

# Workers' rights in the Baltics



An analysis of the Baltic States:  
Determining whether any given  
legislation or practice complies  
with the ILO Core Conventions  
and Convention 144 on  
Tripartite Consultation

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The papers are commissioned as independent parts of a larger project context and have been written by different authors. The content and analysis in the individual papers are the work of the authors and have been commissioned as impartial and independent. The reports do not reflect the policies of NFS.

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# Foreword

I would like to congratulate NFS for this project and to express how much it fits into the daily work of the ILO.

To assess the implementation and practice of ILO Fundamental International Labour Standards plus the Governance Convention N° 144 on tripartite consultation in three specific Baltic countries: Estonia, Latvia and Lithuania and to develop a trade union strategy for strengthening workers' rights in the region by strengthening social dialogue and effective application of Fundamental principles and rights at work is a major contribution to the understanding of the role of the ILO in supporting the creation of the institutions and the promotion of a strong, effective and efficient social dialogue.

In fact, the two main characteristics that make unique the International Labour Organisation (ILO) are the adoption of International Labour Standards (ILS) and its tripartite structure, where governments and social partners, Workers and Employers Organizations, work hand in hand.

The ILO Constitution recognizes that "labour is not a commodity". Indeed, work is part of everyone's daily life and is crucial to a person's dignity, well-being and development as a human being and an active citizen. The ILS are there to ensure the dignity at work and the respect for the human being.

Achieving the goal of decent work in the global economy requires action at different levels, from the enterprise, regional, national and the international level. Via its standards, the ILO contributes to making sure that economic growth, social justice and sustainable development go hand in hand with the creation of decent work. The ILO's unique tripartite structure ensures that these standards are backed by governments, employers and workers organisations.

ILS lay down the basic minimum standards to be respected in the regulated matters. In this context, fundamental principles and rights at work comprise the

main four categories of rights that are considered to be essential to protect and respect in the world of work, including the fight against child and forced labour, the principle of freedom of association and collective bargaining and the work on non-discrimination and equality.

Social Dialogue is essential to achieve the objectives of constructive work to promote decent work and social justice. Social dialogue can only be effective if counts upon the active participation of the three partners, governments, autonomous, independent and representative workers' and employers' organizations, all with the relevant political and technical capacity to give a real meaning to social dialogue, capable of delivering solutions and choices that will contribute to effective and integrated economic, social and environmental protection policies, that will favor the society as a whole.

Political will, commitment to engage in social dialogue by all the parties, clear respect for the fundamental rights of freedom of association and collective bargaining, guaranteed by the government of an enabling legal and institutional framework conducive to effective social dialogue are all ingredients for success.

ILS, namely, Conventions and Protocols once ratified, and of course all Recommendations, have to be reflected in national legislation and implemented effectively. The role of trade unions in promoting implementation in practice is very relevant and social dialogue is the most appropriate tool to enable cooperation in applying ILS.

The proposed strategy for strengthening workers' rights in the Baltic region, elaborated by the trade unions in the framework of this project will certainly lead to a more effective promotion and protection of workers' rights and thus a proper application of ILS in every country.

On behalf of ACTRAV I encourage you to pursue this agenda in the future.

Maria Helena André  
Director, ILO Bureau for Workers' Activities (ACTRAV)



# Introduction

Strengthening workers' rights in the Baltic Sea region is a strategic priority for the trade union movement in the Nordic countries and it has been so ever since the Baltic States gained their independence in 1991. Cross-border cooperation is becoming increasingly important for social and economic development in a globalising world where business and political decision-making have long ago transcended national borders. To counterbalance the globalisation of capital and labour markets, trade unions need to work together across national borders. This time, we have chosen to do so by looking at the very foundation of trade union activity, which is the same in all countries of the region and based on international human-rights instruments, such as the ILO conventions.

In the autumn of 2016, the Council of Nordic Trade Unions (NFS) initiated 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 Tripartite Consultation*. The aim of the project has been to assess the implementation and practice of ILO core Conventions and Convention 144 on Tripartite Consultation in Estonia, Latvia and Lithuania and to develop a strategy for strengthening workers' rights in the region. This publication contains all the written reports and analyses produced within the scope of this project.

I would like to take this opportunity to thank our Baltic colleagues for their excellent cooperation throughout the project. The collaboration between Baltic and Nordic trade unions is as vital as ever, it is based on mutual involvement and a commitment to common goals. The project and its subsequent report are only a starting point for further deepening an understanding of the different contexts and realities in our region. It is one way of learning from one another and sharing experiences. The conclusions in the strategy part of the publication present many more options. This is what we will now continue to discuss and develop in our political contexts to find the best way to further our common trade-union goals and ensure a sound development of workers' rights in the Baltic Sea region.

I would like to thank all our colleagues in the Baltic and Nordic trade unions who have participated with input and knowledge, as well as government representatives and employers' organisations in the Baltic States for participating in interviews and sharing their views. I would also like to thank the Baltic members in our project strategy group, Aija Maasikas, Natalja Mickevica, Vaiva Sapetkaite and Kaja Toomsalo and our external authors Markku Sippola, Niklas Bruun and Kari Tapiola for their valuable input and expertise. Special thanks also go to the ILO Bureau for Workers' Activities (ACTRAV), Maria Helena André and Sergejus Glovackas for their contribution and support.

Last but not least, I would like to thank the project steering group – Anna Gustafsson, Jens Erik Ohrt and Maria Häggman – for their dedication and hard work in both developing and implementing the project successfully. They contributed their time and various expertise to ensure a good strategic basis for further discussion regarding the development of workers' rights in the Baltic Sea region. Finally, special thanks go to Maria Häggman in her capacity as project leader. She has coordinated the work and efforts with exemplary dedication and brought forward and highlighted the planning and implementation as well as the analysis and its conclusions with strategic clarity and superb goal awareness.

Stockholm, 17 October 2017

Magnus Gissler

General Secretary, Council of Nordic Trade Unions





# Ideological underpinnings of the development of social dialogue and industrial relations in the Baltic States

by Markku Sippola

January 2017

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# 1. Introduction

The state of industrial relations (IR) in Estonia, Latvia and Lithuania contains a dilemma. On the one hand, the IR situation can be characterised as backward and stagnated. On the other, there is a continuous expectation of change for the better in terms of union power. This has been the case at least for a decade.<sup>1</sup> The impact of Soviet legacies on trade unions, the weak state of social dialogue as well as the virtual absence of sectoral dialogue were central features of the Baltic IR ‘model’ already in the early 2000s. In the current post-financial crisis situation, the Baltic States continue to face the dilemma of stagnating IR but hopes for trade union revitalisation. On the one hand, the effect of the financial crisis in 2007–2009 has been detrimental to Baltic IR, which had not been strong at any time since the restoration of independence (Lulle 2013). The times of crisis can, however, provoke innovative elements in trade union organising, as Estonian examples have shown (Kall 2017), and IR has been re-politicised to some extent in Latvia and Lithuania (Blaziene 2015; 2016a; 2016b; 2016c; Karnite 2015a; 2015b; 2016).

After the collapse of the Soviet Union, the BS made remarkable progress in restructuring the economy, reorienting to new markets and reallocating resources to new sectors (Eamets and Masso 2005, 72). The Baltic States clearly distinguished themselves from the rest of the former Soviet republics in terms of the rapidity and scope of their economic reforms (Pabriks and Purs 2002, 90). The Baltic States have also been fortunate in comparison to the other CEE countries that served as satellites of the Soviet Union or FSU countries. GDP, salaries and direct foreign investment rose more rapidly in the Baltic States than in other CEE countries until the onset of the recession in 2008.

Transformation to a market economy advanced at a different pace in each of the three countries: the most rapid implementation of liberal policy took place in Estonia, followed by Latvia and, more hesitantly, by Lithuania (Hunya 2004, 93). The transition strategy adopted in Estonia and Latvia differed significantly from that of Russia. Estonia was most keen to follow IMF policy recommendations and Latvia soon followed the ‘Estonian model’ (Nikula 1997, 18). The trend towards rapid reforms in Estonia and Latvia inspired a sort of ‘Protestant ethic’ explanation, according to which more traditional, Catholic and family-based relations were more common to Lithuania (Norkus 2007). Nevertheless, a more convincing explanation for the ‘backwardness’ of reforms in Lithuania is the country’s larger share of agriculture in the economy and later modernisation.

While economic growth and financial ‘pegging’ to the Euro have been highly prioritised in the BS, social and employment issues have not been very high on the political agenda. Toots and Bachmann (2010) argue that the ‘catching up’ idea of social welfare is not acute in the BS under contemporary post-modern conditions. The Baltic ‘welfare regime’ is a mixture of post-modern and modern ideas, while it seeks simultaneously to increase flexible employment (post-modern path) and decrease poverty levels (modern path). Paradoxically, a combination of neoliberal and post-communist principles prevail, and despite a relatively good fiscal balance, new social risks are poorly met (Toots & Bachmann 2010).

Unionisation rates (one of the most important indicators of the state of trade unionism) are among the lowest in the Baltic States among European countries: at 8–10% of the workforce. There is some research on the ‘acquiescence’ (passivity

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1 My personal experience in investigating IR in the Baltic States dates back to the beginning of the 2000s, when I carried out my PhD fieldwork. If I compare the overall atmosphere of that time to what Lulle (2013) describes in the summary of her Friedrich Ebert Stiftung report from the 2010s, the situation looks strikingly similar: “Trade unions (TU) in the Baltic States are generally weak and stigmatised as ‘Soviet style’ organisations. TUs are in a particularly difficult situation in Estonia. Social dialogue in the Baltic States is rather weak and declarative, especially during the crisis years; sectoral social dialogue is largely absent” (p. 1.).

in protesting, lack of union activism) in Central and Eastern European (CEE) countries in general and in the Baltic States in particular (Crowley 2002; Woolfson & Beck 2004). The IR situation would be different had there been an atmosphere of discontent among Baltic labourers or if historical currents had played a supportive role in the trade union movement. What is more, the Baltic States have been EU member states since May 2004, which has made it possible for workers to move abroad if working and labour conditions prove unsatisfactory.

There are completely different regimes of IR on the opposite shores of the Baltic Sea. The Nordic countries are well-known for their high unionisation rates and robust union structures, whereas, since the restoration of independence, the Baltic States have had chronically low unionisation rates and weak union structures. One might doubt that the divergence between geographically close labour market regimes will last forever – especially if a neo-classical economic ‘equilibrium’ scenario comes true. The opportunity for companies from highly unionised Nordic countries to invest in sparsely unionised Baltic countries raises the spectre of “regime shopping” with employers seeking to move to locations where unions have been unable to exert their influence. Trade unions operate in the common Baltic–Nordic geographic space of labour and product markets. As Commons (1913) predicts, unions which organise only part of a market will be plagued by instability caused by competition from unorganised lower-waged workers.

The paper is structured as follows: after the introduction, in Section 2, the foundations of the hegemonic ‘one-nation’ and ‘getting-rid-of-communism’ political-ideological principles are introduced; and the penetration of the neo-liberal ideas into the Baltic political scene are elucidated. These developments are related to the Russian ‘question’ (the presence of sizeable Russian minorities in Latvia and Estonia in particular), which dates back to the ‘Russification’ of these countries during the Soviet era. As one has to note the fundamental impact of Soviet trade unionism on the current IR situation in the Baltic States, efforts to ‘Europeanise’ the Baltic IR realm are almost as profound. Therefore, in Section 3, the major effects of EU accession of the Baltic States in 2004 are put forward; particular attention is given to the adoption of European ‘social dialogue’ model. Section 4 embraces the main chronological account of events concerning the ideas revolving around IR development in the Baltic States. A point of departure here is to show the dynamics of a few features of IR (e.g. weak legitimacy of the unions, insufficient social dialogue at all levels) that appear to persist and some divergent developments in the re-politicisation of the labour movements. The discussion section draws together the main ideas and ideologies associated with Baltic trade unionism, that is, the notions of ‘acquiescence’, ‘getting-rid-of-communism’, instrumentalism, neoliberalism, ‘one-nation’, ‘social dialogue/partnership’ and the dilemma of ‘politicisation’ and suggests future lines of IR development in the Baltic States.

## 2. One-nation/getting-rid-of-communism, neo-liberalism and the Russian ‘question’

The peoples of the Baltic States have embraced an enthusiastic ethos of restructuring their countries in the aftermath of Soviet occupation. The civic movements that led to the re-gaining of independence in 1991 were intertwined with anti-communist political mobilisation (Ruutsoo 2003, 250). The aspiration to rid themselves of the socialist system’s legacy gained widespread popular support among titular (non-Russian) populations as rapid privatisation, restoring national currencies and radical political and economic reforms were carried out in the 1990s (Sippola 2014, 119). The nationalistic, pro-republican views had the upper hand in the beginning of the transition period, which resulted in an arrangement where a bulk of the Russian-speaking population found itself without citizenship or voting rights (Mygind 1997, pp. 134–35). Mygind (1997, p. 134) concluded that ‘As a result of this, a vacuum existed on the left of the political spectrum in [Latvia and Estonia].’

Neo-liberalism triumphed in general within CEE countries because of a disillusionment with state socialism (Nissinen 1999, 20). At the peak of the economic boom in the first decade of the 2000s, one could argue that ‘the paradigm of neo-liberal reconstruction [was] actively implemented in the [previous] decade and a half’ (Woolfson 2007). The anti-socialist political climate in the post-Soviet Baltic States has left its mark on the evolution of the welfare regime in these countries. Even left-wing politicians regarded the Nordic social-democratic welfare model as too leftist and instead favoured the Continental European *Sozialstaat*, while right-wing politicians even found the Bismarckian model too ‘solidaristic’ and turned to more liberal welfare policies (Toots & Bachmann 2010).

The obvious insufficient militancy of Baltic trade unions relates to chronic uncertainty in labour markets on the one hand, but in Estonia and Lithuania in particular, it is also intertwined with the ‘Russian question’. The latter factor, associated with the experiences of Russification under the Soviet regime, hampered the emergence of an effective, coherent civil society, i.e. the cohesion between the Russian and titular nation populations. For the ‘titular nation,’ acquiescence mirrors the silent acceptance of a ‘Western,’ neo-liberal stance. Non-citizen Russians have perceived that trade unions – or other avenues provided by civil society – are not the way to defend their cause, since these organs are too closely associated with the previous regime.<sup>2</sup> The historical perspective that the Russian populations carry a more collectivist worldview, inherited from the earlier period of Soviet (Russian) dominance, is still valid in today’s Baltic political environment. A significant factor in the developments since the restoration of independence has been that particularly in Estonia and Latvia, trade unions have a considerably larger proportion of Russian members than the percentage of the population comprising the Russian minority would seem to indicate. Many ethnic Russians were urban industrial workers. For instance, Estonia’s ethnic Russians from the eastern Narva and Kohtla-Järve regions played a visible role in internal discussions in the early 1990s. Trade union leadership had to ensure that multi-ethnic variation would

2 Amongst the non-citizen Russian population in Estonia, there was an apparent lack of interest in politics compounded by a lack of institutional bases for nationally-based mobilisation (Smith 2002, p. 76). A sign of indifference of non-citizens towards politics in Latvia was that half of them could not assess their political views according to the traditional left-right scale (Pabriks & Purs 2002, p. 84). However, in the 2010 Latvian elections, ethnic Latvians voted mostly for neoliberal Latvian parties, and the 30% Russian-speaking minority voted with similar consistency for their (loosely Keynesian) party (Hudson & Sommers 2011).

not become an internal factor or, indeed, that it could not be exploited externally.

Lithuania inherited a much smaller Russian population as a legacy of the Soviet era than Latvia and Estonia. Accordingly, there was less need to eradicate everything associated with the Soviet Union, including trade unions and labour demonstrations. Nonetheless, the country had perhaps the strictest anti-strike legislation of any FSU country in 2007–2008, which did not manage to eliminate dozens of teachers' work stoppages, however (Petrylaite 2010). There was even a one-day hunger strike organised by the Lithuanian Trade Union Confederation (LPSK) against government attempts to reduce public-sector wages (Blaziene 2009). Although the effects of these stoppages were modest, they made some commentators conclude that the era of merely accepting unsatisfactory labour conditions was over and that Lithuanian employees were seeking new avenues to express their dissatisfaction (Petrylaite 2010).

### 3. The effects of EU accession on IR (especially when it comes to ‘social partnership/dialogue’)

As regards EU accession, Estonia belonged to the initial group of six countries negotiating for accession in 1997, whereas Latvia and Lithuania were among a group of ten admitted in 1999. The negotiations for accession concluded in 2002, resulting in the admittance of the countries into the EU in May 2004. The Baltic States scored well in the accession process in terms of political and economic criteria for the adoption, implementation and enforcement of the *acquis communautaire*.<sup>3</sup> All this occurred in the framework of *Europeanisation*, a process in which EU rules and norms were incorporated into domestic policymaking (Jacobsson & West 2010). These norms were supposed to create pressure for reforms and changes in policies, structures and processes in the accession countries. However, the policy areas of social affairs and employment received less attention in the legal transposition of the *acquis* in the BS than the other areas (ibid., 103). Baltic trade unions did not play the same kind of active role as in the Nordic countries in influencing public opinion regarding EU accession. Nor was accession particularly motivated by social concerns, or by the need to balance the economic and social aspects; the general purpose of accession was to achieve economic and political aims.

The enlargement of the European Union (EU) coincided with a decline in union membership and power in many European countries during the last decades of the 20<sup>th</sup> century (Boxall & Purcell 2003, 165). It is remarkable that the demand for workplace ‘partnership’ simultaneously became more articulated, especially in the UK. The notion of ‘social partnership’ largely originates in the EU’s “social Catholic” idea of corporatist social policy and to a lesser extent in industrial relations (Kettunen 2001, 158). The notion of ‘social dialogue’ goes hand in hand with the idea of partnership; social dialogue is functional for European civil society and is meant to compensate for the EU’s ‘democracy deficit’ (ibid.). The use of ‘social dialogue’ as a model for post-communist industrial relations is not only due to EU legislation but also reflects the views of a part of the political elite in these countries. Social dialogue and tripartite cooperation were also seen as apt models to reconcile differing interests that arose between workers, employers and governments in the new post-socialist situation. Western commentators and Soviet liberals took a stand in the early 1990s that the best way to resolve conflicts of economic interest between labour and management after the collapse of the USSR was a negotiated transition with the ideology of ‘social partnership’ (Clarke and Fairbrother 1993a, 91).

Although the Baltic governments and social partners promoted the idea of social dialogue in the early 2000s, it became clear in the time of my fieldwork in the BS, carried out in 2004–2006, that employers’ associations were particularly reluctant to take on the issue. Employers focused on social partnerships with state agencies rather than trade unions; this became evident when I made an inquiry into the policy papers of employers’ associations. The overall tendency in the Baltic States was that social dialogue was carried out mainly at national level, while there was barely even a mention of anything in sectoral level documents.<sup>4</sup> The official use of

3 The process of harmonising the accession country’s laws with EU norms.

4 An exception to this rule was the Latvian Construction Contractors’ Association (LBA) that promoted social dialogue in public. According to the association’s website, the goal of the association, as of 2006, was “... to co-ordinate and protect the interests of members of the Association in the building market and to retain good relations between employers and employees and with customers.” Market activity was mentioned first, whereas industrial relations came next. The main social partner, the Latvian Builders’ Trade Union (LCA) was also on the list of partners.

the terms ‘social dialogue’ and ‘industrial relations’ had typically been left to the national confederations of employers in the Baltic States. The fact that the state of social dialogue is weak, especially when it comes to the institutional structures of tripartite and bipartite dialogue and consultation at central level, is a generally accepted view (Jacobsson & West 2010).

The legal underpinnings of EU integration are reinforced by the rulings of the European Court of Justice (ECJ). Recent ECJ rulings have tested the consistency between the Baltic and Nordic models in favour of the former.<sup>5</sup> Although primacy has been given to trade unions in collective bargaining, according to the EC directive the negotiations are not by definition supposed to be done with trade unions. The unexpectedly negative outcome for the Swedish trade union in the ECJ ruling on the Laval case might have shaken the power balance between capital and labour in the Baltic–Nordic IR context.

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<sup>5</sup> Repercussions of this are seen in the dispute in 2005 between the Swedish building trade union and the Latvian Government concerning the Laval un Partneri case, in which the Swedish counterpart regarded that Nordic unions have been granted the right to implement directives via the collective agreements, and the Latvian counterpart relied directly on the directives.



## 4. Convergence and divergence of the trade-union idea in Estonia, Latvia and Lithuania throughout the ‘transition’ decades

When the Soviet system collapsed, the existing forms of social relations within the enterprise constrained the formation of an independent workers’ movement.<sup>6</sup> The IR point of departure in the Baltic States was more or less the same, given the common trajectory of their Soviet past. However, some diverging features between the Baltic States that started to take shape in the early 1990s continued throughout the 2000s. We now take a chronological excursion to the convergent and divergent IR tendencies in the Baltic States and consider IR development separately in the 1990s, 2000s and 2010s.

### 4.1. Early 1990s: IR in the Baltic States takes shape

While the years of national awakening in 1987–1991 saw a proliferation of participation in civil society in the Baltic States, the membership of any kind of associations was in a steady decline after that. Overall trust in institutions declined as cynicism towards the ‘civil society’ avenue of influence increased. In Estonia, an overall decrease in participation in different types of joint actions and societies was due to the diminishing enthusiastic ethos, which united the nation in the years of the reawakening (Järve 1996, 163). Neither were the associations used for advocating the interests of social groups nor did citizens acknowledge their potential in regulating social life tensions. The idea of participatory citizenry was acute immediately after independence was regained, but individuals’ personal spheres subsequently took precedence over public concerns (Lagerspetz 2004, 102).

As we speak of Soviet legacies, the ‘historical record’ of the Soviet Union and the (de-)politicised role of Baltic trade unions, we need to consider the links between politics and unions during the Soviet era and what happened in the transitional period. The trade union served as a ‘school of communism’ and the ‘transmission belt for the policies of the party’; an idea that has persisted within the new workers’ movement (Clarke and Fairbrother 1993b, 155). Clarke and Fairbrother even argue that this idea was a major barrier to the development of trade unions that could articulate workers’ interests. Consequently, west European models are not directly applicable to the Baltic region. The emerging production regime must be understood as a hybrid, consisting of elements from the Soviet past and the market economy (ibid, 175).

The structure of Soviet trade unions served as the basis of the trade union movement in the Baltic States. In Estonia and Latvia, major confederations were characterised as ‘reformed unions’, in which the union structures and practices remained more or less unchanged from the way they were prior to 1989 (Nikula 1997, 128–129). Although trade unions distanced themselves from the Communist Party of the Soviet Union in the late 1980s and participated in the movement that demanded economic and political independence in Estonia and Latvia, they carried out reforms without the participation of rank-and-file members (Nikula 1997, 128–129). This had serious consequences for the future legitimacy of the labour unions among workers. Why was it not possible for the BS trade unions to follow the Czech-Slovak model, for instance, and simply move to a new structure with their members? In many cases the union leadership did not have sufficient

<sup>6</sup> I agree with Michael Burawoy’s idea that the post-socialist transition must be understood in terms of transformation, instead of as a series of epochal ‘breaks’ where social relations and practices carry over traditions from the previous Soviet era (Pickles 1998, 174).

contact with its members; it did not reach out to them; it did not have political alternatives to offer. This was further complicated by the ethnic issue, especially in Latvia and Estonia.

