairs
- 18 April 2017: Trade Union, EAKL premises, Laulupeo 24, Tallinn.
 - Mr Peep Peterson, President, Estonian Trade Union Confederation EAKL
 - Ms Kaja Toomsalu, Confederal Secretary, Estonian Trade Union Confederation EAK

LATVIA

Interviews conducted by Bernt Fallenkamp and Siri Relling

- 22 March 2017: Government, Hotel Radisson Blue Latvija, Elizabetes iela 55, Riga
 - Mr Maris Badovskis, Director of Department of Labour Relations and Labour Protection Policy, Ministry of Welfare of Latvia

- 21 March 2017: Trade Union, LBAS building, 29/31 Bruninieku Street 4th floor, Riga.
 - Dr. Irena Liepina, Vice President, Free Trade Union Confederation LBAS
 - Mr Kaspars Racenajs, Lawyer, Free Trade Union Confederation LBAS

- 21 March 2017: Employers, Employers Confederation of Latvia, Baznicas Street 25-3, Riga
 - Mr Andris Alksnis, lawyer, Labour Law Expert, Employers Confederation of Latvia LDDK

Appendix 2: Interview Questions

Freedom of association and the right to organise

1. What kind of preconditions are there in order to organise workers and for undertaking union activities?
2. Which sectors are organised/not organised?
3. How are workers organised?
4. Is the government providing assistance to organising, and if yes/no, how/why?
5. Is the protection of shop stewards ensured and have the authorities taken measures to prevent discrimination?
6. Does the same situation apply to the public sector?
7. What is the main reason for low unionisation rates of employers' organizations/trade unions?

Right to collective bargaining

1. To what extent are wages and working conditions determined by collective bargaining?
2. How does collective bargaining function in practice?
3. At what levels are collective bargaining agreements negotiated and to what extent?
4. What are the main obstacles to collective bargaining?
5. Are there specific restrictions in the public sector?
6. Examples of legal procedures in conflict situations?

Right to strike

1. Is the right to strike ensured?
2. Have there been strikes? Why/why not?
3. Is mediation obligatory before strikes can be undertaken and what competences does the mediator have (in theory and practice)?
4. To what extent has there been protest or political strikes for instance against austerity measures during the latest crisis? Have such strikes been regarded as legal and have there been any sanctions against such strikes?
5. Are any strikes undertaken by others than the trade unions?
6. What restrictions are there on strikes in the public sector?

Tripartite Consultation and the application of ILO Conventions

1. How do you evaluate the role and influence of the ILO in the policymaking and legislative process?
2. How efficiently are ILO conventions 87 and 98 implemented? Does tripartite consultation on international labour standards take place in line with Convention No. 144?
3. Are there tripartite mechanisms to examine and promote the implementation of international labour standards?
4. Are there tripartite institutions and how are they organised?
5. How are bipartite corporation and bipartite agreements working?
6. How do social partners influence policymaking and legislative processes?
7. What are the benefits for social partners of participating in the ILO agenda?
8. How do you evaluate the role and influence of EU regulation on social dialogue, for example the EU directive about information and consultation of workers?

Appendix 3: LPSK's position on the new Labour Code in Lithuania, 26 June 2017



LITHUANIAN TRADE UNION CONFEDERATION

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Vilnius, 26 June 2017

LPSK's position on the new Labour Code in Lithuania

After an adoption of the new Labour Code the current situation in Lithuania is not cheerful. It is true that after the Lithuania's parliamentary elections in October 2016 a new political force came to rule and political situation changed a lot. Therefore, tripartite social dialogue got more constructive and the Tripartite Council gained more influence to shape the new Labour Code, which is coming into force on 1 July. There are some positive changes but trade unions do not celebrate the outcome of this process.

We note that during the negotiations of the Tripartite Council social partners were not on equal grounds. Before it started the Lithuanian government stated that those aspects, on which the Tripartite council will not agree, will stay as stated in the previous version of the Labour Code (which had to come into force on 1 January 2017). The previous version was very liberal and much more favorable to employers.

Sadly, good intentions of the new government backfired. Employers were not motivated to seek a consensus. The previous situation was more convenient and useful to them.

A postponement of the new Labour Code is praiseworthy but that did not led to immense changes related to workers welfare. As it was mentioned before, employers had an upper hand in the Tripartite Council. Comparing the new Labour Code and the Labour Code, which entered into force in 2003, workers' social rights are undermined.

In the new Labour Code redundancy notice period got shorter and severance pay got smaller. Furthermore, there was established a new legitimate provision that an employer is allowed to fire an employee practically without any reason just in 3 days. In this case an employer has to pay a compensation, which amounts to 6 average salaries.

There are more negative changes. Vacations are shortened and a work week got longer. If employees worked 48 hours a week at most, now in some cases it reaches 60 hours a week.

We may add, that strike announcement procedures in Lithuania were liberalized, but here are some problems too. For example, it is legal for employees to strike, if their employer disagrees to sign a collective agreement, but it is not legal to do that, if employers break a collective agreement.

Artūras Černiauskas,
President of the Lithuanian Trade Union Confederation