Since the early 1990s, the unionisation rate has been highest in Latvia, followed by Lithuania and Estonia (where it is lowest).<sup>7</sup> The historical-structural differences between the Baltic States and the other former east European socialist countries deserve our attention. In Poland, for instance, why was the independence-related movement intertwined with the trade union movement “Solidarity”<sup>8</sup> while labour unions in the Baltic States had a marginal societal role? There are various institutional explanations for this, such as the fact that the Baltic States share a distinctive feature of having been subject to Soviet-type modernisation (Nikula 1997, 18), and at the political level actors are seeking to getting rid of all influences of the Soviet time (Nikula 1997, 18; Rahikainen & Ylöstalo 1997, 71). Younger workers were more likely opposed to trade unions but many senior workers remained members on the basis of social custom, although most did not believe in their influence (Rahikainen and Ylöstalo 1997, 71). In Estonia, employees showed little interest in trade unions, which, in Rahikainen and Ylöstalo’s opinion, was “easy to understand in a country that strives to erase ‘all things Soviet’”. Furthermore, the influence of trade unions was negligible in practice, especially as social policy was carried out by other means and obligatory employment was no longer in practice. (Ibid, 75.)

The early 1990s laid the groundwork for the continuing delegitimising spiral of Baltic trade unionism. The historical-structural factors for a poor point of departure are mentioned above, as are the ideological underpinnings. One might argue that the seeds of the so-called ‘servicing unionism’ were sowed early in that decade. In the early 1990s, wages were the most important work incentive and the instrumentalist orientation towards work was prevalent, especially among industrial workers (Melin 1995, 77). With the overall de-politicising climate as regards the trade union movement and instrumentalist orientations prevailing, one possibility for union revival was economic/business unionism. David Ost (2002) aptly argued that union renewal is possible in CEE countries through economic (business) unionism rather than embracing political strategies or turning to social movement activities.<sup>9</sup> This argument deserves consideration in a Baltic context, namely as the Baltic citizens’ race to enhance their standard of living and achieve western standards was interconnected with the growing importance of instrumentalist values. Thus, Baltic unions needed to show their instrumentalist value (how they could improve labour conditions) in order to gain new members, which they were incapable of doing.

#### **4.2. Growth period: mid-1990s–mid-2000s**

After the initial transition period in the early 1990s, the neoliberal grip of rightist forces consolidated their positions in the Baltic political arena. The Estonian and Latvian political scenes were totally dominated by centre-right parties, whereas in Lithuania that scene leaned towards the centre-left (Jacobsson & West 2010,

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7 Unionisation rates dropped from about 100% in the early 1990s to 10–20% within a decade (Antila and Ylöstalo 2003, 68).

8 The reputation of trade unions being mere passive relicts of the socialist era is not always justified. We have to bear in mind that unions played an important part in the actual overthrow of the communist governments before the collapse of the regime. Cases in point are Solidarity in Poland and Podkrepa in Bulgaria, which organised protests and mass demonstrations, acted as unions, political parties as well as centres of intellectual leadership (Dittrich and Haferkemper 1995, 144).

9 This is in line with Charlwood’s (2002) evidence from Britain that the willingness of the non-union workforce to join unions increases where job dissatisfaction, left-wing views and union instrumentality gain ground. The combination of these three factors explains the proneness to unionisation more clearly than any of the factors alone. Still, the perceived instrumental orientation of workers (the belief that a union would make a workplace better) is the best single factor in anticipating unionisation (ibid).

103). The decline in trade union membership that started in the 1990s continued, although the rates did not drop as sharply. The continuing weakness of the Baltic labour movement could be the result of a number of coinciding factors, including weak corporatist institutions, union competition, individual emigration and legacies from the Soviet era (Crowley 2002, 5; Woolfson and Beck 2004, 227–228). As the weak status of unions became *status quo*, the ‘social custom’ explanation of trade-union membership (Visser 2002) became manifest.<sup>10</sup> The logic goes that as unionisation rates in certain sectors within a country (as was the case in the BS) decline, both the effectiveness of unions and the single worker’s loss of reputation due to non-membership weaken (Visser 2002).

From time to time, there were signs that trade unionism was reviving. In Estonia, a planned strike by doctors and healthcare workers was averted by last-minute agreements entered into by trade unions, employers and the state mediator (*Baltic Times*, 18–24, January 2007). In case of failure to reach an agreement, the industrial action would have spread nationwide and extended to sectors of the labour force such as railway workers, pilots and seamen – groups regarded as highly unionised in Estonia (*ibid*).<sup>11</sup> Trade-union membership increased in some strategically important industries such as the maritime industry.<sup>12</sup>

The notable differences in union representation become visible when looking at Baltic union structures. The simplest structure in the BS appeared in Latvia, where the Confederation of Free Trade Unions (LBAS) started to unite all workers. There were two equally powerful (or weak) confederations in Estonia, the EAKL (representing mostly blue-collar workers) and TALO (representing mostly white-collar workers). EAKL had 43,776 members, and TALO had 30,000 members in 2005 (Kallaste 2005, 114); LBAS had 165,000 members in 2,900 enterprises (Pavuk 2008b).<sup>13</sup> In Lithuania, the state of affairs got more complicated.<sup>14</sup> The Lithuanian Labour Federation, LDF, used to be the smallest of the confederations and had a rather marginal role. Estimates of membership figures varied from 2,000–3,000 to 15,000 (Davies 2004, 56). LPS Solidarumas had 58,000 members and LPSK about 110,000 members in the early 2000s. The year 2007 saw a ‘declaration of cooperation’ between these three confederations stating that they hoped to unite in the future (Carley 2008, 30).

During this period of IR development, an external factor came into play. The Baltic States joined the EU in May 2004, which prompted the first great wave of emigration from these countries (the second occurred during the crisis in 2007–2009). Given the tight labour market due to the exodus of workers abroad, one might wonder why remaining workers did not use their collective voice. One

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10 According to Visser (2002, 406–407), unions fail to attract members for two reasons: (a) they do not deliver the services or goods that workers expect; or (b) they are unable to uphold the norm of social custom. Social custom theory explains diverging unionisation trends between sectors within a country and gives us a clue about why unionisation rates differ from one country to the next.

11 Tiia Edith Tammeleht, legal secretary for the EAKL, was quoted in *The Baltic Times* as saying: the planned action was the first major activity for years, and “this is the first time in recent history that we had such a wide sectoral action. It shows that unions are becoming stronger, and that workers have more power”.

12 The dispute between the shipping company Tallink and the seamen’s trade unions of Sweden and Finland resulted in a membership rise of 40% for the Estonian seafarers’ union EMSA (*The Baltic Times*, 25–31 January 2007). This provided proof of the power of international union cooperation and is captured by a quote made by Harri Taliga, president of EAKL: “When the Estonian people saw that unions overseas can be a real power, seamen membership numbers increased by 40%”. (*ibid*)

13 One of the strongest unions in the whole Baltic region was the Latvian Education and Science Workers’ Trade Union (LIZDA), which united 56,000 members and accounts for 80% of the employees in these sectors (Pavuk 2008b). The union was famous for its meetings, demonstrations and picketing for rising workers’ salaries. It also had its own strike fund (Pavuk 2008b).

14 The largest confederation, LPSK (Lithuanian Trade Union Confederation), unites most of the unions but there are historical and political reasons behind the existence of another confederation, the Lithuanian Trade Union “Solidarumas”.

explanation lies in the situation of the Baltic labour market. Emigration improved the situation of the average skilled worker and increased their power to negotiate wages on an individual basis. This materialised in the significant salary increases of the years prior to the recession in 2007–2009. In Latvia, there were year-to-year salary increases of up to one third and over a quarter in increases in Estonia and Lithuania (Woolfson et al. 2008).

The transition period strengthened individuals' responsibility to find solutions and cope with the risks and contradictions caused by social and economic restructuring (Kalmus & Vihalemm 2006). This was mirrored in the development of values. A comparison between Swedish and Estonian values (ibid.) displays a predominance of *post-material values* in the former and *modern values* in the latter.<sup>15</sup> Kalmus and Vihalemm concluded that social atomisation in Estonia was in part a carry-over from the Soviet era when the forced feeding of Soviet 'collectivism' made individuals to resort to informal social structures.<sup>16</sup> In fact, the desire for collective negotiations was greater than what actually occurred. According to Antila and Ylöstalo (2003, 84), a significant portion of employees would have preferred collective agreements to individual agreements on many issues between employer and employee.<sup>17</sup> Such an aspiration for collectivism withered away a few years later, as the proportion of those desiring individual wage negotiations increased to 80% (Woolfson et al. 2008).

### 4.3. From the financial crisis in 2007 to the present: a decade of austerity and emigration

By the onset of the crisis in 2007–2009, unionisation rates in the Baltic States had stabilised at their low levels (8–10%), which hints that the nadir of Baltic IR had passed. As soon as the labour market changed from tight into loose at the onset of the recession, employers proposed cutting salaries by up to one-third. We saw some commonalities in the IR situation among the BS, since all these countries relied on a similar 'austerity' recipe for balancing their budgets due to the recession, a policy that had repercussions by prompting a massive emigration of labour force (Sippola 2013). This policymaking did not, however, lead to remarkable political unrest. The ostensible unity in the voting behaviour in the 2010 Latvian elections allowed the legislators to conclude that the internal devaluation policies had been successful (Hudson & Sommers 2011). In the Estonian finance minister Jürgen Ligi's words, 'nobody would take to the streets flying the red flag', as noted in an article in *The Economist* on 1 January 2011. Explanations for tranquillity were sought from other sources of national mentality. In the same article, when asked why Estonians do not take to the streets, Estonia's president Toomas Ilves was quoted as saying: "Maybe it's our peasant mentality".

It seems that the Baltic unions were more compliant with the 'austerity' agenda – the financial situation of the countries was indeed dramatically bad – at the onset of the recession than they are today. The Baltic labour movements reacted to

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15 This analysis gave support for the picture of Estonian society as consisting of "losers" (relying on "nostalgia" and "spiritualisation") and "winners" (achievement-oriented) in transition.

16 The shift from collectivistic to individualistic emphasis is, indeed, linked with the "evolution toward a market-based economy" (Vadi & Buono 1997, 74), which is seen as an inevitable development rather than resulting from an ideological learning process. Jerschina & Górniak (1997) go even further in associating "leftist orientation" (which they derive from the scale measuring the combination of egalitarianism and economic statism) with nationalism and authoritarianism, while they associate "progressive" Western values with such attributes as achievement orientation, political activism and economic optimism. This dichotomy is formed without considering an alternative explanation emphasising that citizens in desperate and subordinate position are "passive", "nationalistic" or "leftist" because they may have nothing else to resort to except their social networks, or the only way these people can show their resistance is silence.

17 However, the trend in wage bargaining seemed to be towards individual agreements in Estonia, according to the Working Life Barometer 2005 (Working Life Barometer 2005, 60, 62). Over 60% of workers negotiated their wages on an individual level. The same proportion of workers preferred this method of negotiation.

public-sector cuts differently in different countries. Public-sector cuts in Estonia did not incite worker protests in this sector (Kunnas 2010), which was replicated in Lithuania, where the only remarkable mass protest was in January 2009, which had no influence on government policy (Petrylaite 2010).<sup>18</sup> It is noteworthy that the prime minister's campaign for unpaid leave in summer 2009 did not provoke any significant opposition by trade unions, despite the policy's clear contravention of the established Labour Code (Petrylaite 2010). Eventually, all three Lithuanian trade union confederations endorsed a 'historical' social pact with government and employers, which in effect suspended union protests in exchange for government promises to continue social dialogue, but with necessary wage and benefit cuts (Woolfson 2010). However, the depression that began in 2008 sowed some seeds of change in the political scene. In general, there has been an inclination towards leftist views in the BS in times of deteriorating living conditions, whereas favourable economic conditions have paved way for the diffusion of neoliberalist ideology from global level/Nordic neighbouring countries to the Baltic States (Jahn 2016, 174).

However, when it comes to the Latvian trade union movement, a process of re-politicisation may have been underway for a while. Public-sector reforms incited protests by members of the Latvian Trade Union of Educational and Scientific Employees (LIZDA) in late 2009 (Curkina 2009). Also, around 5,000 students are reported to have taken to the streets of Riga to protest deep spending cuts. Latvian trade unions have been more or less active in involving themselves in politics until today. For example, the Latvian Union of Health and Social Care Employees (LVSADA) signed a cooperation agreement with the centre-left pro-Russia political party *Saska* in January 2015 (Karnite 2015a). This came only a few weeks after the Free Trade Union Confederation of Latvia (LBAS) concluded a cooperation agreement with the same party. Several government-opposing strike threats and public protests, organised by the Latvian Trade Union of Education and Science Employees (LIZDA), associated with a proposed 'new model' of teachers' pay have occurred in 2016; also the LVSADA repeatedly threatened protest action unless healthcare funding was increased (Karnite 2016).

The politicisation of industrial relations has perhaps started to manifest itself in Lithuania as well. Worth noting in this respect were two separate teachers' stoppages in December 2015, involving around 15% of education workers, and a two-week teachers' strike in the spring of 2016, involving around 10% of educational establishments, for a permanent increase in education funding (Blaziene 2016a; Blaziene 2016b).<sup>19</sup> Also, political mobilisation occurred from the summer of 2015 to the summer of 2016, when trade unions campaigned against a new 'social model' in Lithuania (bringing more 'flexicurity') and against new a Labour Code that makes it easier to dismiss employees, allows more flexible forms of employment and amendments to working hours legislation (Blaziene 2015; Blaziene 2016c). In their opposition to the Code, the unions sided with the President of Lithuania, who vetoed a number of the provisions of the code in autumn 2016 (Blaziene 2016d).

In Estonia, there are contradictory reports about the politicisation of industrial relations. On the one hand, Osila et al. (2015) calculated that no more than zero working days were lost in industrial actions in 2013 and 2014 in Estonia. On the other, there are various reports of miscellaneous protests in recent years, includ-

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18 In that case, some 7,000 people gathered in one of the largest mass meetings since regaining independence. The gathering was organised by trade unions and was defensive in nature: it was meant to call on the government to guarantee certain social benefits and rights as well as keep its obligations to consult unions within the framework of 'social dialogue' (Woolfson 2010). This desperate attempt to make union 'voices' heard did not succeed in the desired manner, and the protests took an increasing 'muted' form throughout 2009.

19 The strike ended when the unions signed an agreement with government ministers to provide an extra €8 million to increase teachers' pay and to continue negotiations on the education collective agreement (Blaziene 2016b).

ing a nation-wide teachers' strike in March 2012, a healthcare workers' strike in October 2012, a regional bus drivers' warning strike at Gobus in October 2014, massive demonstration of agricultural workers in Tallinn in September 2015, and a nation-wide healthcare workers' warning strike in September 2016. Although various politicians have supported workers' views in the demonstrations, explicit alliances between political parties and trade unions are not in sight.

## 5. Discussion

What lessons are to be learned from the ideological underpinnings of IR for the development of trade unionism in the Baltic States? What conclusions must be drawn on the basis of the main ideas and ideologies associated with Baltic trade unionism, that is, the notions of ‘acquiescence’, ‘getting-rid-of-communism’, instrumentalism, neoliberalism, ‘one-nation’, ‘social dialogue/partnership’ and the sensitive issue of ‘de- and re-politicisation’?

The main union structures have remained relatively unchanged since the early 1990s. The same weak points, the impact of Soviet legacies on trade unions, the weak state of tripartite cooperation and social dialogue – as well as the virtual absence of sectoral dialogue – have remained central features of the Baltic IR ‘model’ until now. No radical reform of the unionism model occurred until recently; the easy adoption of European ‘social Catholic’ models of ‘social partnership’ and ‘social dialogue’ went well with post-Soviet trade unionism. In general in CEE countries, a more confrontational mode of action gave way to more conformist ‘social partnership’ in the transition decades.

In terms of scope, the social dialogue cultivated in the BS is slightly different from the standard ILO definition of “social dialogue and tripartism”. According to ILO, in addition to negotiation, consultation and sharing information between labour market parties, social dialogue also includes collective bargaining, dispute prevention and resolution and corporate IR actions (*ilo.org*); only the first function is relatively comprehensively accomplished at nation-level social dialogue. When it comes to ILO preconditions for sound social dialogue (*ibid.*), the Baltic States provide an enabling legal and institutional framework, satisfactory respect for rights of freedom of association and collective bargaining, while there is a lack of political will to engage in social dialogue and weak capacities of management and labour to participate in full social dialogue.

Different labour market parties have taken different approaches to social dialogue and these have remained more or less the same until today. In my analysis of the developments in the early 2000s, I found that employers in particular were reluctant to take on social dialogue. However, a quick media survey of recent years proves that employers are relatively intensively involved in nation-level social dialogue, which means that they are not indifferent to the idea of social partnership. It seems that governments have been most enthusiastic about social dialogue, implying that social dialogue in these countries has largely remained at the national level. As regards trade unions, it seems that social partnership has offered a smooth transition model for IR in the post-Soviet context, which is not too confrontational in relation to the employers.

A worst-case scenario is that the ‘conformist’ nature of social partnership – as judged on the basis of the social dialogue agendas in the 1990s and early 2000s – can lead to upholding a state of IR stagnation in these countries. However, from a positive perspective social dialogue is capable of maintaining the credibility of the trade unions in the eyes of Baltic citizens at a time when the status of trade union movements in these countries is its weakest. In other words, the model adopted by Baltic trade unions can momentarily keep them functioning while finding parallel, indigenous (inherently Baltic) solutions for carrying out sector-based and nation-level IR. Social dialogue can function “by default” with weak organisations representing the partners if their voice is recognised as representative and if it is not contested by other organisations. The ‘organising model’ unionism in the wake of establishment of the Baltic Organising Academy (BOA) in 2012 (Kall 2017) can serve as a supplement to current models of social partnership and ‘servicing unionism’. However, directly adopting the underlying principles of BOA to the Baltic context might pose problems, since it could be considered too ‘political’ and narrowing to Baltic trade unions’ autonomy.

In terms of overall political development, it is observed that the ideological foundations of the one-nation discourse and getting-rid-of-everything associated with the communist past is drying up in the face of today's austerity and post-modern individualism. This discourse has dominated for a quarter of a century now and, of course, international tensions can contribute to its persistence. The conventional political centre-right views are evidenced to give way to centre-left political opinions as people face deteriorating economic conditions. As to the economic prosperity and equal distribution of the benefits of economic growth, the crisis years 2007–2009 gave a warning signal to the peoples of the Baltic States; the reactions to the crisis have varied from emigrating abroad to a revival of social unrest. Accordingly, re-politicisation of Baltic trade union movements has occurred to some extent in Latvia and Lithuania (Blaziene 2015; 2016a; 2016b; 2016c; Karnite 2015a; 2015b; 2016). When it comes to the acquiescence of the Baltic worker, i.e. the propensity not to protest or unionise, the situation is more complicated, since the reasons for such behaviour can derive from both Soviet 'quiescent' behaviour and the downward spiral of union legitimacy in the Baltic States throughout the transition decades. As collective action has not borne any fruit, Baltic citizens do not readily see it as a method to use in case of employment-related problems. Rather, the worker is destined to remain loyal to one's employer or accomplish an individual 'exit' (see also Sippola 2013).

Is the missing link between political parties and trade union mobilisation one of the factors hampering the revitalisation of labour movement in the Baltic States? There has been an underlying agreement in Baltic societies that trade unions should be depoliticised. However, some trade union leaders have been active in party politics or have left the trade unions to engage in political activity. The absence of viable popular resistance to austerity in the BS is based on the assumption – as well as other geographic and financial sector reasons – that the population in these countries has remained relatively de-politicised as a legacy from a Soviet past and a lack of credible collective action models. (Sommers et al. 2014). After discouragement after failed protests, Baltic people may quietly choose to emigrate rather than continue to protest against their governments (Sippola 2013; Sommers et al. 2014). In effect, austerity is antithetical to the Social Europe vision (Sommers et al. 2013); by accepting austerity measures (or passively accommodating to them), the people of the Baltic States are silently allowing the anti-Social Europe movement to gain ground.

An alternative path to take for Baltic unions would be to acknowledge the current de-politicised, utility-maximising premises of citizens, and to emphasise the instrumentalist value of trade unions. The race of Baltic citizens to enhance their standard of living and achieve western standards was seen already in the 1990s. This was interconnected with the growing importance of instrumentalist values emphasising personal, immediate and tangible gains. Therefore an option for the Baltic unions would be to show their instrumentalist value – in which ways they have been able to improve labour conditions – in their efforts to recruit new members. However, workers need to take a collectivistic point of view of their instrumentalism in some way. I have encountered such sentiments among Estonian migrant workers in Finland, whom I investigated in 2013–2014. Besides the purely instrumentalist orientation (emphasising security) in the accounts of Estonian workers, some stories of the interviewees hinted that being a union member also requires collectivism. This is at the core of the *instrumental collectivist* idea of becoming a member (Bradley, 1999; Lockwood 1996, 57–58). This is also a key to understanding the contradiction between individualism and collectivism in the context of working class solidarity. Healy et al. (2004, 452) point out that the instrumental collectivist orientation is different from its individualist counterpart in that given the former orientation, individuals recognise their own weakness in relation to their employer; this signifies a point when they turn to unions to gain access to power.



# References

- Antila, J. and Ylöstalo, P. (2003) Working Life Barometer in the Baltic Countries 2002. Helsinki: Finnish Ministry of Labour.
- Blaziene, I. (2009) 'Trade union hunger strike averts public sector pay cut,' EIROnline. Available at <http://www.eurofound.europa.eu/eiro/2009/07/articles/lt0907029i.htm> [1 June 2012].
- Blaziene, I. (2015) Lithuania: Unions protest at new draft social model law. EurWORK European Observatory of Working Life. Available at: <https://www.eurofound.europa.eu> [retrieved 14 December 2016]
- Blaziene, I. (2016a) Lithuania: Teaching unions strike twice in a row after negotiations collapse. EurWORK European Observatory of Working Life. Available at: <https://www.eurofound.europa.eu> [retrieved 14 December 2016]
- Blaziene, I. (2016b) Lithuania: Latest working life developments – Q1 2016. EurWORK European Observatory of Working Life. Available at: <https://www.eurofound.europa.eu> [retrieved 14 December 2016]
- Blaziene, I. (2016c) Lithuania: Latest working life developments – Q2 2016. EurWORK European Observatory of Working Life. Available at: <https://www.eurofound.europa.eu> [retrieved 14 December 2016]
- Blaziene, I. (2016d) Lithuania: Latest working life developments – Q3 2016. EurWORK European Observatory of Working Life. Available at: <https://www.eurofound.europa.eu> [retrieved 14 December 2016]
- Blaziene, I. & Zabaraskaite, R. (2015) Lithuania: Working life country profile. EurWORK European Observatory of Working Life. Available at: <https://www.eurofound.europa.eu> [retrieved 14 December 2016]
- Bradley, H. (1999) *Gender and Power in the Workplace*. London: Macmillan.
- Carley, M. 2008. Industrial Relations Developments in Europe 2007. EurWORK European Observatory of Working Life. Available at <http://www.eurofound.europa.eu> [retrieved 8 February, 2017]
- Charlwood, A. (2002) 'Why Do Non-Union Employees Want to Unionise? Evidence from Britain', *British Journal of Industrial Relations* 40(3): 463–491.
- Clarke S. & Fairbrother, P. (1993a) 'Trade Unions and the Working Class', S. Clarke, P. Fairbrother, M. Burawoy & P. Krotov (eds.) *What about the Workers? Workers and the Transition to Capitalism in Russia*. London: Verso.
- Clarke S. & Fairbrother, P. (1993b) 'Beyond the Mines: The Politics of the New Workers' Movement', S. Clarke, P. Fairbrother, M. Burawoy & P. Krotov (eds.) *What about the Workers? Workers and the Transition to Capitalism in Russia*. London: Verso.
- Commons J. R. (1913) *American Shoemakers, 1648–1895: A Sketch of Industrial Evolution*. *The Quarterly Journal of Economics* 24(1): 39–84.
- Crowley, S. (2002) *Explaining Labor Quiescence in Post-Communist Europe: Historical Legacies and Comparative Perspective*, Center for European Studies Central and Eastern Europe Working Paper No. 55.
- Curkina, I. (2009) 'Trade union protests against education cuts and reforms,' EIROnline. Available at <http://www.eurofound.europa.eu/eiro/2009/08/articles/lv0908029i.htm> [1 June 2012].
- Dittrich, E. J. & Haferkemper, M. (1995), *Labour Relations in the Making – Bulgaria, Hungary, Poland and the Czech Republic*, in E. J. Dittrich, G. Schmidt & R. Whitley (eds.) *Industrial Transformation in Europe*. London: SAGE Publications Ltd.
- Eamets, R. and Masso, J. (2005) 'The Paradox of the Baltic States: Labour Market Flexibility but Protected Workers?' *European Journal of Industrial Relations* 11(1): 71–90.
- Healy, G, Bradley, H & Mukherjee, N. (2004) 'Individualism and collectivism revisited: a study of black and minority ethnic women'. *Industrial Relations Journal*, vol 35 (5), pp. 451–466.

- Hudson, M. & Sommers, J. (2011) 'The Death of "Social Europe": The Myth of the Baltic Tigers,' Counterpunch, 18 January 2011, available at <http://www.counterpunch.org/hudson01182011.html> [11 May 2011].
- Hunya, G. (2004) 'FDI in Small Accession Countries: the Baltic States', EIB Papers 9:2, pp. 92–113, European Investment Bank, Luxembourg.
- ISSP (2015). International Social Survey Programme: Environment, Family and Changing Gender Roles, Citizenship and Work Orientations data for Estonia. Tallinn University.
- Jacobsson, Kerstin & West, Charlotte (2010) "Europeanization of labor policy-making in the Baltic States", in: Bengt Jacobsson (ed) *The European Union and the Baltic States: Changing Forms of Governance*, London: Routledge, 98–120.
- Jahn, D. (2016) Diffusion of Party Positions: Policy Positions Moving from the Nordic to the Baltic States. In: N. Aylott (ed.) *Models of Democracy in Nordic and Baltic Europe: Political Institutions and Discourse*. London and New York: Routledge, 153–179.
- Jerschina, J. and Górnjak, J. (1997) 'Leftism, Achievement Orientation, and Basic Dimensions of the Socio-economic and Political Attitudes in Baltic Countries versus Other Central and East European Countries', in N. Hood, R. Kilis and J-E. Vahlne, *Transition in the Baltic States: Micro-Level Studies*. London: MacMillan Press Ltd.
- Järve, M. (1996) 'Elanikkond ja kodanikualgatus', in A. Aarelaid (ed), *Kodanikualgatus ja seltsid Eesti muutuval kultuurimaastikul*, Jaan Tõnissoni Instituudi Kirjastus, Tallinn, pp. 155–164.
- Kall, K., Mankki, L., Sippola, M. & Lillie, N. (2015). *Transnational Union Organizing in a Regional Labour Market: The Baltic Organising Academy and Finnish-Estonian Union Cooperation*. Paper for the 27<sup>th</sup> SASE Annual Meeting, London.
- Kall, Kairit (2017) Post-crisis innovation within Estonian private sector unions. In: M. Bernaciak & M. Kahancova (eds.) *Beyond the crisis: Strategic innovation within CEE trade union movements*. Brussels: ETUI, pp.73–89
- Kallaste, E. (2005) 'Measurement of Social Dialogue and Involvement of Employees', in *Tööturg 2005. Aastakogumik*, Eesti Statistika, p. 112–118.
- Kalmus, V. and Vihalemm, T. (2006) 'Distinct Mental Structures in Transitional Culture: An Empirical Analysis of Values and Identities in Estonia and Sweden', *Journal of Baltic Studies* XXXVII(1): 94–123.
- Karnite, R. (2015a[22 June]) Latvia: Union's pact with political party comes under fire. EurWORK European Observatory of Working Life. Available at: <https://www.eurofound.europa.eu> [retrieved 13 December, 2016]
- Karnite, R. (2015b[25 November]) Latvia: Working life country profile. EurWORK European Observatory of Working Life. Available at <https://www.eurofound.europa.eu> [retrieved 13 December, 2016].
- Karnite, R. (2016) Latvia: Latest working life developments – Q2 2016. EurWORK European Observatory of Working Life. Available at: <https://www.eurofound.europa.eu> [retrieved 13 December, 2016]
- Kettunen, P. (2001) *Kansallinen työ. Suomalaisen suorituskyvyn vaalimisesta*. Helsinki University Press.
- Kunnas, K. (2010) 'Palkkojen alennukset ajavat jo työssäkäyviä köyhyyteen Virossa,' *Helsingin Sanomat* 26 May 2010.
- Lagerspetz, M. (2004) *From NGOs to Civil Society: A Learning Process*. In M. Lagerspetz, A. Trummal, R. Ruutsoo & E. Riksmann (eds.) *Non-Profit Sector and the Consolidation of Democracy*. Tallinn: Open Estonian Foundation.
- Lockwood, D. (1996) Sources of Variation in Working Class Images of Society. In: J. Scott (ed) *Class: Critical Concepts*, Volume IV. London and New York: Routledge, 42–58.
- Lulle, Aija (2013) *Estonia, Latvia, Lithuania – Labour Relations and Social Dialogue. Annual Review 2012. Regional Project on Labour Relations and Social Dialogue*, Warsaw, February 2013. Friedrich Ebert Stiftung.
- Melin, H. (1995) 'Work situation of main occupational groups in the Baltic States',

- in R Blom, H Melin & J Nikula (eds), *Social Stratas and Occupational Groups in the Baltic States*, Social Change in Baltic and Nordic countries –project, Working Papers series no 1. University of Tampere, Department of Sociology and Social Psychology, pp. 59–80.
- Mrozowicki, A. (2014). Varieties of trade union organizing in Central and Eastern Europe: A comparison of the retail and automotive sectors. *European Journal of Industrial Relations*, 20(4), 297–315.
- Mygind, N. (1997) 'Privatisation and Employee Ownership: The Development in the Baltic Countries', in N. Hood, R. Kilis and J-E. Vahlne, *Transition in the Baltic States: Micro-Level Studies*. London: MacMillan Press Ltd.
- Nikula, J. (1997), *From State-Dependency to Genuine Worker Movement? The Working Class in Socialism and Post-Socialism*. Academic dissertation. Faculty of Social Sciences, University of Tampere.
- Nissinen, M. (1999) *Latvia's Transition to a Market Economy: Political Determinants of Economic Reform Policy*. Studies in Russia and East Europe. School of Slavonic and East European Studies, University of London. Macmillain Press Ltd.
- Norkus, Z. (2007) 'Why did Estonia perform best? The North-South gap in the Post-Socialist economic transition of the Baltic States', *Journal of Baltic States* 38(1), 21–42.
- Osila, L., Kadarik, I. & Masso, M. (2015[25 November]) *Estonia: Working life country profile*. EurWORK European Observatory of Working Life. Available at <https://www.eurofound.europa.eu> [retrieved 18 January, 2017].
- Ost, D. (2002) 'The Weakness of Strong Social Movements: Models of Unionism in the East European Context', *European Journal of Industrial Relations* 8(1): 33–51.
- Pabriks, A. and Purs, A. (2002) 'Latvia: the challenges of change', in D. J. Smith, A. Pabriks, A. Purs and T. Lane (eds.), *The Baltic States: Estonia, Latvia and Lithuania*. London: Routledge.
- Pavuk, O. (2008b) '...', the Baltic Course 22 November 2008.
- Petrylaite, D. (2010) 'The Right to Strike in EU Member States: A Comparative Overview with Particular Reference to Lithuania,' *The International Journal of Comparative Labour Law and Industrial Relations* 26(4): 421–34.
- Pickles, J. (1998) 'Restructuring state Enterprises: Industrial geography and Eastern European transitions', in J. Pickles and A. Smith (eds.) *Theorising Transition: The Political Economy of Post-Communist Transformations*. London: Routledge.
- Rahikainen, O. and Ylöstalo, P. (1997) *Työelämän muutos Suomessa ja Lähialueilla*. Tutkimus Hel–singistä, Pietarista ja Tallinnasta, Työpoliittinen tutkimus no. 179. Helsinki: Työministeriö.
- Ruutsoo, R. (2003) 'Kansalaisyhteiskunta ja sen rooli Baltian maiden lähihistoriassa', H Melin & J Nikula (eds), *Yhteiskunnallinen muutos, Vastapaino*, Tampere.
- Sippola, M. (2013) 'The awkward choices facing the Baltic worker: Exit or Loyalty,' *Journal of Baltic Studies* 44(4): 451–473.
- Sippola, M. (2014) *Balancing between exit, voice, and loyalty: Labor market policy choices in Estonia*. In: J. Sommers & C. Woolfson (eds.) *The Contradictions of Austerity: The Socio-Economic Costs of the Neoliberal Baltic Model*. Oxon: Routledge, 118–137.
- Smith, D. J. (2002) 'Estonia: Independence and European integration', in D. J. Smith, A. Pabriks, A. Purs and T. Lane (eds.), *The Baltic States: Estonia, Latvia and Lithuania*. London: Routledge.
- Sommers, J., Woolfson, C. & Juska, A. (2014) 'Austerity as a global prescription and lessons from the neoliberal Baltic experiment', *The Economic and Labour Relations Review* 25(3): 1–20.
- Stenning, A. & Hörschelmann, K. (2008) 'History, Geography and Difference in the Post-Socialist World: Or, Do We Still Need Post-Socialism?' *Antipode* 40(2): 312–335.
- Toots, A. & Bachmann, J. (2010) 'Contemporary Welfare Regimes in Baltic States: Adapting Post-Communist Conditions to Post-Modern Challenges,' *Studies of Transition States and Societies* 2(2): 31–44.

- Vadi, M. & Buono, A. F. (1997) Collectivism and Individualism in Estonia: An Exploratory Study of Societal Change and Organisational Orientation. In: N. Hood, R. Kilis & J.-E. Vahlne (eds.) *Transition in the Baltic States: Micro-level Studies*. Macmillan Press Ltd., pp. 62–79.
- Visser, J. (2002) 'Why Fewer Workers Join Unions in Europe: A Social Custom Explanation of Membership Trends', *British Journal of Industrial Relations* 40:3, pp. 403–430.
- Visser, J. (2015). ICTWSS Database, Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 34 countries between 1960 and 2014, Institute for Advanced Labour Studies, AIAS, University of Amsterdam, Amsterdam. Available at: <http://www.uva-aias.net/207> [09.03.2016].
- Woolfson, C. (2007) 'Labour Standards and Migration in the New Europe: Post-Communist Legacies and Perspectives' (forthcoming), *European Journal of Industrial Relations* 13(2).
- Woolfson, C. (2010) "'Hardi times" in Lithuania: Crisis and "discourses of discontent" in post-communist society', *Ethnography* 11(4): 487–514.
- Woolfson, C. & Beck, M. (2004) 'The End of Labor Quiescence? Industrial Unrest in Contemporary Lithuania', *The International Journal of Comparative Labour Law and Industrial Relations*, 20:2, pp. 227–251.
- Woolfson, C., Calite, D. & Kallaste E. (2008) "Employee 'voice' and working environment in post-communist New Member States: An empirical analysis of Estonia, Latvia and Lithuania", *Industrial Relations Journal* 39:4, 314–334.
- Working Life Barometer (Tööelu barometer) (2005) *Elanikkonna uuringu aruanne* (Population research report). Tallinn: Saar Poll OÜ.

# The Baltic States and the Core Conventions of the ILO

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# 1. Introduction

This report discusses the implementation of the eight core ILO Conventions in the Baltic States as well as the implementation of Convention 144 on tripartite consultations. The report was commissioned by the Council of Nordic Trade Unions (NFS).

The report starts with a short presentation of the ILO system and the core conventions to facilitate an understanding of the implementation issues. Thereafter the report is structured in the form of separate country reports for each of the three Baltic States. For each state, the author begins by presenting a few basic background facts and a description of the approach to international conventions taken by the respective national legal systems. Then the implementation of the respective ILO Conventions is discussed and finally some conclusions are drawn. In the last chapter some general conclusions are made relating to all three Baltic States.

The first draft of this report was distributed to various experts in the Baltic States and elsewhere in early February. Many useful comments were received and the draft was also presented at the NFS Conference “Employees’ rights in the Baltics”, held in Vilnius on 23 February 2017. The feedback and comments on the draft are integrated into this report.

In this context, the author wants to thank all commentators and participants in the conference for their useful comments and contributions. I also want to thank Maria Häggman and Magnus Gissler of the NFS for their support. For all remaining errors and misunderstandings, however, the author bears sole responsibility.

## 2. The ILO, its standard-setting system and the methodology of the report

The International Labour Organisation (ILO) was established already in the aftermath of the World War I in 1919. Since then, the ILO has brought together the governments, employers and labour representatives of the now 187 Member States to set labour standards, develop policies and devise programmes promoting decent work for all women and men. It is the only UN agency with a tripartite structure. This tripartite structure should also form an integrated part of all ILO-related activities in the member states, where tripartite consultations should be the standard procedural mechanism as envisaged in Convention 144 on Tripartite Consultations.

Setting standards has traditionally been a core activity for the ILO and it has adopted many conventions and recommendations to set an international minimum standard for working conditions. Member states must take these instruments to the national Parliaments, which decide whether to ratify them. Member states must also report on the fulfilment of ratified conventions to the ILO. The Committee on Experts of the Application of Conventions and Recommendations (CEACR) is the body doing this work for the ILO. A separate ILO body – “The Freedom of Association Committee” (CFA) – is responsible for monitoring the Conventions on the Freedom of Association when complaints regarding individual cases have been filed.

In 1998, the ILO Conference decided to proclaim eight of the existing labour conventions as Core Labour Standard Conventions.<sup>20</sup> These Conventions are divided into four categories: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

The decision on Core Labour Standards was taken in the form of an ILO Declaration on Fundamental Principles and Rights at Work. The Declaration commits Member States to respect and promote principles and rights, irrespective of whether they have ratified the relevant conventions. This declaration makes it clear that these rights are universal and that they apply to all people in all states regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It recognises that economic growth alone is not enough to ensure equity and social progress and to eradicate poverty.

The commitment by all member states to abide by the core conventions is supported by a follow-up procedure. Member states that have not ratified one or more of the core conventions are asked each year<sup>21</sup> to report on the status of the

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### **20 Forced Labour:**

Convention 29: Forced Labour – 1930 (including Protocol 2014)  
Convention 105: Abolition of Forced Labour – 1957

### **Freedom of Association:**

Convention 87: Freedom of Association and Protection of the Right to Organise – 1948  
Convention 98: Right to Organise and Collective Bargaining – 1949

### **Equality:**

Convention 100: Equal remuneration – 1951  
Convention 111: Discrimination (Employment and Occupation) – 1958

### **Child Labour:**

Convention 138: Minimum Age Convention – 1973  
Convention 182: Elimination of the Worst Forms of Child Labour – 1999



relevant rights and principles within their borders, noting impediments to ratification and areas where assistance may be required. These reports are reviewed by the Committee of Experts (CEACR). In turn, their observations are considered by the ILO's Governing Body.

When discussing the interpretation of the ILO Core Conventions, it is important to note some basic facts. Most of these core conventions are rather old. The only exception is the new, legally-binding Protocol on Forced Labour, supported by a Recommendation (No. 203), aiming to advance prevention, protection and compensation measures and to intensify efforts to eliminate contemporary forms of slavery. The convention regulating the worst forms of child labour is as recent as from 1998. The older instruments are rather brief and many interpretations of their content have gradually been developed in practice.

The supervisory mechanisms of the ILO have been used as the main source for these reports. The author has systematically studied the reports regarding the Baltic States concerning their implementation of the core conventions and Convention 144. All three Baltic States have ratified these conventions, although Estonia is the only country so far to ratify Protocol 2014 for the Forced Labour Convention.

The author has used the unofficial English translations of labour legislation in the Baltic States and refers to these English texts/translations. The Baltic States also report on their implementation of fundamental labour standards set by the UN, the European Council and the EU. Such material has also been used to assess the implementation of the ILO conventions.

## 3. Estonia

### 3.1 Background

Trade-union membership in Estonia is estimated to be slightly below 10%, distributed over two organisations: the Confederation of Estonian Trade Unions (EAKL) and the Estonian Employees' Unions Confederation (TALO). The Estonian Employers' Confederation represents private-sector employers. The coverage of collective bargaining has been about 30%, however, at least in some periods due to extension mechanisms used in some sectors.

Estonia's legal system is based on the Constitution of the Republic of Estonia (Eesti Vabariigi põhiseadus).<sup>21</sup> Article 29.5 of the Constitution sets out that everyone is free to belong to unions and federations of employees and employers. Furthermore, according to Article 29.5, unions and federations of employees and employers may assert their rights and lawful interests by means that are not prohibited by law. The conditions and procedure for the exercise of the right to strike are provided by law.

The procedure for resolution of labour disputes is provided by law (Art. 29.6).

The fundamental political rights are also enshrined in the Constitution. According to Article 47, everyone has the right to assemble peacefully and to conduct meetings without prior permission.

Issues related to foreign relations and international treaties are regulated in Chapter IX of the Constitution. Article 123 states that the Republic of Estonia may not accede to treaties which are in contravention of the Constitution. It also states that when Estonian laws or other legislation conflicts with an international treaty ratified by the Parliament, Riigikogu, provisions of the international treaty apply.

### 3.2 Freedom of Association (Conventions 87 and 98)

The legislation foreseen in the Constitution is the Collective Agreements Act 1993 (14.4.1993) with subsequent amendments, the Trade Unions Act (14.6.2000) with subsequent amendments and the Collective Labour Dispute Resolution Act (5.5.1993). Individual employment contracts are regulated by the Employment Contracts Act (17.12.2008), while the Civil Service Act (13.6.2012) applies to public-sector employees.

The right to not be discriminated against on the basis of trade union membership is protected by Section 19 of the Trade Unions Act, but there are no direct sanctions if violations occur.

There have been some relatively recent incidents and court cases in Estonia regarding discrimination against trade union members. To strengthen the freedom of association, the Penal Code was amended and Section 155 entered into effect on 1 January 2015. This introduced sanctions to guarantee the right to form and join trade unions, but the sanctions do not apply when those who already are trade union members face unfavourable treatment.

Section 19 of the Trade Union Act recognises that privileges due to trade union membership should not be regarded as discrimination. However, concerns have been raised within Estonian trade unions that the Labour Inspectorate holds the position that trade unions and employers are not allowed to agree on certain benefits for trade union members in collective agreements. Such an interpretation is clearly not within the limits of ILO conventions 87 and 98.

Estonia has had a long-standing debate with the supervisory bodies of the ILO regarding the freedom of association rights for public servants. The issue was at stake in a case that emanated from a complaint submitted by the EAKL to the CFA, arguing that by totally prohibiting the right to strike in the public sector, the Gov-

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<sup>21</sup> Passed 28.06.1992, entered into effect 3.7.1992, RT 1992, 26, 349, 1992.

ernment of Estonia violated workers' rights.<sup>22</sup> The Committee, and consequently ILO, gave several detailed recommendations already in 2008:

- The Committee expects that the legislation will be soon amended, in consultation with representative workers' and employers' organisations concerned, to ensure that public servants who do not exercise authority in the name of the State enjoy the right to strike.
- The Committee requests the Government, within the framework of consultations on the reform of the Public Service Law, to ensure that the mechanisms available to workers who are deprived of an essential means of defending their socio-economic and occupational interests (mediation, conciliation and/or arbitration) are impartial and rapid.
- The Committee expects that a list of enterprises or agencies where minimum services should be maintained during a strike will soon be adopted, in full consultation with the workers' and employers' organisations concerned.
- The Committee requests the Government to ensure that priority is given to collective bargaining as a means of determining the employment conditions of public servants, rather than adopting legislation to restrain wages in the public sector.

This issue was followed up by the CEACR on several occasions until Estonia finally adopted the Public Service Act (or Civil Service Act) in June 2012 which entered into effect on 1 April 2013. Section 7 of this Act distinguishes between officials appointed to a post of authority which involves the exercise of official authority, on the one hand, and employees whose jobs do not involve the exercise of public authority, but only work to support the exercise of such authority, on the other. The strike ban applies only to officials (Section 59). This solution formally satisfies the old recommendation of the CEACR that the Estonian government should ensure that the right to strike is guaranteed to all public servants, with the only possible exception of those exercising authority in the name of the state. This solution still has problems, however. Under Article 9 of Convention 87, the extent to which the guarantees of the Convention must apply to the armed forces and police can be determined by national law, but when restrictions are placed on the right to strike in the public sector, these restrictions should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part.<sup>23</sup> Second, the group defined as exercising public authority seems to be very broadly defined in Estonia.<sup>24</sup> Therefore, the problem still appears to be partly unresolved in Estonia.<sup>25</sup>

Several issues relating to the draft Collective Agreement Negotiation and Collective Labour Dispute Resolution Act, which was brought before the Parliament already in 2014, have been controversial. Since this legislation does not seem to be on the agenda of the present government, I do not further discuss these legislative initiatives. Also, the discussions regarding a reform of the extension mechanisms, which have been going on since 2009, have not resulted in any reforms so far.

### 3.3 Child Labour (Conventions 138 and 182)

In relation to Articles 5 and 7(1) of Convention 182, the CEACR noted in 2014 that, following its previous comments, the Government had provided information in its report under the Minimum Age Convention, 1973 (No. 138), that the labour

22 The Freedom of Association Committee (CFA) Case 2543 (Estonia), Report 350, June 2008.

23 See *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*. 5<sup>th</sup> revised edition 2006. p. 596.

24 During an ILO Mission in 2014, the author was given an estimation from an official in the Ministry of Justice that the public sector had around 12,000 officials and 7,000 employees.

25 See also the European Committee of Social Rights, Conclusions 2014 – Estonia, Article 6.4, where similar concerns are raised in relation to Article 6.4 of the European Social Charter.

inspectors visit enterprises aimed at conducting inspections of legal relations as well as carrying out targeted inspections of working conditions of minors. The Government's report indicated that during the period from 2010 to 2013, investigations concerning minors were conducted in 79 enterprises, where 67 infringements were identified. Most of these violations related to working hours, rest periods, holidays and overtime. In addition, seven violations were related to the employment of young persons in hazardous work, such as work in bars and breweries, gardening work using dangerous machines and the lifting of heavy weights. Misdemeanour procedures were initiated in 21 cases concerning the violation of the Employment Contracts Act, and in 14 cases, sanctions amounting to a total of €8,030 were imposed.<sup>26</sup>

Furthermore, the Committee noted from the Government's report that out of the 243 crimes registered during the period from 2011 to 2013, 152 cases related to the production and distribution of child pornography (Section 178 of the Penal Code), 24 cases related to trafficking of minors for prostitution (Section 175 of the Penal Code) and 23 cases related to procuring or offering a child for sexual purposes (Section 178(1) of the Penal Code). The Committee requests the Government to provide information on the number of persons prosecuted and the specific penalties imposed for the crimes related to the worst forms of child labour.

Convention 138 permits light work for persons aged 13 to 15. In its 2015 Conclusions on Estonia relating to Article 7.3 of the Charter, the Committee of the European Social Charter has stated that, according to Section 43 (4) of the Employment Contracts Act, the maximum working hours for children enrolled in compulsory education are as follows:

- children aged 7–12: 3 hours per day (followed by a rest period of at least 21 consecutive hours) and 15 hours per seven days;
- children aged 13–14 or who are under an obligation to attend school: 4 hours per day (followed by a rest period of at least 20 consecutive hours) and 20 hours per seven days.

The Committee concluded that the daily and weekly working hours for children subject to compulsory education were excessive as the situation does not conform with Article 7.3 of the European Social Charter.<sup>27</sup> There are clearly similar problems relating to ILO Convention 138.

#### **3.4. Forced labour (Conventions 29 and 105, and Protocol 2014)**

Estonia ratified the 2014 Protocol to the Forced Labour Convention (29) on 24 November 2016 and the Protocol will come into force on 24 November 2017.

Regarding Articles 1(1), 2(1) and 25 of Convention 29, the Committee noted the Government's indication concerning the adoption in 2012 of Penal Code amendments criminalising and penalising human trafficking.<sup>28</sup> Pursuant to Section 133 as amended, the crime of trafficking is punishable by one to seven years' imprisonment. The Committee also noted the statistical information provided by the Government regarding the number of cases of human trafficking brought before the courts. The Government further indicated that, as of 2010, actions against trafficking fall within the scope of the "Development plan for reducing violence (2010–2014)". The development plan encompasses a multi-layered action plan against trafficking, which focuses on both sexual and labour exploitation and provides for prevention measures, as well as measures to assist victims and strengthen investigations. The plan also drew attention to the need for heightened awareness of the various facets of human trafficking, as well as for clear procedural guidelines for conducting interviews with potential victims. The Com-

26 CEACR Direct Request – adopted 2014, published 104<sup>th</sup> ILC session (2015)

27 The European Committee of Social Rights, Conclusions 2015, Estonia, Article 7.3.

28 CEACR Direct Request – adopted 2014, published 194<sup>th</sup> ILC session 2015.

mittee encouraged the Government to pursue its efforts to ensure that thorough investigations and prosecutions are carried out against perpetrators of human trafficking. It requests the Government to continue providing information on the application of Section 133 of the amended Penal Code in practice, including the number of investigations and prosecutions carried out, as well as the specific penalties applied. The Committee also requested the Government to provide information on the application in practice of the “Development plan for reducing violence (2010–2014)”, indicating whether the objectives set out had been achieved and whether an evaluation had been made to assess the impact of the measures adopted. The Committee also requested information on the measures taken to protect victims of trafficking and to facilitate their access to immediate assistance and effective remedies.

### **3.5 Equal pay and non-discrimination (Conventions 100 and 111)**

The factual situation on the Estonian labour market shows that although Conventions 100 and 111 as well as the European Union equality legislation, or EU *acquis*, are formally implemented by the Equal Treatment Act (2008) and the Gender Equality Act (2004), with subsequent amendments, there are still no efficient policies in place to address the remaining structural inequality problems on the Estonian labour market.

There are limited statistical data available from the labour disputes committees and courts that would make it possible to evaluate the impact of the legislation and of specific sanctions for employers who are violating the relevant provisions of the Gender Equality Act, including the principle of equal pay for work of equal value.. Therefore, the UN CEDAW-Committee<sup>29</sup> raised concerns regarding the following matters in 2016:

- the lack of an effective mechanism for filing complaints about sexual harassment in the workplace that allows cases to be brought before the court *ex officio*;
- the existence of a persistent horizontal and vertical occupational segregation and gender pay gap of almost 30% and a lack of transparency concerning wages at enterprise level;
- the lack of systematic collection of sex-disaggregated statistical data on employment, as required under the Gender Equality Act;
- women’s significant underrepresentation in management positions in the private sector;
- the low employment rate among women aged 25–49, due to unequal sharing of child-raising and caretaking responsibilities between women and men, and the lack of childcare services in the state;
- employment discrimination against women returning to work after maternity leave.

The CEACR has raised similar concerns and requested information on any measures taken by the social partners to promote equality at all levels of the Estonian labour market.<sup>30</sup>

### **3.6. Convention 144**

Convention 144 requires Member States of the ILO to conduct tripartite consultations in all matters related to the ILO. This applies to discussions on possible ratifications, reporting to the ILO, etc. In Estonia, these consultations take place in the ILO Council.

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<sup>29</sup> UN Committee on the Elimination of Discrimination Against Women, 18.11.1016 CEDAW/C/EST/CO/5-6. Available on [www.un.org](http://www.un.org).

<sup>30</sup> CEACR Direct Request adopted 2012, published at the 102<sup>nd</sup> ILC session 2013, on ILO Conventions 100 and 111.

In 2013, the CEACR noted the reply of the Estonian government to its direct request that intense tripartite consultations be conducted in preparation for the new Maritime Labour Act, which will include the provisions of the Maritime Labour Convention and work involving the Fishing Convention (188).

There are some reports from Estonia indicating that the handling of the economic crisis in Estonia damaged the relations between the state or the government, on the one hand, and the social partners, on the other. Trade unions agreed to cuts, but government promises were not fulfilled and several agreements already made were breached. Furthermore, the wish to make quick decisions resulted in low or only formal involvement of social partners.<sup>31</sup>

Involvement in the ILO policy by management and labour makes it possible to provide separate observations regarding reports of the implementation of different ILO instruments; such reports from labour and management have been rare in the case of Estonia.

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<sup>31</sup> Jaan Masso, Kerly Krillo, Inta Mierina, Presentation at in the conference “The European Social Model in times of Economic Crises and Austerity Policies”, Brussels, 27–28 February 2014.

## 4. Latvia

### 4.1. Background

Trade-union membership in Latvia is estimated to be around 13%. The only recognised confederation at national level is the Free Trade Union Confederation of Latvia (LBAS). Management associations include the Employers' Confederation of Latvia (LDDK), having more than 5,000 member companies, employing 35% of employees in Latvia.<sup>32</sup> The most important level for bargaining is at company level, but sectoral bargaining occurs in some sectors. Collective bargaining is conducted to some extent in the public sector, although the Act on Remuneration of Officials and Employees of State and Local Government Authorities significantly limits the scope of public-sector bargaining.

The Constitution of the Republic of Latvia sets out the fundamental human rights which the state must recognise and protect in accordance with the constitution, laws and international agreements binding on Latvia (Art. 89). In Latvia, there is a Constitutional Court which can review the constitutionality of the individual laws. International human rights treaties can be directly applied in Latvian courts. The principle of freedom of association is confirmed in the Constitution (Art. 102). According to Article 108, "Employed persons have the right to a collective labour agreement, and the right to strike. The State shall protect the freedom of trade unions". It is further stated that everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited (Art. 106). Human rights must be realised without discrimination of any kind (Art. 91.2).

### 4.2 Freedom of Association (Conventions 87 and 98)

The regulatory framework for freedom of association and collective bargaining is the Law on Trade Unions (2014), the Employers' Organisations and Associations Law (1999), the Labour Dispute Law (2003), the Act on Strikes (2005) and the Labour Law (2002) and especially Part B on Collective Agreements (Sections 17–27).

For a long period of time, Latvia was criticised by the ILO regarding the threshold it had set for the establishment of trade unions, which, according to the 1990 legislation, was set at 50 members or at least one-quarter of the workforce. ILO considered this too high and the number was likely to create an obstacle to the establishment of trade unions at enterprise level.<sup>33</sup>

In the 2014 Trade Union Act, this requirement was revised and the requirement of 50 members now applies to industrial unions only (established outside an undertaking), while the requirement is otherwise at least 15 members, or less than one-fourth of the total number of employees at the undertaking, which may not have less than 5 employees (Section 7).

One of the barriers to lawful strikes, as identified by the ILO, is the obligation to observe an excessive quorum or to obtain an excessive majority support for the strike action. The decision to strike must be adopted by a three-quarters majority at a meeting attended by at least 75% of all employees in company-wide strikes or 75% of members of the trade union in sector-wide strikes.

These requirements were removed in 2005. The decision must now be taken at a general meeting of the trade union attended by at least half of the members. The decision must then be adopted by a simple majority (Section 11 of the Act on Strikes).

<sup>32</sup> See Lulle, Aija, *Estonia, Latvia and Lithuania – Labour Relations and Social Dialogue*. Annual Review 2013. Friedrich Ebert Stiftung.

<sup>33</sup> See CEACR, Direct Request, adopted 2010, published 100<sup>th</sup> ILC session, 2011.

Other restrictions concern the objectives of a strike.<sup>34</sup> Solidarity strikes are considered illegal unless the dispute concerns a ‘general agreement’, i.e. a sectoral-level collective agreement. Since sectoral agreements are rare, this makes strikes even rarer. Politically-motivated strikes are also illegal. Finally, there are restrictions on the right to strike for various groups of public servants (e.g. fire-fighters, police officers, judges, public prosecutors, etc.). The ILO has repeatedly asked the Latvian government to extend the application of collective bargaining procedures to public servants who are not directly exercising public authority.<sup>35</sup> In 2014, the Constitutional Court ruled that the prohibition which prevented border guards from forming and joining trade unions was unconstitutional, whereas the prohibition of strike action was deemed constitutional (case No. 2013-15-01). Finally, the list of ‘essential services’ that have to be ensured during a strike is very broad.

According to the Act on Strikes, during the strike a minimum of “essential services” – the discontinuation of which would threaten the security, health and life of the state, of the whole society, of a group of the population or of some individuals – must be continued at enterprises or joint ventures, organisations and institutions. Essential services include medical science and first aid services; public transportation services; drinking water supply services; services generating and supplying electricity and gas; communications services; air service control and the service providing meteorological information to the air service control; services relating to the security of all kinds of transportation; waste and sewage collection and water purification services; radioactive goods and waste storage; utilisation and control services and civil protection services.

#### **4.3 Child labour (Conventions 138 and 182)**

In 2014, some important amendments were introduced to comply with the ILO Conventions on child labour and European Directive 94/33/EC on Young Workers.

Section 37 of the Labour Code was amended by a provision stipulating that employment restrictions for youths are applicable (based on the nature of the work) to the employment of youths aged 15 to 18 (who continue schooling to acquire basic education (compulsory schooling is 9 years)). Under Latvian law, two schemes (depending on the nature of the work) exist for work that can be performed by persons under the age of 18: lighter work, which applies to youths aged 13 to 15, and work that is not as restrictive that can be performed by youths aged 15 to 18. In principle, this means that Latvian law provides the right to employ any person aged 15 to 18 years, irrespective of whether they continue their compulsory nine-year schooling and are thus considered either children or adolescents.

Amendments to Section 132 introduced a distinction between the maximum working time of youths aged 13 to 15 and youths aged 15 to 18. Previously, Section 132 had allowed the employment of youths aged 13 to 18 for a maximum of 4 hours daily and 20 hours weekly during school holidays. The amendments allow the employment of youths aged 15 and above for up to 7 hours daily and 35 hours weekly during school holidays. The amendments were justified as reflecting the reality that individuals aged 15 to 18 have the ability to perform the same type of work, with the restriction of working time depending on whether the person aged 15 to 18 is still subject to mandatory schooling. The ILO position on these amendments has not yet been published.

#### **4.4 Forced labour (Conventions 29 and 105 (and Protocol 2014))**

Until now, Latvia has not ratified Protocol 2014 of the Forced Labour Convention.

In relation to Convention 29, issues relating to the work of prisoners and the right of members of the armed forces to leave service during peacetime have been a matter of particular concern.

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<sup>34</sup> This information is from ETUI Reforms Watch 2017. See <https://www.etui.org/Reforms-Watch/Latvia/Strikes-in-Latvia-background-summary>.

<sup>35</sup> See CEACR Observation 2010, published 100<sup>th</sup> ILC session, 2011.



The CEACR recalled in 2012 that the Convention requires career members of the armed forces to fully enjoy the right to leave their service in peacetime at their own request within a reasonable period, either at specified intervals, or by giving advance notice, and requested the Government to provide information on the application of Section 43(1) of the Military Service Law in practice, indicating the criteria applied in accepting or rejecting a resignation, as well as the number of cases in which such resignations were refused and the grounds for refusal.<sup>36</sup>

The CEACR also noted that legislation permitted work to be done by prisoners for private enterprises. It requested the Government to provide statistics in its next report specifying the number of prisoners who perform work for private enterprises. While noting that, according to national legislation, prisoners' conditions of working for private enterprises may approximate those of a free labour relationship, the Committee observed that the formal and informed consent of prisoners to work for private enterprises did not appear to have been asked for. Therefore, the Committee requested the Government, in its next report, to provide information on how national legislation and practice ensure that work done by prisoners for private enterprises both inside and outside prison premises, occurs only with their formal and informed voluntary consent and that this consent is free from the menace of any penalty, including the loss of rights or privileges.<sup>37</sup>

#### **4.5 Equal pay and non-discrimination (Conventions 100 and 111)**

Section 60 of the Latvian Labour Code (Law) stipulates that the principle of equal pay for the same kind of work or work of equal value shall apply.

Under *Convention 100*, the CEACR has addressed the gender wage gap and occupational segregation.<sup>38</sup> The Committee noted an overall gender wage gap in 2013 (first quarter) of approximately 24.8% in the public sector and 13.9% in the private sector (23.4% and 15.6% respectively in 2011). Also, referring to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee noted the Government's indications regarding measures to implement the Gender Equality Action Plan 2012–2014 to address occupational segregation, particularly in the field of education. Noting that the gender wage gap remained stable, the Committee once again urged the Government to take the necessary steps to reduce the gender wage gap in the public and private sectors, including taking measures to improve women's access to a wider range of jobs and positions. The Committee also asked the Government to continue to provide updated statistical information on the distribution of men and women in the various economic sectors, occupational categories and positions, as well as their corresponding earnings.

In relation to Article 2 of the Convention, the CEACR noted the adoption of Cabinet Regulation No. 1075 of 30 November 2010 determining a unified system for classification of positions and classification procedures for positions in state and local government ("Catalogue of positions of the State and local government authorities") and Cabinet Regulation No. 66 of 29 January 2013 regarding remuneration of officials and employees of state and local governments and procedures for the determination thereof, as well as several other regulations concerning specific positions. The Committee understood from the Government's report that the classification of the positions is based on the functions to be performed and the level of responsibility and complexity of the position. The Government had argued that the determination of the monthly salary, as well as other benefits, was therefore not related to the gender of officials or employees. The Committee recalled the fact that a system of remuneration is based on a classification of jobs established by law, however, and it does not formally distinguish between men and women and does not prevent indirect discrimination, which can be due

36 CEACR Direct Request 2012, published ILC session, 2013.

37 Ibid.

38 CEACR Direct Request 2013, published 103<sup>rd</sup> ILC session, 2014.

to the way the classification of jobs itself was established, the tasks performed mainly by women often being undervalued in comparison to the tasks traditionally performed by men. The Committee asked the Government to ensure that the method used to establish the classification of the positions and, accordingly, to determine whether the remuneration of public officials and employees are based on objective criteria, and positions traditionally occupied by women are not undervalued and therefore classified at a lower level in comparison to those traditionally held by men.

In relation to Article 2(2)(c), the Committee noted the Government's indication that in Latvia, most collective agreements are concluded at enterprise level. Although some agreements contain provisions prohibiting discrimination, none of them provided expressly for the principle of equal pay for work of equal value. According to the Government's report, the Free Trade Union Confederation of Latvia, LBAS had recommended that collective agreements include measures to improve women's training as well as measures to reconcile work and family responsibilities such as flexible working time for women or paid additional leave, with a view to reducing wage inequality. The Committee recalled that in discussing equal remuneration, the overall societal context of equality and non-discrimination cannot be ignored and needs to be addressed, and if measures to reconcile work and family responsibilities are important in this context, it is essential that such measures are made available to both men and women on an equal footing. The Committee once again asked the Government, in cooperation with the social partners, to promote the inclusion of the principle of equal pay for men and women for work of equal value in collective agreements, and to provide information in this regard, including on any measures envisaged to reconcile work and family responsibilities.

Recalling that the concept of "equal value" requires some method of measuring and comparing the relative value of different jobs, the CEACR asked the Government, in cooperation with workers' and employers' organisations, to promote, develop and implement practical approaches and methods for the objective evaluation of jobs with a view to effectively applying the principle of equal remuneration for men and women for work of equal value in the public and private sectors as required under Article 3 on objective job evaluation.

The CEACR welcomed initiatives taken by the LBAS with respect to gender equality, including equal remuneration, such as the publication and dissemination of information, and the organisation of a meeting with the Employers' Confederation of Latvia to discuss wage inequalities. The Government indicates that the Gender Equality Committee had played a significant role in the recommendations to balance the number of men and women in education with a view to narrowing gender gaps. The report also indicated that issues of remuneration, including equal remuneration for work of equal value, had been examined by the Labour Affairs Tripartite Cooperation Sub-council of the National Tripartite Cooperation Council (LATCS). The Committee asked the Government to provide information on any initiatives undertaken by the social partners, by the Gender Equality Committee, the LATCS or otherwise, to promote specifically the principle of equal remuneration between men and women for work of equal value.

The CEACR welcomed the amendment of Section 60 of the Labour Code which extended the period during which a worker can bring a claim for equal remuneration before a court from one to three months. However, the Government had indicated that from 1 July 2011 to 30 June 2012, no such claims had been submitted to the courts and no violations of equal remuneration provisions had been detected by the State Labour Inspectorate. It had also indicated that the Ombudsman had examined only two cases of non-compliance with equal remuneration provisions. Noting this information, the Committee pointed out that in cases where no or few cases or complaints are being lodged, this probably indicates a lack of an appropriate legal framework, insufficient awareness of rights, a lack of confidence in or absence of practical access to procedures or a fear of reprisal.

The Committee asked the Government to take measures to heighten awareness of the relevant legislation, to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of unequal pay, and to examine whether the applicable substantive and procedural provisions actually allow claims to be brought successfully.

Under Convention 111 regarding discrimination, issues related to colour and social origin were addressed. The Committee referred to the earlier adoption of the Law on the Prohibition of Discrimination of Natural Persons Engaged in Economic Activity, which prohibits discrimination with respect to self-employment on several grounds except colour and social origin. In this respect, the Committee noted the Government's indication that the grounds of race and ethnic origin, both of which are covered by the Law, include the ground of colour. The Government had further indicated that the competent authorities had yet to receive any information on cases of discrimination against self-employed persons based on social origin. The Committee recalled that the grounds of colour and race, while generally examined together, should not be considered identical, as colour differences may exist between people of the same "race" (see General Survey on the fundamental Conventions, 2012, paragraph 762). The Committee requests the Government to ensure that emerging forms of discrimination that may lead to discrimination in employment and occupation based on colour and social origin are adequately monitored to assess whether the protection afforded by the legislation remains appropriate and effective.

The CEARC noted the detailed information provided by the Government concerning the activities and institutions implementing policies for Roma inclusion. The Committee also noted the statistical information provided by the Government on the participation of Roma in training and public employment projects. These data do not allow the Committee to assess whether the number of Roma who participate in training is proportionate with the number of Roma in the total population, however. The Committee further noted that a survey on "The Situation of Roma in Latvia" with respect to education and employment was to be carried out in 2015. The Committee requested the Government to indicate whether the policy on Roma inclusion has been finally adopted and to provide specific information on the impact of measures taken to promote equal opportunity and treatment in education, vocational training, employment and occupation for minority groups, including Roma, and the obstacles encountered.

The CEARC noted from the Government's report that, between January 2013 and June 2014, labour inspectors received 43 complaints related to discrimination, on the basis of which administrative penalties were imposed on 17 persons or entities, and that enforcement measures were applied pursuant to section 32 of the Labour Law on discriminatory job advertisements. Moreover, labour inspectors participated in a training course focused on discrimination and differential treatment in May 2014. The Committee further notes the awareness-raising activities carried out by the Ombudsman concerning the rights of persons with disabilities, among others. The Committee requested the Government to continue providing information on the complaints received by labour inspectors and the Office of the Ombudsman, as well as the cases filed with the judicial authorities concerning discrimination in employment and occupation, and the sanctions imposed.

Finally, the CEARC addressed discrimination based on national origin. For a number of years, the Committee had been referring to certain provisions of the Law on State Language of 1999 concerning language requirements that may have a discriminatory impact on minority groups in employment and occupation (particularly on Russian-speaking minorities). In this respect, the Committee noted that the European Commission against Racism and Intolerance (ECRI) had indicated that occupations in the private sector which "affect the lawful interests of the public" for which the official language must be used in accordance with Section 6(2) of the Law on State Language, concerned over 1,000 professions (CRI(2012)3, 21 February 2012, paragraph 62 6(2) of the Law on State Language, so as to limit

this to instances where language is an inherent requirement of the job. The Committee requested further information regarding the language requirement regime.

Also, discrimination based on political opinion or political affiliation was addressed. The CEARC had been referring to the mandatory requirement set out in the State Civil Service Act (2000), which provides that to qualify as a candidate for any civil service position the person concerned “is not or has not been in a permanent staff position, in the state security service, intelligence or counterintelligence service of the USSR, the Latvian Soviet Socialist Republic (SSR) or some foreign State” (Section 7(8)), or the persons concerned “are not or have not been members of organisations banned by laws or court rulings” (Section 7(9)). The Committee noted the Government’s indication that the restrictions are intended to ensure a loyal and politically neutral civil service, which in turn will ensure a stable and politically neutral state administration, and that there is no intention to repeal this restriction. The Government indicated that in 2013, 18 persons were dismissed from civil service positions due to the mandatory requirements for civil servants. While understanding the Government’s concerns regarding the requirement for all government unit members to be loyal to the State, the Committee recalled that for measures not to be deemed discriminatory under Article 4 of the Convention, they must affect an individual due to activities he or she is justifiably suspected of being or proven to have been involved in. These measures become discriminatory when simply based on membership of a particular group or community.

#### **4.6 Convention 144**

Latvia has a tripartite Cooperation Council for tripartite consultations. The Government Report from the Republic of Latvia regarding the implementation of Convention 144 reports that six meetings of the National Council were held in 2012, one in 2013 and four in 2014 to discuss domestic legislative issues. Furthermore, extensive tripartite consultations were reported in relation to ILO reporting and ILO related activities.<sup>39</sup>

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<sup>39</sup> See Republic of Latvia, Government Report on Convention No. 144 “Tripartite Consultation (International Labour Standards) Convention” (1976).

## 5. Lithuania

### 5.1 Background

Trade-union membership in Lithuania is estimated at around 10%, distributed over two main confederations: LPSK and Solidarumas.<sup>40</sup> Collective bargaining coverage in the country is deemed to be rather low, around 10–15%, and the enterprise level is the principal level for bargaining.

Trade union activities are regulated by the Lithuanian Constitution. It stipulates that “trade unions shall be freely established and shall function independently. They shall defend the professional, economic and social rights and interests of employees.” Furthermore, all trade unions must have equal rights. (Article 50). Also, the right to strike has been enshrined in the Constitution: “While defending their economic and social interests, employees shall have the right to strike. The limitations of this right and the conditions and procedure for its implementation shall be established by law.” (Article 51)

The most important legislative instrument governing the Lithuanian labour market is the Labour Code. At present, the 2003 Labour Code is still in force, as subsequently amended numerous times since 2003, but the Lithuanian Parliament adopted a new Labour Code in 2016. The coming into force of this piece of legislation has been postponed for six months, however, until 1 July 2017, to give the Tripartite Council in Lithuania the possibility of discussing and agreeing on some amendments to the contested Code.

This makes the legislative situation in Lithuania rather unusual: it has an old Labour Code that is still in force and a new one that has been adopted, but which is still not in force and could undergo some changes before coming into force. In accordance with the preferences from NFS, the following report deals with both the present and the future labour codes. The law in force is described simply as the “Labour Code”, whereas wherever the adopted future Labour Code is referred to as the “2016 Labour Code” (2016 being the year when it was adopted by the Lithuanian parliament).

Article 8 of the Labour Code codifies the principle that international conventions can be directly applicable in Lithuania by stating that “Where international treaties to which the Republic of Lithuania is a party establish rules other than those laid down by this Code and other labour laws of the Republic of Lithuania, the rules of the international treaties to which the Republic of Lithuania is a party shall be applied,” and that “International treaties to which the Republic of Lithuania is a party shall be directly applied to employment relationships, except in cases where international treaties provide that the application thereof requires a special regulatory act of the Republic of Lithuania”.

While the Labour Code gives clear precedence to international conventions over national law, the 2016 Labour Code is less clear on this point. In Article 3(4), it states, regarding the sources of Lithuanian labour law, that “the international treaties of the Republic of Lithuania shall apply to employment relations directly only in cases when direct application of the international treaty stems therefrom”. It could presumably be argued that what is presently the main rule (international treaties have precedence) has become an exception that applies only when direct application from a treaty “stems therefrom”. If the Lithuanian courts and authorities adhere to the principle that national law should as far as possible seek conformity with international instruments, this difference might have restricted significance in practice, but the new formulation is clearly not aimed at strengthening international labour law in the Lithuanian labour law system.

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<sup>40</sup> A third confederation, LDF, has been excluded from the national tripartite council since it is not regarded as real.

## 5.2 Freedom of Association (Conventions 87 and 98)

In relation to the Labour Code and the present Act on Trade Unions, some issues have been raised in the dialogue between the ILO supervisory bodies (especially the Committee of Experts, CEACR).

The issue of criteria for the establishment and membership of a trade union has been discussed and resolved positively.<sup>41</sup>

The categories of civil servants whose freedom of association rights are restricted have given cause for some concern.

Employees of the professional Lithuanian army seem to be completely outside the right to organise in a trade union, although they can organise in a general association.

The procedure for declaring a strike has been much debated. Until 2010, the Labour Code had a clause which stated that one condition for declaring a strike was that at least half of the employees in the enterprise concerned voted in favour of the strike in a secret ballot. This was regarded as an excessive requirement by the ILO supervisory system, which deemed it unjustified to include non-voting employees in the assessment, and arguing that at least a majority of voting employees should be sufficient. As a result of this dialogue, the requirement was deleted and left to be regulated by the internal statutes of the trade unions.

The 2016 Labour Code has reintroduced the requirement for a strike ballot, but now the required majority is one-quarter of the members of the trade union. This requirement seems only to apply to enterprise-level strikes in accordance with Article 245, however.

A matter of concern has also been the way in which minimum services during a conflict are defined, and the compensatory measures undertaken for those employees who are deprived of the strike weapon because they participate in providing vital services to the public during the strike.<sup>42</sup>

Regarding the procedure for defining the minimum services, this task is now given to the impartial body hearing the labour dispute (arbitration), which is in accordance with ILO requirements.

In relation to the 2016 Labour Code, there are some new issues which might give cause for concern concerning the obligations for Lithuania under ILO Conventions 87 and 98.

Especially the new employee representation system, as described in Article 165, could undermine the position of trade unions and collective bargaining. The new system is prescribed in the following way:

### Article 165. System of the representation of employees

1. The representation of employees shall mean the protection of employees' rights and interests and their representation in relations with other parties of social partnership, in labour-dispute resolution bodies and institutions of social partnership as well as the creation and changes of their rights and duties or other participation when determining employees' labour, social and economic rights and duties in accordance with the procedure established by labour law norms.
2. The representatives of employees shall be a trade union, works council or employees' trustee.
3. Trade unions shall collectively represent their members – employees and persons working of equivalent to labour relations provided for in the Employment Law of the Republic of Lithuania in accordance with

41 Originally, 20 members were needed to establish a trade union. These requirements were changed, and it also became possible for a trade union to appeal in court against a decision regarding a refusal to register a trade union. See ILO, Direct Request (CEACR) adopted 2014, published 104<sup>th</sup> ILC session (2015). Furthermore there were restrictions against third country nationals becoming members in a Lithuanian trade union while working in Lithuania. In this regard, the legislation was amended 2013 (Act No XII-364 of 13 June 2013).

42 See Observation (CEACR) adopted 2014, published 104<sup>th</sup> ILC session (2015).

the procedure established by this Code or other laws. Trade unions shall also individually defend their members and represent them in individual labour relations. Collective bargaining, the conclusion of collective agreements and the initiation of collective labour disputes of interests shall be the exclusive right of trade unions.

4. The works council and the trustee of employees shall be independent representative organs of employees and represent all employees in information, consultation and other procedures of participation, whereby the employees and their representatives shall be involved in the employer's decision-making processes at employer level in the cases and in accordance with the procedure established in this Code or on the place of employment level, if it is stipulated in this Code or agreements of social partners. The employees' representatives at employer level shall be considered the employees' representatives at the place of employment level, unless labour law norms or agreements of social partners provide otherwise.
5. The activities of employees' representatives shall be organised and exercised by their cooperation and in such a way so that the general interests and rights of employees are protected as efficiently as possible. The works council may not exercise the functions of employee representation which, according to this Code, are considered exclusive rights of trade unions.

An undermining mechanism might be that works councils are made the main bodies for interaction between workers and employers. It is understandable that complementary mechanisms in addition to trade union representation are needed since the trade unions often lack representativity, but the dividing line between collective bargaining and procedures involving the works councils are made in a manner that seriously risks undermining collective bargaining. As a starting point, works councils are charged with all functions, except for collective bargaining, the conclusion of collective agreements and the initiation of collective labour disputes of interests, which are the exclusive right of trade unions. On the other hand, the parties to a collective agreement can only agree on procedures for the exercise of the rights to information, consultation and other participation as long as they do not reduce the statutory powers of the works council. It is obvious that the legislator here is creating a dual system even at workplaces with highly representative trade unions, and it is very difficult to see how this is possible considering the state's obligation to promote collective bargaining.

#### Article 193. Contents of collective agreements

1. In a collective agreement, the parties shall specify employment, social and economic terms and conditions and guarantees of the employees, as well as mutual rights, obligations and liability of parties.  
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4. The parties may consider, in a national (inter-branch), territorial or branch (production, services, professional) collective agreement:
  - 1) matters related to the setting of wages for employees of several employers or employers operating within the same branch or territory, working norms and other wage-related matters;
  - 2) health and safety at work;
  - 3) matters related to the employees' employment, professional training and requalification;
  - 4) social partnership support measures enabling the avoidance of collective labour disputes;
  - 5) other working, social and economic conditions relevant to the parties;
  - 6) procedures for making amendments and additions to the collective

- agreement, its term of validity, enforcement system and procedures, and other organisational matters related to the conclusion and carrying out of the collective agreement.
5. The parties may consider, in an employer-level collective agreement or a collective agreement on a level of a place of employment:
    - 1) terms of conclusion, amendment and termination of employment contracts;
    - 2) remuneration conditions;
    - 3) working and rest time conditions;
    - 4) health and safety at work measures;
    - 5) conditions of providing one another with information;
    - 6) procedures for the exercise of the rights to information, consultations and other participation of employees' representatives in the employer's decision adoption process, without reducing the statutory powers of the work council;
    - 7) other working, economic and social conditions relevant to the parties;
    - 8) procedure for the carrying out of the collective agreement;
    - 9) procedures for making amendments and additions to the collective agreement, its term of validity, enforcement system and procedures, and other organisational matters related to the conclusion and carrying out of the collective agreement.

According to the ILO Convention 98, Article 4 the state is under an obligation to “encourage and promote” collective bargaining. The fact that the works councils under the 2016 Labour Code have been made the primary body for employer-level interaction between employees and the employer, through a clause stating that collective bargaining cannot reduce the statutory power of the works council, has together with the provision in Article 197 regarding the application of collective agreements, according to which the agreement shall only apply to the members of the trade union that is a party to the agreement (can apply to all workers only if it is approved by the general meeting of all employees), in fact undermines collective bargaining as a general primary tool for regulating working conditions. This does not comply with the principles of freedom of association.

Compliance could easily be achieved if the main principle for collective agreements was to apply them to all employees (unless otherwise stipulated in the agreement) in combination with flexible rules regarding the content of collective bargaining which would enable the parties to also agree on information and consultation rights, while the works councils could be complementary bodies for information and consultation rights when no collective agreements are applicable.

**Other issues:** *Dismissal protection for trade union representatives and other employee representatives.* In the “old” Labour Code, we find some Articles aimed at protecting employee representatives. According to Article 134, employees who are elected to employee-representative bodies may not be dismissed from work without the prior consent of the body concerned during the period for which they have been elected. Furthermore, Article 135 stipulates that in the event of a reduction in the number of employees for economic or technological reasons or due to structural reorganisation at the workplace, the right of priority to retain the job must be enjoyed by those who are elected to employee representative bodies.

Similar stipulations cannot be found in the 2016 Labour Code. Instead the new code introduces a mechanism granting special authority to the State Labour Inspectorate to give consent to terminate the employment contract of a person representing employees. Trade union control is replaced by state-body control. From the point of view of the principles of freedom of association, this is not a problem per se. The problem is that, based on the text of the new Act, the prioritisation seems to be lacking. The Act introduces a procedure where the State Labour Inspectorate has to verify that the termination is not arbitrary or discrim-



inatory, but employee representatives do not have priority rights any longer. This could mean that in a redundancy situation where two out of ten employees are facing dismissal, the employer can apparently lawfully choose to terminate the employment contract of the union representative.

Article 83 of the “old” Labour Code sets out some principles regarding action prohibited for the employer during industrial action. An example is that replacing striking workers with new recruitments is not allowed. The new 2016 Labour Code is mute on this point. Considering Article 256 of the 2016 Labour Code, which stipulates that the employer can declare a lockout seven days after a strike begins, it seems to be possible to recruit new workers to replace those who are on strike and continue the lockout against trade union members.

### **5.3 Child labour (Conventions 138 and 182)**

Convention 138 may permit light work for persons aged 13 to 15. In its 2015 Conclusions on Lithuania, the Committee of the European Social Charter, referring to Article 7 of the Charter, according to Section 36 of the Law on Occupational Safety and Health, states that during holidays, young persons under 15 years of age may work up to 7 hours per day and 35 hours per week and young persons who have reached the age of 15 may work up to 8 hours per day and 40 hours per week.<sup>43</sup> The Committee’s interpretation is that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week to avoid any of the risks that the performance of such work might have for their health, moral welfare development and education. If the concept of “light work” is similarly interpreted in Article 7 of the Convention as in Article 7 of the European Social Charter, which seems to be consistent and reasonable, the legal situation in Lithuania does not seem to be in full conformity with ILO Convention 138.

### **5.4 Forced labour (Conventions 29 and 105 (and Protocol 2014))**

Lithuania has not ratified Protocol 2014 of the Forced Labour Convention (29). Lithuania is a country of origin of victims of trafficking, but to certain extent a country of destination, particularly for men subjected to trafficking for labour exploitation.

Prisoners working for private enterprises without their prior, voluntary, formal and informed consent is a problem (Article 2 (2) (c). (C 29).

### **5.5. Equal pay and non-discrimination (Conventions 100 and 111)**

Regarding equal pay and non-discrimination, there have been three concerns raised by the ILO supervisory body relating to the Lithuanian situation: 1) there are issues related to the assessment of equal pay, on the one hand, and the enforcement of the principle of equal pay, on the other (Convention 100); 2) in relation to Convention 111, there are concerns regarding discrimination on multiple grounds, such as ethnic minority groups like Roma women and persons with disabilities, and also regarding the lack of mechanisms to deal with and enforce cases of sexual harassment; 3) there are concerns that the general approach of weakened protection against dismissals and changes in terms and conditions of employment in the new Labour Code might especially result in a weakened position for pregnant women and women with small children.

In the following we discuss these concerns more in detail.

In its Direct Request<sup>44</sup> to Lithuania in 2013, the CEACR sought information on the methodology used to classify and rank different jobs and positions, i.e. how job evaluation and classification were performed. Furthermore, the Committee asked the Government to provide information on the concrete measures taken to strengthen the capacity of labour inspectors to identify and address unequal

<sup>43</sup> Conclusions 2015 – Lithuania Article 7-1.

<sup>44</sup> Direct Request (CEARC) – adopted 2013, published 103<sup>rd</sup> ILC session (2014)

remuneration, as well as to promote public awareness of the legal provisions on equal remuneration, the procedures and remedies available, and to assist workers in such procedures. The CEACR noted the persistent gender-based pay gap and that the Lithuanian State report did not contain information on measures taken to reduce the gender-based pay gap. In relation to Articles 3 and 4 of Convention 100, the Committee made some observations and asked for information on measures adopted to promote the use of objective job evaluation methods that are free from gender bias, and the results achieved. The Committee also asked the Government to provide information on the steps taken, in cooperation with the social partners, to promote the principle of the Convention in sector, territorial and enterprise negotiations and to ensure that work in sectors and occupations in which women are predominantly employed is not being undervalued.

The obligations under Convention 111 were addressed in the Direct Request from the CEACR in 2013.<sup>45</sup> The Committee wanted information on preventive measures regarding sexual harassment at work, as well as information about any cases brought before the competent authorities.

The CEACR raised concerns regarding possible discrimination in Lithuania on the labour market based on political opinion, nationality, disabilities and ethnic background (especially the employment opportunities for the Roma community).

The problems of implementation and enforcement have also been addressed by several supervisory bodies. In Lithuania, the Equal Opportunities Ombudsperson does not have the right to initiate legal proceedings. The Ombudsperson can be involved as an expert witness, but cannot directly assist a victim of discrimination to bring a case to court. The Ombudsperson may refer relevant material to the public prosecution authorities, if there are indications that a criminal offence might have been committed. The 2015 Annual Report from the Equal Opportunities Ombudsperson shows that 33% of complaints received (altogether 265 in 2015) were workplace related and in only 2% of the cases was the investigation referred to a pretrial investigation.<sup>46</sup>

The Lithuanian Law on Equal Opportunities for Women and Men was amended in 2014. The new legislation has been assessed especially from the point of view of EU law by professor Tomas Davulis.<sup>47</sup> His general conclusion is that the general implementation of EU gender equality directives in Lithuania is considered satisfactory, but that there is a lack of any evidence of a real practical implementation of non-discrimination legislation and that there is some inconsistency between two relevant different legal instruments: the 1998 law on Equal Opportunities for Women and Men (amended 2014) and the 2003 Law on Equal Treatment (amended 2008).

Regarding the protection of pregnant women employees and women returning to work after maternity leave, it seems that the special protection regime from the 2010 Labour Code is kept in the 2016 Labour Code. This special protection applies to women working in an open-ended contract. The fact that the new legislation paves the way for different forms of flexible employment contracts might result in a decrease of employee women who actually enjoy this stronger protection.

## 5.6 Tripartite consultations

The administrative structure of the Tripartite Council of Lithuania was modified: the independent legal person (Office of the Tripartite Council) was abolished in November 2014 and the Ministry of Social Security and Labour took over the organisational aspects of the functioning of the Tripartite Council of the Republic of Lithuania. Corresponding amendments to the Labour Code were made.

<sup>45</sup> Direct Request (CEACR) – adopted 2013, published 103<sup>rd</sup> ILC session (2014).

<sup>46</sup> See the Annual report of the office of the Equal Opportunities Ombudsperson. General statistics 2015. Available <http://www.lygybe.lt/en/>

<sup>47</sup> Davulis Thomas, Country Report. Gender Equality. How are EU rules transposed into national law? European Commission 2016., p. 43.

The 2016 Labour Code contains detailed rules on the Tripartite Council of the Republic of Lithuania. The list of matters the Tripartite Council shall consider explicitly mentioned “matters to be considered according to provisions of the International Labour Organisation’s Convention 144” (Article 185.9).

## 6. Conclusions

### 6.1. Ratifications

In terms of the eight core ILO labour conventions, the Baltic States have done their homework. All conventions have been ratified and implementation reports have been submitted. The only remaining instruments to be ratified among the Core Conventions are, for Latvia and Lithuania, the 2014 Protocol to Convention 29, which Estonia recently ratified.

### 6.2 The general picture

The legislation required to implement the ILO standards has been adopted. The problems that remain primarily involve enforcement rather than a lack of adequate legislative measures.

There is a general problem regarding access to justice in cases regarding fundamental labour rights. To strengthen these rights, it would be important to make an in-depth review of each country to identify the mechanisms that lead to the lack of effective enforcement of fundamental labour rights.

The crisis after 2008 created problems both for the tripartite dialogue as well for trust relations between the Baltic States and the labour market organisations. The crises also revealed that the labour market systems in the Baltic States are still rather fragile and that much development work has been done with support from the European Union and other international organisations, but that efforts need to be made to consolidate the national institutions to enable them to deal with future developments in a sustainable manner. Otherwise there is a risk that unresolved social problems will foster populism, nationalism and extremism.

This situation seems to have been handled slightly differently in the respective states. In Estonia, new legislation has been put on hold, in Lithuania the Government is introducing a rather radical legislation more or less openly aimed at undermining trade unions and the collective bargaining system.

From the ILO point of view, the formal minimum requirements set out in Convention 144 are fulfilled by all three Baltic States. The ILO activities, however, are not regarded as an integral part of the developing of the national labour market systems, but as a necessary international obligation. The labour market parties are rather passive in using the ILO system and they rarely submit observations and reports to the ILO. There are obviously many reasons for this situation, not at least the lack of resources and experience of ILO matters.

One way to strengthen the ILO commitment and the influence of trade unions in the Baltic States would be to establish close cooperation on ILO matters between trade-union confederations in the Baltic States. Since there also is a need to raise awareness about ILO standards in the Nordic countries, it could be worth exploring whether some cooperation also could cover the Nordic trade unions and the NFS. This is also important considering that the ILO's core conventions are currently not only relevant in the context of the making of national labour law, but they are – based on European Union law – used in public procurement for subcontractors and in corporate social responsibility (CSR) codes and commitments that multi-national companies frequently enter into.

### 6.3 Implementation of the Core Conventions in the Baltic States

Freedom of association. There are several common features regarding the approach to ILO Conventions 87 and 98 in the Baltic States. This may not be surprising considering their common history. In the following, I briefly sum up the main areas where implementation needs to be improved:

- a) We find different forms of restrictions of freedom of association for groups employed in the public sector. The ILO conventions allow for some limited restrictions, but legislation in the Baltic states clearly goes beyond these minimum standards.
- b) The other area where the Baltic states have adopted a minimalistic approach relates to the collective bargaining system. The protection of union representatives seems rather weak, and there is little promotion or strengthening of collective bargaining on the part of state authorities.

The 2016 Labour Code in Lithuania goes one step further in this regard since it clearly makes collective bargaining a secondary tool for worker participation by narrowing the issues that can be agreed upon in collective agreements. The simultaneous restriction of the scope of application of collective agreements to union members only together with the weakening of the position of union representatives cannot result in any other conclusion than that this legislation undermines collective bargaining in a way that is incompatible with ILO Conventions 87 and 98.

- c) The detailed legislation regarding industrial action and strikes in the Baltic States is also rather restrictive, as pointed out in the above. Many of the stipulations have not been tried in practice and the extent to which national courts could interpret some of them in accordance with ILO standards is unclear.

Forced labour, child labour and non-discrimination. In these areas, it is not only important to have a minimum of ILO standard legislation in place, it is also crucial to introduce policies and programmes to deal with the problems in a systematic, long-term manner. Here, preventive measures are as important as well-functioning enforcement measures.

Tripartite activities to identify the problems, and tackle them, seem to be absent in the Baltic States. We do need more than casuistic programs financed by EU institutions or other international organisations; long-term policies and commitment at national level should also be established.



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

– One region – three different countries

by Siri Relling and Bernt Fallenkamp

August 2017

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

\* 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

### 4.1 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.

### 4.2 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.

### 4.3 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.<sup>48</sup>

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 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.<sup>49</sup>

### 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.

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<sup>48</sup> Both in the old and the new, that entered into force on 1 July 2017.

<sup>49</sup> LPSK's position in the new Labour Code in Lithuania, 26 June 2017 (Appendix 3)

### **6.5 Possible actions**

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.

1. 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.
2. 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.
3. 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 Krupaviien**, chairperson, Solidarumas

**Riardas Garuolis**, board member, Solidarumas, and chairperson of the Trade Union of Tour Guides (Solidarumas)

**Daiva Kvedarait**, international secretary, Solidarumas

**Manvydas Pilka**, lawyer, LPSK

**Gražina Gruzdien**, chairperson of the Trade Union of Lithuanian Food Producers (LPSK)

**Aleksandras Posochovas**, chairperson of the Service Workers' Trade Union (LPSK)

**Evelina Šilinyt**, 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 Egl Radišauskien**, 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, Lauupeo 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 4<sup>th</sup> 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

# **Steering Group Analysis – a Summary of Project Findings**

**by Anna Gustafsson, Jens Erik Ohrt and Maria Häggman**

## Introduction

One of the main purposes of this project is to determine whether any given legislation or practice complies with the ILO Core Conventions and Convention 144 on Tripartite Consultation.

As a baseline for this analysis, Niklas Bruun prepared a report, structured as separate country reports for each of the three Baltic States, including a description of the approach to international conventions taken by the respective national legal systems and the implementation of the respective ILO Conventions. Finally, Niklas Bruun also drew some conclusions for each country and made some general conclusions and recommendations relating to all three Baltic States.

Niklas Bruun's report was the starting point for the field study interviews conducted by Siri Relling and Bernt Fallenkamp, which successfully contributed to the analysis of the Baltic States Trade Union Movement challenges in relation to the ILO core conventions and social dialogue.

Some questions have arisen regarding the answers received from the field study and the questions that we did not get any answers to. The right to strike in the public sector is such an issue.

The Steering Group therefore prepared this separate note on questions that arose from the Niklas Bruun report and as well as the answers received, including parts of the interviews that remain unanswered. It is our intention by doing so, to identify areas of concern that need further discussion and consideration.

The Steering Group therefore would like to draw the attention to the following issues during the presentation of the field study at the midway conference in Tallinn 29 August 2017, followed by a discussion on developing a strategy to improve workers' rights in the respective countries.

## Estonia

*Niklas Bruun highlights the following concerns with regard to:*

### 3.2 Freedom of Association (Conventions 87 and 98)

- i. Section 19 of the Trade Union Act recognizes that privileges due to trade union membership should not be regarded as discrimination. However, concerns have been raised within Estonian trade unions that the Labour Inspectorate holds the position that trade unions and employers are not allowed to agree on certain benefits for trade union members in collective agreements. Such an interpretation is clearly not within the limits of ILO conventions 87 and 98.
- ii. Under Article 9 of Convention 87, the extent to which the guarantees of the Convention must apply to the armed forces and police can be determined by national law, but when restrictions are placed on the right to strike in the public sector, these restrictions should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part. Second, the group defined as exercising public authority seems to be very broadly defined in Estonia. Therefore, the problem still appears to be partly unresolved in Estonia. (The issue is also addressed in the Field Study report)
- iii. According to section 59 of the Civil Service Act, the strike ban applies only to officials exercising public authority, however this group seems to be very broadly defined in Estonia, raising questions whether this goes beyond the limited restrictions allowed for in or C 87 and 98. (The issue is also addressed in the Field Study report)

*From the Field Study interview, the following observations are made:*

1. Benefits, vacation, additional vacation, work-time is regulated by law, but some issues are discussed by collective agreements, which indicate the point raised by Mr. Niklas Bruun (i).
2. The restrictions on freedom of association and collective bargaining, including the right to strike within the public sector, highlights and address a key principle of the fundamental conventions, including the objective of the strike, definition of civil service and essential services.



3. It is not clear whether the criteria: “5 members to make trade unions, 5 trade unions to have sectoral organization, and 5 to make central organization” derives from legislation or trade union statutes?
4. Discrimination against Trade Union members or leaders seems to occur frequently, which raise the issue of protection against anti-union discrimination. The interviews suggest that the government has recognised a problem with the enforcement of laws in regard to protecting trade union members. And the trade unions emphasize that there is no labour court, only dispute committees under the labour inspectorate.
5. There seems to be two terms to define a worker representative: 1) trade unions, and 2) workers representative – (Trustee)?
6. The labour contract act gives you minimum and maximum obligations. But the civil service act is a maximum act. These contracts clearly have a great impact and limits the collective bargaining possibilities.
7. There seems to be great uncertainty regarding what would be regarded as political strikes and hence illegal (stated both by the Employer Confederation and the Trade Union Confederation).

*Niklas Bruun highlights the following concerns with regard to:*

### 3.3 Child Labour (Conventions 138 and 182)

- i. The Committee of the European Social Charter has concluded that the daily and weekly working hours for children subject to compulsory education were excessive as the situation does not conform with Article 7.3 of the European Social Charter. There are clearly similar problems relating to ILO Convention 138.

*Niklas Bruun highlights the following concerns with regard to:*

### 3.4 Forced Labour (Conventions 29 and 105, and Protocol 2014)

- i. The Committee encouraged the Government to pursue its efforts to ensure that thorough investigations and prosecutions are carried out against perpetrators of human trafficking. It requests the Government to continue providing information on the application of Section 133 of the amended Penal Code in practice, including the number of investigations and prosecutions carried out, as well as the specific penalties applied.
- ii. The Committee also requested the Government to provide information on the application in practice of the “Development plan for reducing violence (2010–2014)”, indicating whether the objectives set out had been achieved and whether an evaluation had been made to assess the impact of the measures adopted.
- iii. The Committee also requested information on the measures taken to protect victims of trafficking and to facilitate their access to immediate assistance and effective remedies.

*Niklas Bruun highlights the following concerns with regard to:*

### 3.5 Equal pay and non-discrimination (Conventions 100 and 111)

- i. ... there are still no efficient policies in place to address the remaining structural inequality problems on the Estonian labour market.
- ii. ... Therefore, the UN CEDAW-Committee<sup>10</sup> raised concerns regarding the following matters in 2016:
  - a) the lack of an effective mechanism for filing complaints about sexual harassment in the workplace that allows cases to be brought before the court ex officio;
  - b) the existence of a persistent horizontal and vertical occupational segregation and gender pay gap of almost 30% and a lack of transparency concerning wages at enterprise level;
  - c) the lack of systematic collection of sex-disaggregated statistical data on employment, as required under the Gender Equality Act;
  - d) women’s significant underrepresentation in management positions in the private sector;

- e) the low employment rate among women aged 25–49, due to unequal sharing of child raising and caretaking responsibilities between women and men, and the lack of childcare services in the state;
  - f) employment discrimination against women returning to work after maternity leave.
- ii. The CEACR has raised similar concerns and requested information on any measures taken by the social partners to promote equality at all levels of the Estonian labour market.

*Niklas Bruun highlights the following concerns with regard to:*

### 3.6 Convention 144

- i. There are some reports from Estonia indicating that the handling of the economic crisis in Estonia damaged the relations between the state or the government, on the one hand, and the social partners, on the other. Trade unions agreed to cuts, but government promises were not fulfilled and several agreements already made were breached. Furthermore, the wish to make quick decisions resulted in low or only formal involvement of social partners. (The issue is also pointed out in the Field Study report)

*From the Field Study interview, the following observations are made:*

1. Statements like “doesn’t take ILO too seriously” – “government or other authorities don’t work to encourage social dialogue” – “there is no national tripartite committee”- “would like to have it more organized and formalized” – “social dialogue is important, but our politicians have stated other priorities” underlines and clarifies the point raised by Mr. Niklas Bruun (i)
2. The lack of social dialogue stresses the importance of dialogue/meetings and cooperation between the social partners in order to strengthen their position towards the government/parliament and create the basis for a future positive social dialogue in the country. The social partners indicate problems both in regard to informality of structure, information and involvement.

*3.7 In general, the following possible actions are proposed from the Field Study interview:*

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

## Latvia

*Niklas Bruun highlights the following concerns with regard to:*

### 4.2 Freedom of Association (Conventions 87 and 98)

- i. In the 2014 Trade Union Act, this requirement was revised and the requirement of 50 members now applies to industrial unions only (established outside an undertaking), while the requirement is otherwise at least 15 members, or less than one-fourth of the total number of employees at the undertaking, which may not have less than 5 employees (Section 7).
- ii. Other restrictions concern the objectives of a strike. Solidarity strikes are considered illegal unless the dispute concerns a ‘general agreement’, i.e. a sectoral-level collective agreement. Since sectoral agreements are rare, this makes strikes even rarer. Politically-motivated strikes are also illegal.
- iii. Finally, there are restrictions on the right to strike for various groups of public servants (e.g. firefighters, police officers, judges, public prosecutors, etc.)

The list of 'essential services' that have to be ensured during a strike is very broad. Essential services include medical science and first aid services; public transportation services; drinking water supply services; services generating and supplying electricity and gas; communications services; air service control and the service providing meteorological information to the air service control; services relating to the security of all kinds of transportation; waste and sewage collection and water purification services; radioactive goods and waste storage; utilisation and control services and civil protection services. (The issue is also addressed in the Field Study report)

*From the Field Study interview, the following observations are made:*

1. According to Niklas Bruun, the legislation fixes a requirement of 50 members to create industrial unions, which by ILO has been considered obviously, too high a figure. Consultation in order to reduce the fixed number is recommended.
2. The strong restriction on both the objection on strikes and the right to strike for various groups due to the very broad list of essential services is generally not of big concern. Nevertheless, further discussion and consideration on these issues might be worth considering.
3. It is not clear from the field study if there exist two definitions of worker representative: 1) trade unions, and 2) workers representative?
4. In regard to collective bargaining in the public sector there are restrictions on what issues that can be agreed upon in law? (TU interview) Also unclear if this was "just" for the public sector or concerns all collective agreement bargaining?
5. The trade unions also made a general comment that collective bargaining "does not function properly" which seems worth exploring further, not least given the low coverage.
6. There is also here an access to justice challenge concerning conflicts on labour rights: labour commissions that are informal, at company level and seek compromises.

*Niklas Bruun highlights the following concerns with regard to:*

4.3 Child labour (Conventions 138 and 182)

- i. Amendments to Section 132 introduced a distinction between the maximum working time of youths aged 13 to 15 and youths aged 15 to 18. Previously, Section 132 had allowed the employment of youths aged 13 to 18 for a maximum of 4 hours daily and 20 hours weekly during school holidays. The amendments allow the employment of youths aged 15 and above for up to 7 hours daily and 35 hours weekly during school holidays. The amendments were justified as reflecting the reality that individuals aged 15 to 18 have the ability to perform the same type of work, with the restriction of working time depending on whether the person aged 15 to 18 is still subject to mandatory schooling. *The ILO position on these amendments has not yet been published.*

*Niklas Bruun highlights the following concerns with regard to:*

4.4 Forced labour (Conventions 29 and 105, and Protocol 2014)

- i. Until now, Latvia has not ratified Protocol 2014 of the Forced Labour Convention.
- ii. In relation to Convention 29, issues relating to the work of prisoners and the right of members of the armed forces to leave service during peacetime have been a matter of particular concern.

Therefore, the Committee requested the Government, in its next report, to provide information on how national legislation and practice ensure that work done by prisoners for private enterprises both inside and outside prison premises, occurs only with their formal and informed voluntary consent and that this consent is free from the menace of any penalty, including the loss of rights or privileges.

*Niklas Bruun highlights the following concerns with regard to:*

#### 4.5 Equal pay and non-discrimination (Conventions 100 and 111)

- i. Section 60 of the Latvian Labour Code (Law) stipulates that the principle of equal pay for the same kind of work or work of equal value shall apply.
- ii. Under Convention 100, the CEACR has addressed the gender wage gap and occupational segregation. The Committee noted an overall gender wage gap in 2013 (first quarter) of approximately 24.8% in the public sector and 13.9% in the private sector (23.4% and 15.6% respectively in 2011). Also, referring to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee noted the Government's indications regarding measures to implement the Gender Equality Action Plan 2012–2014 to address occupational segregation, particularly in the field of education. Noting that the gender wage gap remained stable, the Committee once again urged the Government to take the necessary steps to reduce the gender wage gap in the public and private sectors, including taking measures to improve women's access to a wider range of jobs and positions.
- iii. The Committee also asked the Government to continue to provide updated statistical information on the distribution of men and women in the various economic sectors, occupational categories and positions, as well as their corresponding earnings.
- iv. The Committee asked the Government to ensure that the method used to establish the classification of the positions and, accordingly, to determine whether the remuneration of public officials and employees are based on objective criteria, and positions traditionally occupied by women are not undervalued and therefore classified at a lower level in comparison to those traditionally held by men.
- v. The Committee recalled that in discussing equal remuneration, the overall societal context of equality and non-discrimination cannot be ignored and needs to be addressed, and if measures to reconcile work and family responsibilities are important in this context, it is essential that such measures are made available to both men and women on an equal footing.
- vi. The Committee requests the Government to ensure that emerging forms of discrimination that may lead to discrimination in employment and occupation based on colour and social origin are adequately monitored to assess whether the protection afforded by the legislation remains appropriate and effective.
- vii. Finally, the CEARC addressed discrimination based on national origin. For a number of years, the Committee had been referring to certain provisions of the Law on State Language of 1999 concerning language requirements that may have a discriminatory impact on minority groups in employment and occupation (particularly on Russian-speaking minorities).
- viii. Also, discrimination based on political opinion or political affiliation was addressed. The CEARC had been referring to the mandatory requirement set out in the State Civil Service Act (2000), which provides that to qualify as a candidate for any civil service position the person concerned "is not or has not been in a permanent staff position, in the state security service, intelligence or counterintelligence service of the USSR, the Latvian Soviet Socialist Republic (SSR) or some foreign State" (Section 7(8)), or the persons concerned "are not or have not been members of organisations banned by laws or court rulings" (Section 7(9)).

*From the Field Study interview, the following observations are made in regard to*

#### 4.6 Convention 144

1. There is a consensus on a well functioning Social Dialogue among the government and social partners in Latvia on central level. All parties however do point out that there are problems on sectoral and company level.

*4.7 In general, the following possible actions are proposed from the Field Study interview:*

1. Although there is a solid tripartite dialogue on the national level, there is low coverage of collective agreements on sectorial and company level. The Trade Union and the Employers' organisation need to develop a solid bipartite dialogue on branch union level, and focus on training of shop stewards and managers on labour relations, with the focus of negotiation-skills and modernisation of the collective agreements.
2. The Government, as an employer for the public sector, should consider establishing collective agreements that include negotiations on wages for their employees, including teachers, nurses, etc.

## **Lithuania**

*Niklas Bruun highlights the following concerns with regard to:*

### **5.2 Freedom of Association (Conventions 87 and 98)**

- i. The categories of civil servants whose freedom of association rights are restricted have given cause for some concern ... Employees of the professional Lithuanian army seem to be completely outside the right to organise in a trade union, although they can organise in a general association.
- ii. The procedure for declaring a strike has been much debated ... The 2016 Labour Code has reintroduced the requirement for a strike ballot, but now the required majority is one-quarter of the members of the trade union. This requirement seems only to apply to enterprise-level strikes in accordance with Article 245, however.
- iii. A matter of concern has also been the way in which minimum services during a conflict are defined, and the compensatory measures undertaken for those employees who are deprived of the strike weapon because they participate in providing vital services to the public during the strike.
- iv. Regarding the procedure for defining the minimum services, this task is now given to the impartial body hearing the labour dispute (arbitration), which is in accordance with ILO requirements.
- v. In relation to the 2016 Labour Code, there are some new issues which might give cause for concern concerning the obligations for Lithuania under ILO Conventions 87 and 98. Especially the new employee representation system, as described in Article 165, could undermine the position of trade unions and collective bargaining. (The issue is also addressed in the Field Study report)

*From the Field Study interview, the following observations are made:*

1. The workers' organization points out limitations on the right to strike in the new labour code, that the government is reassessing at the time of the interview:  
"Regarding strikes, there used to be restriction for replacement of striking people by the employer, this restriction is not there anymore. New concept: "lock-out". Strike can only be 7 days long and after that, the employer can enforce a lock-out, which means they will replace the workers."
2. The employers organization points at a problem where lawyers work to get cases to court even though the social partners agree on issues. ("90% of cases where the social partners agree, the lawyers want to go to court.")
3. The Trade Unions point out that the new labour code only offers protection to the trade union leader and the Work Council, not to other elected leadership.

*Niklas Bruun highlights the following concerns with regard to:*

### **5.3 Child labour (Conventions 138 and 182)**

- i. If the concept of "light work" is similarly interpreted in Article 7 of the Convention as in Article 7 of the European Social Charter, which seems to be consistent and reasonable, the legal situation in Lithuania does not seem to be in full conformity with ILO Convention 138.

*Niklas Bruun highlights the following concerns with regard to:*

#### 5.4 Forced labour (Conventions 29 and 105 (and Protocol 2014))

- i. Lithuania has not ratified Protocol 2014 of the Forced Labour Convention (29).
- ii. Lithuania is a country of origin of victims of trafficking, but to certain extent a country of destination, particularly for men subjected to trafficking for labour exploitation.
- iii. Prisoners working for private enterprises without their prior, voluntary, formal and informed consent is a problem (Article 2 (2) (c). (C 29).

*Niklas Bruun highlights the following concerns with regard to:*

#### 5.5 Equal pay and non-discrimination (Conventions 100 and 111)

- i. Regarding equal pay and non-discrimination, there have been three concerns raised by the ILO supervisory body relating to the Lithuanian situation: 1) there are issues related to the assessment of equal pay, on the one hand, and the enforcement of the principle of equal pay, on the other (Convention 100); 2) in relation to Convention 111, there are concerns regarding discrimination on multiple grounds, such as ethnic minority groups like Roma women and persons with disabilities, and also regarding the lack of mechanisms to deal with and enforce cases of sexual harassment; 3) there are concerns that the general approach of weakened protection against dismissals and changes in terms and conditions of employment in the new Labour Code might especially result in a weakened position for pregnant women and women with small children.

*Niklas Bruun highlights the following concerns with regard to:*

#### 5.6 Convention 144

The administrative structure of the Tripartite Council of Lithuania was modified: the independent legal person (Office of the Tripartite Council) was abolished in November 2014 and the Ministry of Social Security and Labour took over the organisational aspects of the functioning of the Tripartite Council of the Republic of Lithuania. Corresponding amendments to the Labour Code were made. (The issue is also addressed in the Field Study report)

- i. The 2016 Labour Code contains detailed rules on the Tripartite Council of the Republic of Lithuania. The list of matters the Tripartite Council shall consider explicitly mentioned “matters to be considered according to provisions of the International Labour Organisation’s Convention 144” (Article 185.9).

*From the Field Study interview, the following observations are made:*

#### 5.6 Convention 144

1. According to the two social partners, the state alone tried to impose changes to the tripartite council without consultations with 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, and argue that this should not be decided by one partner alone. The interview with the government representative also emphasizes that the social partners need to meet specific criteria that will be assessed by the Ministry of Social Security and Labour.

*5.7 In general, the following possible actions are proposed from the Field Study interview:*

The Government, in cooperation with the Trade Union and Employers’ Organisation, should, according to ILO Convention 144 on Tripartite Consultations, 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.

1. The Government should establish solid tripartite institutions and fora that, irrespective of the change of governments/political parties, will last and contribute to a sound social dialogue on both bipartite and tripartite level.

2. The government should establish independent institutions that can deal with labour issues and breaches of standards and regulations, as e.g. through a Labour Court. There is a need for a neutral place for the Trade Union to voice concern related to labour issues, like harassment of workers/shop stewards.
3. The Government should, together with the Employers' organisation and the Trade Union, work to combat the informal sector and corruption, and to increase transparency, trust and sound debate.

Other general conclusions that can be drawn from the field study:

- Respondents in all countries have identified the need for strong social partners and more education. Training of managers and shop stewards in labour relations is vital for building strong organisations and to have a good social dialogue on a bilateral level, including focus on negotiations skills and capacity building in collective bargaining
- Many of the respondents have pointed at the structure of the labour market as a key challenge for organising. i.e the number of SMEs. This problematic could merit further study.
- The partners have pointed out a need for education and information about the ILO system
- All parties have pointed out the problem of representativity
- There seems to be a general problem of access to justice in cases regarding fundamental labour rights. Bruun suggests that “to strengthen these rights, it would be important to make an in-depth review of each country to identify the mechanisms that lead to the lack of effective enforcement of fundamental labour right.” Might this be a suggestion as part of a strategy going forward?





# Elements of a Time-bound Action Plan for the Reinforcement of Baltic Trade Unions

by Kari Tapiola

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# 1. Unfavourable Historical Starting Point

The legacy of the Soviet system was experienced differently in the Baltic States than in the other Soviet republics, which gained independence – most of them with a minimum of preparation or national desire – when the Soviet Union collapsed. Estonia, Latvia and Lithuania had been independent during the period between the two World Wars, but fell under Soviet occupation both at the beginning of World War II and after it. They had trusted in the new League of Nations. They had been members of the International Labour Organisation and ratified a number of its conventions. Their economic and political systems were comparable to those in Central and Western Europe. The Baltic States had become increasingly authoritarian, but this was not very different from what was true of many other Central European countries at the time.

After the war, the Baltic States were incorporated into the Soviet Union. This meant that an alien political and socio-economic system was imposed on them. This system, controlled by the Communist Party, differed from their history of independence and previous foreign dominance. For all practical purposes, independent trade union and employer activities ceased.

In this system, trade unions were a “transmission belt” for centralised decision-making. Lenin called trade unions a “school of communism”, but in practice trade union leaders were not always at the vanguard of political action. Rather, over the years trade unions came to be known as the “graveyard of political officials”.

The role of socialist management differed radically from that of employers in a market economy. In addition to production (which both trade unions and management were to promote), socialist state enterprises were to provide full employment and social services for their workers. In an economy characterised by shortages of goods and products, the enterprises had an important distributive function. In large enterprises this could take place through subsidised shops on the premises. The material support arrangements and social security in general were essentially run by the trade unions. Managers were also members of trade unions, and this was their primary source of social protection. Private small-scale entrepreneurship did not officially exist.

The movement to restore independence to the Baltic States started with an initial emphasis on economic self-determination. On the part of trade unions, this did include the option which characterised other former Soviet states: the restructuring of existing trade unions and adapting them to the realities of the market economy.

The restructuring of the Estonian EAKL started before the restoration of independence, and in fact it inspired the Federation of Independent Trade Unions (FNPR), which was being set up in the Russian Federation. Yet the political and economic transitions were not comparable. Russia emerged as the successor state of the Soviet Union, while the Baltic States returned to independent rule, waving aside the formula of the Commonwealth of Independent States used for the rest of the former Soviet Union.

The changeover to a market economy in the Baltic States was very rapid. It was assisted by both investment from neighbouring Nordic countries and the knowledge of the market economy model which the Baltic States had gradually acquired and which, under perestroika, they now could make use of. Estonia, Latvia and Lithuania had been more advanced than the other Soviet Republics in terms of economic development, especially regarding consumer products but also radio-electronics.

Finland had established a form of free trade with the Soviet Union at the time

of the trade agreement with the EEC in the 1970s. This originally rather fictional set-up suddenly became a reality when the borders were thrown open. Much of the investment from Finland was physical movement across the Gulf of Finland of relatively small-scale enterprises, which had lost their Soviet market and were not competitive in other international markets. To many of them, the Baltic States offered a relatively easy way out of this predicament. The production they created was not comparable to that of the large-scale enterprises of the Soviet days, nor they did not come with any social model to manage the employment or working conditions of their workforce.

This process in the Baltic States cannot be characterised as deliberate shock therapy in the same way as in Poland. It was comparable, but it lacked the intentional shock given administered by the programme of the Polish Minister of Economy, Leszek Balcerowicz. Baltic developments consisted rather of a rapid creation of a new economy, with direct foreign investment from neighbouring Nordic and other European countries, coupled with liberalisation and deregulation. The former “commanding heights” of the state-owned economy were not knocked down, but rather a new economy with new rules took over at the primary level of economic activity.

In retrospect, retaining a large trade-union movement, which would have been restructured on the basis of the Soviet practice and with a significant variation of its functions, was not a feasible alternative for the Baltic States. The nature of economic transition worked against this alternative.

In this respect the Baltic States differed from the rest of the formerly Communist Central and Eastern Europe. What is common, though, is that much of post-Soviet trade unions’ activities depended on a survival strategy in situations where the ownership and decision-making structures of enterprises had changed but the social realities under which production and work were carried out remained much the same as earlier. In such cases, the old trade unions became a default position.

The property of the old trade unions from the Soviet time was an inherited but poisonous asset. It soon became clear that the maintenance and use of this property cost real money in the new market economy, and these costs could not be defrayed due to declining membership dues. Certain disagreements in the Baltic States regarding former trade union properties were brought to the ILO’s Committee on Freedom of Association around 2000. In Latvia, a trade union won back its premises through the courts. In Lithuania, the property was shared and managed in a manner which in practice did not satisfy all trade unions.

The Baltic trade-union movement has had no recent tradition of defending the rights of the workers against either employers or governments. The political system has varied between authoritarian right-wing rule and Communism since the 1930s. Employer policies were a new experience for all.

Yet governments were not openly hostile to the trade unions. In each Baltic State, trade unions had supported the independence movement. Consequently, trade unions did not end up in a political wilderness even if, at least in Estonia and Latvia, large number of workers were non-nationals.

There was a degree of tension in Estonia between the central leadership and Russian-speaking workers in the eastern region of the country (Narva, Kohtla-Järve) for whom maintaining the old structures was a source of protection in a post-industrial region that was now in difficulty. Due to internal turbulence in the Russian Federation at the time, this situation was not exploited by Russia. Instead, some radical Scandinavian unions attempted to support the eastern region’s unions through a human rights agenda. In Lithuania, the Russian-speaking minority had been much smaller. Instead, Lithuania experienced a challenge to the traditional trade-union structures by a movement which resembled Poland’s Solidarno.

Trade-union structures were often seen as remnants of the Soviet era, but there was little open hostility to their leaders and activists because they had not become identified with the Soviet occupation. This had become clear at the time of the failed putsch in the Soviet Union against Gorbachev in August 1991. Just

over a fortnight after the failed coup, the Supreme Soviet of the USSR formally recognised the independence of the Baltic States.

The Baltic States had become members of the ILO for the first time in 1921, and, after independence was re-established, their relations with the ILO were soon reactivated. The first high-level ILO delegation visited all three countries in November 1991. As of 1992, the Baltic States were represented at the International Labour Conference by tripartite delegations. The new Multidisciplinary Team of the ILO, based in Budapest, also covered the Baltics.

## 2. Shortcomings of International Solidarity

The geographically closest international supporters in the Nordic area had no experience of how to provide assistance in these new circumstances. Up to then, the development-cooperation activities of the Nordic trade unions had been with developing countries and the lessons learned from this were not directly applicable to their neighbouring region. Nor did recipients consider themselves “developing countries”. Their problem was not a lack of development, but rather misdevelopment.

It was sometimes said of the socialist system in the Communist countries that it was well developed to solve problems which no one else had. When the system changed, the acute dilemma was that everyone felt that they knew how to make an omelette (the market economy) out of eggs but that no one knew how to make eggs (ingredients of a managed socio-economic system) out of an omelette. The change was not about transforming socialism. It was about replacing socialism with a capitalist market economy.

For a while it was not clear which form practical and concrete assistance should take. The Nordic unions made use of their educational facilities and offered a significant amount of training about how workers’ representation should function in a democratic market economy. They had both the resources and the will to assist, but Nordic unions lacked experience of the structural transitional problems of their Baltic counterparts. These, in turn, had to cope with a radically changing situation requiring urgent first aid, not long-term organisational solutions and advice.

The property inherited by the Baltic trade unions provided some potential relief, at least. However, the Nordic options of assisting the trade unions in how to use this property were not workable. By this time, the socio-economic activities of several Nordic trade unions had resulted in severe crises back home in their own country.

Unfortunately, technical assistance and cooperation tend to focus on what to do. In countries in transition, it should have equally focused on what not to do (or what not to accept) in a relatively harsh new market economy. Even in the Nordic area, some assumptions – that were still generally acceptable in the 1970s – had become to be questioned with the new focus on entrepreneurship, the liberalisation of capital markets and labour market flexibility. Employers’ organisations, who had been partners in constructing the so-called Nordic model, were no longer convinced that new employers’ bodies in the former socialist countries had been such a good idea.

As a result, the know-how assistance provided by Nordic trade unions was not easily transferable. Nor did Baltic trade unions want to end up in a new kind of dependency either. The Baltic States had regained their independence mainly through their own actions. There had been a fair share of scepticism about independence in the Nordic countries and other European neighbours. The Soviet Union disintegrated within an unexpectedly short period of time. Despite some tensions, the Baltics were spared the kind of conflicts that engulfed some of the other former Soviet republics, such as Moldova and Georgia.

A certain amount of direct financial assistance was provided by Nordic trade unions to their branches in the Baltic States. The effect of that, however, turned out to be mainly to support the national leadership of the unions. As no significant part of this financial assistance went to organisational activities or membership services, of which the old leadership had little experience, the effect was to maintain a union leadership that was increasingly out of touch with its actual or potential base.

A massive input of assistance, both financial and know-how, might have helped

Baltic trade unions to survive better. In the early 1990s, there was some talk of a “Marshall Plan” for ex-Communist countries. This did not consider the fact that the original Marshall Plan had a strong labour–management element or that it focused on tripartite cooperation. Fifty years later, the situation was far more complex: all the potential supporters agreed on the need for the Baltic States to transition rapidly to a market economy, but social issues were not at the top of anyone’s list of concerns.

As elsewhere in Central and Eastern Europe, new foreign investment brought much needed management know-how. In these circumstances, there was little interest in receiving assistance that could have interfered with the transition by slowing it down or making it more costly. In the 1990s, the attitude of trade unions in Central and Eastern Europe to foreign direct investment differed considerably from the position held by Western European and international trade unions.

### 3. The Realisation of Mutual Interdependence

On this specific point, the author wishes to take the liberty of referring to a concrete, but significant experience from one part of the Nordic–Baltic area in the early years of the ILO.

Following the 1918 Civil War and the consolidation of the Finnish state, the Finnish authorities proceeded to dissolve a number of Communist organisations, among them trade unions with radical left-wing leadership. At that stage, Swedish trade unions became acutely concerned that the newly independent Finland could become an area without efficient trade-union activity. After all, Finnish trade unions had been participating in Nordic meetings since the 1880s and had seen themselves as an integral part of the Nordic trade unions during the last decades of Imperial Russian rule.

A joint complaint was presented by Finnish and Swedish trade unions to one of the early sessions of the International Labour Conference. As a result, the ILO sent an official expert to examine the situation in Finland, which helped normalise the situation. The necessary clarification of the different roles of political and trade-union organisations was further supported by the first Labour Contracts Law. The ILO standard supervisory system has not been presented with a freedom of association case concerning Finland since that early period.

The first director of the ILO, Albert Thomas, visited Finland in 1921 and 1927. On both occasions he continued his travels by air from Helsinki to Tallinn. He made several visits to other Nordic and Baltic countries as well. Albert Thomas realised the importance and potential of tripartite cooperation in both the Nordic countries and the Baltic States. Already in 1921, he suggested that the Nordic countries should rotate their representation in the Governing Body of the ILO, thus ensuring a permanent Nordic presence in the decision-making bodies of the new organisation.

More than seven decades later, the interlinked questions of solidarity and self-interest emerged again. In the same way as the Swedish trade unions in the 1920s were worried about the suppression of trade unions in Finland, the Nordic trade unions were now concerned that a union-free area could appear in their immediate geographical neighbourhood in the Baltics.

Despite some two decades of attempts to rein in multinational enterprises, the Nordic trade unions had not been very successful in taking action when their own enterprises moved production and jobs abroad. This applied to the other side of the Baltic Sea as well. Nordic trade unions had little experience in putting pressure on their national enterprises in the near vicinity. Nor was it feasible to call on fellow workers in the Baltic States to resist the investments and jobs that were coming in to replace the former Soviet state-controlled economic system.

At least the Nordic trade unions abstained from calling for a stop to these outward movements of investments and jobs. Notably, they did not take the kind of a negative position which characterised the AFL-CIO's response to US investments in Mexico, although the wage differentials in the Baltic sphere were more than comparable with those on the two sides of the US–Mexican border.

The trade-union leaders of some of the Nordic industries most affected by dislocation and job losses – such as textile, clothing and graphics workers – recognised that in the medium term, the only sustainable answer was to develop the Baltic States' economies into markets that could also absorb Nordic products. The logical consequence was to focus on the strengthening of the unionisation and collective bargaining mechanisms in the Baltic States.

Later on, especially the Baltic States' membership of the European Union provided an additional platform and some badly needed safeguards for social dialogue



and tripartite cooperation. Above, all, this meant maintaining a legitimate voice for worker concerns. Yet valuable time was lost in the first years after the restoration of independence, as the international trade union movement failed to develop a coherent plan for the union-based aspects of transition. In the end, the Baltic States have been left in a grey zone between reorienting the old structures and building something entirely new. Fortunately, this did not lead to a fundamental ideological or ethnic rift, as their re-established independence was not questioned.

## 4. Economic Realism

In the post-1991 situation, there was no viable alternative to the rapid transition to a market economy. No political opposition to such transition was voiced by Social Democratic or labour parties, which, compared to the Nordic countries, were not strong anyway. Unfortunately, the subsequent trend has not strengthened the Baltic Workers' Parties while the Nordic Social Democrats have suffered a series of setbacks. For a multitude of reasons, trade union and political cooperation comparable with the traditional Nordic model could not catch on in the Baltic States. Nor did the strong non-political orientation of Nordic salaried employees' unions.

The personal career and income opportunities for leaders in the remaining and reforming trade-union sector were small compared to the almost seemingly unlimited prospects provided by the new markets. There was no real basis on which to undertake industrial action with sufficient popular support. Had such action been undertaken, it would have been necessary to make a convincing case that the sector was not against the transition in general and that, at least in Estonia and Latvia, it did not have an ethnic dimension.

It would be too easy to say that there was a deliberate trend of reform-minded political leadership to limit the role and rights of trade unions or to avoid collective settlements in the labour market. Anti-union attitudes in the Baltic States were more implicit than explicit. Trade unions have had serious difficulties in explaining their role and rationale in the new economy. Employers' organisations as effective counterparts in negotiations did not exist. In these circumstances an individualisation of employment relations was almost inevitable, especially as new job opportunities were created in activities that had little or no tradition of unionisation.

The proximity to the Nordic model still had a certain influence, especially on social security and know-how regarding the management of social affairs in a market economy. Yet the Nordic social model has relied more on the state than on employers. The transition was all about cutting down the omnipresent role of the state. And when it comes to industrial relations, the Nordic employers are actually less "soft" and social-minded than most of their central European counterparts.

On the part of Baltic trade unions, there were no strong alternatives to the representation of workers by what had been inherited from the earlier trade unions. The history of transition demonstrated that, in most cases, the alternative to reforming an old union base was not the kind of movement as *Solidarno* in Poland. Rather, it was no unions at all. In Poland, *Solidarno* had been a de facto a national liberation movement. In the Baltic States, trade unions had supported the liberation process but had not led it.

At the political level, the question was still not whether but how workers should be represented. It appears that at least in larger work collectives, the void created by either the collapse of the former union base or the absence of a new one seems to have led to reaching out to "trustees" or works councils as a substitute. There does not seem to have been many attempts to create "yellow" or "sweetheart" unions, which would have been dependent on the employers.

## 5. Priorities for the Public Sector

As in many other countries in transition, the public sector has remained the most organised part of the labour market. It was also furthest from the turbulence of the market and the informal economy. For the purposes of a trade union strategy, the message should be clear enough. If something that is left can work, it should be taken care of with all available strength. While there seems to be some kind of a stigma about the public sector, the Baltic States continue to subscribe to the notion of a functioning state based on the rule of law and appropriate institutions.

In the public sector, an important distinction should be made between civil servants and public-sector employees. While civil servants normally have a higher degree of job security than other employees, there may well be recognised limitations on their organising activities and the right to strike. Governments are tempted to argue that public-sector employees should generally have the same restrictions as civil servants. However, they would not accord many of the privileges of civil servants to those workers who have more precarious employment contracts.

For many reasons, the issue of the right to strike should not be allowed to dominate this debate. It is important, but it is usually the last resort when other consultative and negotiation procedures have failed. The concept of freedom of association covers the entire range of actions from freely joining a union to the union's rights to recognition and negotiation. The right to strike is only the last step in a whole string of situations covered by ILO Conventions 87 and 98. It comprises several elements that are not explicitly spelled out in the ILO's instruments but which are the basis on which the jurisprudence gives guidance.

In light of the jurisprudence, the right to associate is only part of a whole sequence of rights: to assemble, to be recognised and registered, to take and express a common position, to maintain the necessary facilities and property, to negotiate collectively and, if needed, to apply pressure by withholding the workers' labour. This continuum legitimises the right to strike which, after all, like all the other phases, can be subject to national law.

The right to organise and thus be properly represented as a collective bargaining partner is in practice more important than discussing the right to strike. The right to strike becomes theoretical, if the right to organise is not granted.

The rights of public-sector employees who are not civil servants, including municipal employees, is a basic question. In a certain way, the more the public sector is restructured and activities are partly or entirely privatised, the greater the need for organisation and negotiations. The right to bargain, including industrial action if needed, must be safeguarded for those who, as a result of restructuring, lose certain guarantees hitherto provided by the public sector to its workers. It is also important to have an authorised counterpart for negotiations and that this counterpart has an institutional basis and is not dependent on political parties or their electoral calendar and interests.

Dealing with the organising of the private sector and the development of social dialogue and collective bargaining is a long-term issue. But if trade unions weaken in the public sector, it will be more difficult to build them up in private activities.

## 6. The Private Sector

A sufficiently detailed typology of the private sector in all three Baltic States should differentiate between traditional large-scale activities which existed during the Soviet era and new “greenfield” investments. It should look at the effect of a more flexible start-up economy.

Traditional activities are liable to have more history of trade union activity. Consequently, transformation methods that have been applied in other central and eastern European countries can still work. To the extent that this leads to parts of the economy being able to manage both crises and outside competition, there might be scope for pragmatic labour–management cooperation.

Regarding small and medium-sized enterprises, both in the production and service sectors, a concept of both organising and dialogue needs further development. This calls for dialogue with employers to the extent that they have either representative or authoritative bodies. If such bodies do not exist, outreach to prominent enterprise leaders should be considered. The main argument for dialogue should be to avoid unfair competition and a race to the bottom, which will hit the enterprises as hard as the workers in each sector. The private sector is not well served by a bankrupt state which tries to shift its responsibilities to the private sector.

Starting such a dialogue with wages – despite their being low – might not be the most promising route, although this depends on how wage determination functions in practice. Early stages of social dialogue and labour–management agreement often work better on more procedural questions than on direct cost issues. One starting point could be workers’ representation; labour–management information and consultation arrangements; productivity development; and occupational safety and health.

It is not clear to what degree workers in an economy with a high share of small enterprises can be organised, or how they can be organised into collective bargaining units. The preferable alternative is to develop agreements which apply to all workers in a given economic sector or branch of activity, irrespective of whether they are members of a trade union. Trade unions should strive (and be seen as striving) to improve the conditions of all workers – not just their own members.

In a situation where there are employee representatives elected independently of trade unions and shop stewards elected by union members, it is important to avoid a situation where parallel systems could be used against the trade unions. Wherever possible, existing systems of representation should be under the influence of trade unions. In many countries there are formal representative arrangements that are not controlled by trade unions, but unions should be able to ensure that any system of workers’ representation is not used to undermine them. Instead, the aim should be to maximise synergy.

Another aim should be to reach an agreement between employers and trade unions on workers’ representation in keeping with the ILO Workers’ Representatives Convention 1971 (No. 144). This Convention was ratified by Latvia in 1992, Lithuania in 1994 and Estonia in 1996. Article 2 of the Convention specifies that workers’ representatives should be either trade union members or elected workers’ representatives whose activity does not duplicate the functions of trade unions.

Such an agreement should be accompanied by capacity-building measures, including bilateral training of workers’ and employers’ shop-floor representatives.

The opportunities to develop a solidarity economy, including cooperative activities, should also be clarified and encouraged.

## 7. Tripartite Cooperation

EU and ILO membership continue to be strong practical arguments for national tripartite dialogue. There appears to be little in prevailing public attitudes that would be openly hostile to such dialogue. While a low unionisation rate could call the representativeness of trade unions into question, there are apparently no other organisations to contest their position. The advocacy role of many NGOs should not be confused with the representative role of trade unions.

On this count, one generally plays the cards one has been dealt. It is not useful to dwell too much on formal requests for the acceptance of representativeness. True representativeness can only be assessed when freedom of association is respected. The pragmatic attitude is to note that a trade union is representative of the views of the workers unless this is effectively challenged. If such representativeness is denied, then at least some of the burden of proof is on whoever wishes to deny it and assume it as a body freely representing its members.

Tripartite bodies are well-suited for general economic, social and labour policy discussions. They should not become a fora for collective bargaining. It is important to clarify what can be agreed upon and what cannot. Use should be made of whatever space is given to trade unions for consultation, as opposed to bargaining. In many cases, it may be better to be fully heard without being bound by a bad deal.

Trade unions should insist on consultations on labour and social legislation, and National Tripartite ILO Committees should play a more prominent role. If there is to be a binding agreement at a national tripartite level, agreements should be concluded first and foremost between the collective bargaining partners.

Consultation on reporting to the ILO should take place before finalising the reports. It is not enough for trade unions just to receive copies of the reports for their information. This is also in the interest of the government, as it will know well enough in advance of whether the trade unions (or employers) are reporting separately to the ILO. Achieving a genuine consensus at the pre-reporting stage is worth pursuing, but it not should be allowed to become a method of pressuring the social partners to accept a specific government policy.

Bipartite or tripartite consultation arrangements should involve a minimum level of bureaucracy to resolve any problems before they are transferred to the ILO's supervisory bodies.

## 8. The Right to Strike

The extent to which the right to strike is guaranteed in the legislation is of crucial importance. Yet it is worth remembering that a credible strike threat assumes that there is an organisation which can carry through on the announced action. There is a difference between strikes which may become necessary if the collective bargaining process does not lead into an acceptable result and strikes which are protests. Strikes against a collective-bargaining agreement are by definition formally out of order unless it can be demonstrated that the other party, the employer, has breached the agreement. While being technically illegal, such strikes would seem to be legitimate.

It might be useful to discuss the issue of “political strikes” by using other language, which is available in the CFA Digest. There is considerable flexibility in this regard. After all, the Solidarno strike in the Gdansk shipyards in the early 1980s would fall under the definition of a political strike. The jurisprudence of the CFA accepts the legitimacy of strikes of a general nature when the direct interests of the workers’ are involved.

When one speaks of political strikes, the implication is that the strike is directed against the political authorities, not employers. In the public sector the state and municipalities are the employers, of course. For this reason it is necessary to have an employer function in this sector which is not dependent on the political constellation of power. A public-sector strike is not automatically directed at the government per se, but at the government and public authorities as employers.

Strikes opposing specific government policies are deemed acceptable by CFA jurisprudence if they concentrate on issues of vital importance to workers. The CFA has concluded that union action (including strikes) against a policy position of the government is acceptable, as long as the trade union does not substitute itself for a political party.

Regarding strikes that occur if employers have violated the collective agreement, the claim should be that the employer is guilty of a breach of contract. In such a case there should be no penalty for a strike but rather compensation. Whether the agreement has been breached or not, by either side, must be settled by a court or through other reconciliation procedures.

## 9. Unionisation

Any trade union is dependent on having a sufficient number of active and dues-paying members. The primary source of its income should be from membership dues. The priority of any national action plan should thus be organising: strengthening the organisations and expanding their dues-paying membership. This should also be the priority of international solidarity action.

### 9.1 Domestic measures

Trade unions need to be aware of their image, i.e. the perception of their role to and relevance in the society and the economy. In the case of the Baltic States, they should be able to build on their positive role in the society and argue for a constructive role in economic policy. While the image of trade unions may not be ideal, their actual or potential role to protect working women and men is acknowledged quite favourably. Consequently, any possible gap between the perception of trade unions and their real role must be filled.

This is not just a public relations exercise, however. It is important that trade unions address, and are seen to address, this question. Without a positive leitmotif, trade unions will be doomed to an obstructionist and defensive position.

What is invariably needed is education and training of both existing and future trade-union leadership at different levels, with sufficient information sessions for as large a number of actual and potential members as possible.

Identifying and making use of talent and professional knowledge is important. Professionalism tends to get positive recognition. It also helps to better integrate trade unions into the public debate on national economic and social policy.

Achieving results through negotiations – at different levels – strengthens the case for trade unions. Negotiators need professional skills and knowledge, and at certain stages of the bargaining process, they can be mentored by national experts. The way in which a branch union assists its members in a bargaining situation, or resolving a crisis, is crucial. A number of positive outcomes usually provide for the best public recognition of the usefulness of negotiated approaches. It is important, however, to avoid giving an impression that the results achieved do not benefit just a small organised group but provide fair benefits for all. Solidarity dictates that trade unions should negotiate for all workers in an enterprise, sector or country.

Training in negotiating techniques given to trade unions can, in due time, be complemented by joint training with employers on how to deal with issues that are liable to be negotiated.

### 9.2 Nordic–Baltic measures

NFS and its member organisations should assist by providing expertise for training courses, focused on training a sufficient number of national course instructors who then conduct courses throughout the countries.

In addition to providing expert knowledge, Nordic trade unions should invite instructors and other experts from their Baltic counterparts to conduct courses in their countries.

Short-term exchange of personnel between Nordic and Baltic trade unions should be contemplated.

Nordic trade unions should continue to put pressure on Nordic enterprises with investments and activities in the Baltic States to comply with fundamental principles and rights at work and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy.

There should be regular joint consultations between management and employees (through trade unions) of both the parent company and its subsidiary.

This should equally concern Baltic-based companies which have activities in the Nordic countries. Important sectors in this context are transport and construction.

There should be a general understanding that subcontracting and working in the Nordic countries should respect the provisions of collective agreements that are in force wherever the work is being carried out.

Mentoring in specific cases could also be done with the involvement of Nordic experts.

Nordic and Baltic trade unions should agree to the procedures to be observed in case of labour conflicts in enterprises with cross-border operations. This might call for different kinds of solidarity action.

Some thought could be given to what Nordic and Baltic trade unions could do together, possibly at the level of sectoral national unions, to target Baltic workers in Nordic countries.

Nordic and Baltic trade union leaders could meet annually to discuss the situation and strategies needed. For the last quarter of a century, there has been little strategic dialogue between Baltic and Nordic trade unions at the highest level. One should not forget that concrete joint activities between Nordic trade unions have been less important than the simple fact that the decision-makers of each organisation have been sufficiently aware of the situation and prospects in each country. Face-to-face contact also plays an important role.

Some of the above issues might be dealt with through BASTUN, even if its primary purpose is to share information. Also, because of the specific situation of the Baltic States (described in the beginning of this report), discussing the situation in St Petersburg, Poland, Belarus or Northern Germany does not lend itself to practical conclusions on what to do to strengthen trade unions in the Baltic States.

### **9.3 Support from the ILO (ACTRAV)**

ACTRAV has a focal point for Europe and can ensure that regular activities with and for Baltic trade unions are carried out. This could involve specific workshops for all Baltic unions, or separately by country, as circumstances and linguistic situations vary. Baltic trade unions should have their fair share of participation in international training activities.

Regarding possible support by the ILO training centre in Turin, courses on organisational activities and media training could be particularly useful.

Although the training of judges and legal experts is not a tripartite exercise, ensuring that judges are more knowledgeable of the application of international labour law can only be helpful. Specific activities could be targeted at trade-union lawyers.

The feasibility of ACTRAV supporting a Nordic–Baltic trade union seminar on the social effects of economic interdependence should be studied.

There appear to be a number of potential problems in applying ratified ILO Conventions, although these have not led to acute controversies for the time being. With intensified organising, bargaining and trade-union action, more and different interpretations will be made of the provisions of the ILO instruments. NFS, Baltic trade unions and ACTRAV could arrange an activity to analyse both the shortcomings in applying ratified ILO Conventions and action for ratifying other conventions. The existing cooperation between Nordic workers' delegates and advisers could be involved in this effort, too.

Although donor resources have become more scarce, Nordic trade unions should explore the willingness of their respective governments to allocate resources for the strengthening of the social and labour dimension of Nordic–Baltic development. All available opportunities and support through the European Union should be explored, initially by the ETUC.



## 10. Time-Bound Programme

It should be permissible to think in terms of a programme which could, over a number of years, satisfy the concerns expressed by both Nordic and Baltic trade unions. Any programme should allow for time, but it should also establish benchmarks to be achieved within an agreed time frame. The following is not a formal proposal. It is a suggestion, based on the reflections made earlier in this discussion paper.

The first question is what can be done immediately. An answer to this is that there should be an agreement on presenting an Action Programme to the NFS and the Baltic trade unions by the spring of 2018. The meeting in Riga on 22 November 2017 could transmit a draft of such a programme to the NFS and a subsequent high-level meeting of the Nordic and Baltic trade union leaders. Alternatively, it could discuss the elements of a draft and propose a timetable for implementing its stages. In any event, a sufficiently clear roadmap should emerge at this stage.

The second question is what can be done within one year. By the end of 2018, it should be possible to agree to a common commitment and a mechanism for following up on the Action Plan. The plan should be explained throughout the trade-unions organisations of both Baltic and Nordic trade unions. This explanation should be based on the mutual interest of all unions concerned. Elements of the plan that call for national tripartite action should be discussed with both governments and employers.

The third question is what could be done within three years. A three-tiered approach could be useful.

(1) At national level, there should be an activation of the practice of social dialogue and tripartite cooperation.

(2) This calls for identifying the strengths of workers' representation (in the public sector and at certain enterprises) and can be done with the full involvement of trade unions.

(3) A dialogue should be underway with decisions on the future of labour–management relations in both the public and, in particular, the private sector.

There are abundant options for what is achievable within one decade. A national agreement on workers' representation and participation should be worked out in each country so that all aspects of the trade-union role are clear to everyone. The objective should not just be to control “trustees” or other representatives, but to ensure their general representativeness and that they are sufficiently backed by the trade unions.

The NFS should not export any model. The exercise involves looking for a Baltic model or possibly three of them. This involvement must be sufficiently rooted in its own membership and it should be used for organising purposes. There is an urgent interest to see that the economic reforms in the Baltic States have the social dialogue safeguards agreed on for the EU Internal Market and set out in the standards of the ILO.



# Strategy for developing workers' rights in the Baltic States by strengthening social dialogue and compliance with the ILO Core Conventions

# Introduction

Cooperation between Baltic and Nordic trade unions has been active since the Baltic States gained their independence in the 1990s. Over the years, it taken many different forms and included cooperation in various areas with the common goal of strengthening workers' rights in the region. The cooperation is based on mutual engagement, respect and a commitment to common goals. Furthering an understanding of our different contexts and realities, learning from one other and sharing experiences in the region are vital for our common development. The cooperation is interesting and rewarding and makes all of us better prepared to meet our common challenges in the digitalised era, with free mobility of both labour and entrepreneurial opportunities. Together, we are better equipped to further collective bargaining and social dialogue in the region and to meet challenges such as declining union density and combatting the grey economy and social dumping. Together, we also have more possibilities for further development in a globalised world and developing a constructive dialogue with both employers and governments in the region.

In the autumn of 2016, the Council of Nordic Trade Unions (NFS) initiated the project *An analysis of the Baltic Countries: Determining whether any given legislation or practice complies with the ILO Core Conventions and Convention 144 on Tripartite Consultation*. The aim of the project is to assess the implementation and practice of the ILO Core Conventions and Convention 144 on Tripartite Consultation in Estonia, Latvia and Lithuania and to develop a strategy for strengthening workers' rights in the region. The project is based on three independent studies which (a) examine the historical context of industrial relations in the Baltic States; (b) make a legal analysis; and (c) report on interviews with social partners and governments. These studies have subsequently been complemented with joint Nordic–Baltic expert discussions at two themed conferences, as well as by an independent analysis made by individual experts, a steering-group analysis of the project and discussions in a specially appointed strategy group.

This document is based on the main conclusions of the project, and all ideas and suggestions are outcomes of the process. The content of the different parts of the project has been summarised in a Steering Group note, which identifies the main areas of development regarding the implementation of and compliance with the ILO Conventions. It is based on the discussions and findings and was developed in close cooperation with the Baltic Trade Unions. Primary focus has been on compliance and practice regarding Conventions Nos. 87 and 98 on Freedom of Association and the Right to Organise and Collective Bargaining and No. 144 on Tripartite Consultation. The national priorities made in this document were chosen by trade union representatives in the respective countries. The purpose of this document is to underpin a common trade-union strategy for the further development of fundamental workers' rights in the Baltic region. The analysis and suggestions in this strategy document have been developed by experts and will be subjected to political discussion and commitment. This is why the project proposes that a working group be formed with the specific purpose of developing a time-bound action plan that can be discussed by the NFS board and the Baltic Unions to strengthen and further trade-union cooperation and development in the Nordic–Baltic region.

Many people have made important contributions to the project. We are grateful to all trade unionists and experts who participated in discussions and activities, as well as to all governmental and employers' representatives in the Baltic countries who participated in interviews and contributed their views and expertise. Special mention also goes to the expert authors who not only contributed written reports, but also actively participated in the discussions. Markku Sippola, Niklas Bruun and Kari Tapiola all contributed in this capacity and brought invaluable expertise to the

project. Bernt Fallenkamp and Siri Relling from LO in Denmark and Norway also deserve special mention for their valuable contribution in conducting the interviews with governments and social partners. A warm thank you also goes to the Nordic ILO group and our contacts in the Baltics. A special thank you also goes to Aija Maasikas and Kaja Toomsalu (EAKL), Natalja Mickevica (LBAS), Evelina Silinyte and Vaiva Sapetkaite (LPSK) and Daiva Kvedaraite (Solidarumas), who worked hard to meet the ambitious deadlines. Finally the cooperation and support of the ILO Bureau for Workers' Activities (ACTRAV), Maria Helena André and Sergejus Glovackas, was also vital to the project and deserves special mention.

# Latvia

## Priorities

### 1. Sectoral collective bargaining.

Currently, wages in Latvia are set by law, not collective agreements. Some existing collective agreements include indications and guidance on how to set wages and organise wage systems. But minimum wages are set by the Regulations of the Cabinet of Ministers.

With the support of the government, the social partners in Latvia started the implementation of the ESF project aiming at promoting collective bargaining at sectoral level. The objective of the project is to sign five sectoral collective agreements in five business sectors: telecommunications, wood processing and forestry, road transport, chemistry and construction. This pilot project is the main platform on which to develop sectoral collective bargaining in Latvia. Therefore, successful outcomes serve the interests of all social partners: employers, workers and the government. While social partners implement the project, they need support to put the system of sectoral collective bargaining into practice. In order to implement sectoral collective bargaining, several supporting activities are needed in the following sub-priorities.

#### Sub-priorities

##### A. Improving knowledge and skills and strengthening capacity

Skills enhancement and training are needed to improve skills and knowledge of collective bargaining negotiators, particularly as this involves:

- The training of leaders and negotiators in collective bargaining issues;
- sharing experiences with experienced trade unions on the design and provision of training courses on collective bargaining.
- Bilateral cross-border international mentoring arrangements.

##### B. Content of collective agreements

Latvian labour law is very detailed. According to the developed practice, the social partners regulate labour-related issues in legislative acts. The main negotiations on labour related issues therefore take place within the tripartite cooperation system and result in amendments to the labour law and other related legislative acts. Best-case practice and argumentation on the issue of de-regulation is needed to help change the mindset of the social partners in Latvia to move from bargaining through a tripartite structure to bipartite social dialogue and collective bargaining. The tripartite system should be retained to deal with general working conditions and for to implement and develop labour law.

It is important to develop arguments for building a model of sectoral bargaining with private employers and clearly show the benefits of collective bargaining, not only for workers, but also for business and the sustainability of the sector. This line of reasoning argumentation could include linking the discussion to skills, productivity, fair competition and finding solutions to labour shortages. This would avoid a race to the bottom and social dumping, and it would enable the articulation of long term visions and plans.

To assist the social partners in building the content of sectoral agreements, information and examples on issues regulated by sectoral collective agreements from other countries are needed. Particular attention should be paid to smart negotiations, innovative approaches to collective bargaining with a special focus on wage setting and wage-setting systems. This could lead to a discussion of and negotiations on how to tackle issues of robotics and digitisation, new forms of employment specific to particular sector, work–life balance, training, work-based learning, lifelong learning, professional qualifications, occupational health and safety and other issues which could arouse the interest of employers and illustrate the value of having an agreement.

### C. Enforcement of sectoral collective agreements

The system of enforcing universally-binding collective agreements in Latvia is unclear. Under the current system, a general agreement entered into between the employers' organisation or association of employers' organisations and a trade union or an association (union) of trade unions shall be binding on all employers of the relevant sector and shall apply to all employees employed by such employers, provided that the employers, group of employers, employers' organisation or association of employers' organisations employ more than 50% of the employees in a sector, or provided that the turnover of their goods or the amount of services is more than 50% of the turnover of goods or amount of services of a sector.

The Labour Law was amended in July 2017 to make it easier to extend collective agreements to apply to entire sectors. The amendments to the Labour Law lowered the threshold for employers to sign an extended collective agreement. Previously, employers' organisations had to represent more than 60% of the turnover of goods or amount of services of a sector. According to the current wording, the 60% of turnover requirement is lowered to 50%. It is now possible for individual employers or a group of employers to join an employers' organisation to become parties to an agreement and help comply with the representativeness criteria. In addition, the amendments require that proof of compliance with the representativeness criteria be provided. The data provided by the Central Statistical Bureau must be used to calculate the representativeness criteria.

However, even when employers representing 50% of a sector sign a collective agreement for the entire sector, enforcement of such an agreement is not guaranteed in the event the other 50% do not recognise the social partners. Trade unions initiated the establishment of an impartial institution which would declare collective agreements to be universally binding on the sector and could also resolve disputes arising from enterprises belonging or not belonging to a particular sector. This proposal found no support, however. There is a lack of clarity regarding enforcement mechanisms as there have been no precedents. Therefore, the general method of enforcement is through the courts. Sharing best practice on mechanisms of enforcement of collective agreements will help social partners to endure their initial experiences of enforcing universally-binding collective agreements.

There is a need to strengthen the labour inspectorate by giving it the resources and capacity to inspect workplaces to combat wage dumping and problems involving subcontracting chains. Considering the prevailing number of small companies, the capacity to inspect workplaces and cooperate with trade unions is crucial for the enforcement of sectoral collective agreements.

The capacity of trade unions to monitor whether collective agreements are effectively implemented and to monitor trade-union cooperation with labour inspectorates is vital. Sharing best practice on strategies and activities aimed at monitoring and controlling the implementation of collective agreements in enterprises will help improve the surveillance capacity of trade unions.

## 2. Organising

There is a need to rethink organising priorities and strategies in Latvia. Unionisation rates are declining, with LBAS currently representing about 90,000 workers. Most of them are in the public sector with health and education sectors having the highest unionisation rates.

The main obstacle to unionisation is the fact that 97% of enterprises in Latvia are small and medium-sized, where it is difficult to establish a outright trade union or a trade-union unit. Not all sectoral trade unions have changed over to a practice of accepting individual members from small and medium-sized enterprises. Other challenges are emigration and an aging population. Latvia has experienced massive emigration since it joined the EU. According to the OECD, Latvia lost approximately 9% of its population due to net emigration during the 2000s. This affected the size of the workforce, as most emigrants were of working age.

The financial capacity for organising and running organisations is also challenging. Union management focuses on implementing ESF projects to strengthen capacity as membership fees only account for about 30% of union income. The current circumstances make it difficult to build financially strong trade-union organisations. A key challenge is to strengthen sectoral trade unions, which is directly related to the unionisation issue. There are a high number of unorganised workers, who are potential trade union members, at small and micro-sized companies. The issues are of both a practical nature and are driven by the need to explain the role and functions of a trade union in society.

The following sub-priorities should be addressed to improve membership rates and the system of organising:

### **A. Strong sectoral trade-union organisations and social dialogue**

Considering the structure of an economy dominated by small and micro-sized enterprises, it is important to strengthen the role and capacity of sectoral trade unions, particularly their capacity to organise, represent and serve members at sectoral and workplace levels.

Charting members' organising methods and sharing best practices with more experienced countries will help build the organising capacity of Latvian trade unions. Special attention should be paid to innovative approaches to organising to reach workers employed in new forms of employment resulting from digitisation, SMEs and micro-enterprises.

A strategy of organising members and regular recruitment should be incorporated into the daily work of LBAS and its member organisations. Developing an organising strategy requires an in-depth analysis of the Latvian labour market. Such an organising strategy could have two main aims. In the public sector, it should strengthen the unions and the procedures that already are in place and which work. In the private sector, it would have to rely much more on exploring approaches to reach out to workers employed in new forms of employment, SMEs and micro-enterprises and focus on issues that could be attractive to employers at enterprise and sectoral level.

### **B. Reaching Nordic multinationals**

Nordic companies represent a high share of entrepreneurship in Latvia, particularly in the banking, media, telecommunications, food and wood-processing industries. It is important to improve cooperation with Nordic trade unions to establish trade unions in these companies and involve the Nordic companies in social dialogue and collective bargaining.

Trade unions in Nordic companies located in Latvia, even if this is only an address, often choose not to join the national level trade-union confederation and operate independently without connection to sectoral trade-union organisations or national tripartite social dialogue. This is contrary to the developed practice of Nordic trade unions characterised by solidarity and unity in national trade union organisations to ensure effective, strong protection of their interests. Cooperation with Scandinavian trade unions is an important part of facilitating the affiliation of independent trade unions established in Scandinavian companies in Latvia to LBAS.

### **C. Stronger role of trade unions in collective bargaining**

Linking recent developments of legal regulation relating to the implementation of collective agreements in Lithuania, Latvian trade unions need argumentation and analysis within the on-going discussion on the implementation of collective agreements that only apply to members of trade unions. Strengthening the position and exclusive rights of trade unions in collective bargaining, as well as the visibility of trade unions at enterprise level should be explored.



## Actions

### Short term

- Sharing examples of the content of collective agreements by translating Nordic and European agreements into Baltic languages and sharing with LBAS experts;
- Sharing best practice relating to unionisation techniques;
- Arranging study visits to and finding Scandinavian national and sectoral trade union organisations with whom to share best practices;
- Engaging in cross-border bilateral mentoring events between Latvian project coordinators promoting collective bargaining and experienced representatives from Scandinavian trade unions;
- Organising the joint training of course instructors in collective bargaining techniques;
- Inviting Latvian representatives of sectoral organisations to participate in sectoral collective bargaining.

### Long term

- Continuing the practice of bilateral cross-border mentoring events on issues of collective bargaining and the enforcement of collective agreements and extending this to the issue of training structures, training methodologies and unionisation;
- Continuing periodical study visits to share best practices relating to collective bargaining and organising, including Latvian representatives of sectoral organisations to participate in Nordic sectoral collective bargaining;
- Developing the practice of jointly training course instructors in training methodologies, collective-bargaining techniques and organising strategies;
- Introducing regular cooperation and sharing of information with Scandinavian trade unions, particularly in the sectors of banking, media, telecommunications, food and wood-processing sectors to improve cooperation, resolve sector-related challenges and facilitate the affiliation of independent trade unions established in Scandinavian companies in Latvia to LBAS.

Generally speaking, short and long-term actions are closely related, while long term actions continue to pursue the aims of the short-term actions.

# Lithuania

## Priorities

### 1. The employee representation system

The representation of employees in the country is not transparent, as there are multiple and somewhat partly overlapping bodies which negotiate with employers.

In Lithuania, workers are represented by trade unions, work councils or trustees. A work council and a trustee mostly have the same rights and obligations. The right to conduct collective bargaining belongs exclusively to trade unions. Information and counselling are the main functions of work councils. If more than a third of workers are members of a trade union, a work council will not be established and all its functions will be carried out by a trade union. This kind of system complicates the worker representation process and makes it more difficult to implement agreements effectively. It is not easy to bargain when relevant information is not readily available.

The dual system weakens the safeguarding of worker interests and undermines trade unions' influence and bargaining power. It is important to emphasise that system of work councils and trustee institutions in Lithuania is an artificial, formal creation. Lithuania was criticised by the European Union institutions for failing to satisfactorily meet the requirements for information and consultation procedures. This problem was "resolved" by creating these low-value institutions of worker representation. In many cases, the bodies are not motivated to represent workers, they lack necessary skills and their impartiality is doubtful.

## Actions

### Short term

- The situation after the Labour Code came into force is not clear and the Lithuanian trade unions believe that some of the new provisions violate ILO Conventions. But stronger arguments are needed. Solid expertise and an evaluation of the new Labour Code by international organisations would be a good platform on which to engage in dialogue, possibly tripartite, with ILO experts. A mission from the ILO to Lithuania should also be considered before engaging the ILO supervisory mechanism.
- Proper translation of the new Labour Code into English should be done as soon as possible, as it would make it easier to evaluate its compliance with ILO Conventions and European law. The trade unions need to proactively influence court interpretations of the new code.

### Long term

- Better unionisation (recruitment) practices are needed, particularly as this concerns small workplaces and new, unconventional forms of employment. If a trade union or several trade unions jointly are big enough in an enterprise, this eliminates the need to establish a work council.
- Capacity-building for better representation of workers is crucial: training sessions, workshops with experts from the ILO/NFS/BASTUN; arranging visits to these organisations.

### 2. Restrictions of the right to strike

The initiation of strikes is a right of trade unions. After the new Labour Code came into force, it is easier to initiate strikes but many questionable restrictions remain. The procedures required in the lead-up to a strike are complicated and time-consuming. The few situations when a strike is permitted are when the employer a) refuses to negotiate, or b) refuses to sign a collective agreement. But, if the employer violates the provisions of a collective agreement, employees are not permitted to strike.

Before a strike begins, a conciliation commission must be established by representatives of the workers and the employer. If the problem is not resolved, it can be addressed by (a) a mediation commission or (b) through arbitration by the Territorial Labour Inspectorate.

The main problem is the following: courts have the right to delay the beginning of a strike and apply so-called temporary protection measures. If workers are permitted to strike, the employer has the right to file a complaint and ask a court to apply temporary protection measures until a particular strike's legality has been clarified. This means that, during this period, workers cannot strike, and the delay may be very long. Lithuanian trade unions have experienced this situation being abused by employers.

The law is unclear on how negotiations should be conducted during a strike and how the issues in the dispute should be settled. A better system for resolving labour disputes needs to be developed.

### **Actions**

#### **Short term**

- The scope of legal strikes must be broadened (i.e. to cases where employers violate collective agreements).
- Training in the ILO Conventions and their implementation is needed.
- There is a need for a more effective system to conduct negotiations and resolve problems. One option is to include the same mediation institutions from the phase in which a strike is declared to include subsequent stages as well. Both sides would have better chances of reaching a consensus.
- There could be an ILO expert mission to discuss the amended Labour Code with the government and the social partners, including dispute settlement.

#### **Long term**

- It is crucial to limit the courts' possibilities to delay strikes.

### **3. Social Dialogue**

There is a problem with how social dialogue is practised in Lithuania. Social partners and their suggestions and recommendations are often ignored. Mostly, there is no real consultation.

Lately, there have been numerous different reforms and legal changes in Lithuania. Institutions abide by formal procedures quite well, but in terms of content, the social dialogue is not sufficiently implemented in most cases. Trade unions are informed late, i.e. after important issues have been decided without being allowed to properly participate in processes or without any compulsory consultations, etc.

Lithuanian trade unions note that even during the negotiations of the Tripartite Council, social partners are not on an equal footing. For example, before negotiations begin, the Lithuanian government stated that any aspects on which the Tripartite Council does not agree will remain in force as stated in the previous version of the Labour Code (which entered into force on 1 January 2017).

The previous version was very liberal and much more favourable to employers. The good intentions of the new government backfired. Employers were simply not motivated to seek a consensus. The previous situation was more convenient and useful to them.

### **Actions**

#### **Short term**

- The new Labour Code should be professionally translated into English as soon as possible, to facilitate an evaluation of the Code's compliance with ILO Conventions and European law.
- The ILO should be requested to analyse the Lithuanian Labour Code and evaluate its compliance with ILO Conventions. An expert evaluation of the new Labour Code by international organisations would be a good platform from

which to consider official observations, possibly file complaints with the ILO and serve as an effective instrument for negotiating with social partners.

- NFS or BASTUN should be requested to analyse the Lithuanian Labour Code to evaluate its compliance with European law.
- An assessment should be made, together with the ETUC, to determine whether the social dialogue set-up is effective and in conformity with EU practice. Consultations with competent EU bodies should be considered.

#### Long term

- The European Social Charter has been ratified by Lithuania but ILO Convention 102 (the Social Security (Minimum Standards) Convention), has not. The latter is stricter and more specific, which is why Lithuanian trade unions should promote its ratification.
- Request ILO and BASTUN or/and NFS to evaluate the new Labour Code's compliance with ILO Conventions and European law.
- Promote positive changes based on these evaluations.
- Request consultations/assistance in shaping relevant drafts and ensuring compliance with ILO Conventions and European law.

### **4. Collective Bargaining in the public sector**

There is a problem with collective bargaining in the public sector, where wages are financed by the state budget. It is possible to reach an agreement with relevant ministries such as the Ministry of Education. But the implementation of these agreements has subsequently been impeded by failing to allocate the resources needed.

In Lithuania's budget sector, trade unions are not allowed to bargain for anything requiring additional appropriations from a budget allocated to an enterprise or institution. This means that unfinanced pay raises or bonuses are off the table. Trade unions may negotiate at sectoral level only within the limits of their funding as adopted by the Lithuanian Parliament or, for example, if the trade unions manage to save any resources. This severely limits the scope of bargaining issues.

#### **Actions**

##### Short term

- Sharing good practices of other countries.
- The new Law on Labour Remuneration requires the creation of a system of labour remuneration and evaluation of workers in every enterprise or institution. This has to be negotiated with workers' representatives, and trade unions consider this a good opportunity.

##### Long term

- There is a need to establish an additional social fund (funded by the state) in every institution, including a budget for aims such as pay raises, bonuses, social guarantees and benefits, etc.
- Additionally, there is a need for training in collective bargaining skills.

In general, short-term and long-term actions are closely related, and long-term actions continue to pursue the aims of short-term actions.

# Estonia

## Priorities

### 1. A new labour-market package including renewed legislation and the practice of collective bargaining

Issues that need to be addressed:

- The practice of extending collective agreements should be confirmed. It means that a best practices/goodwill agreement of extending collective agreements should be negotiated, agreed on and signed by EAKL and the employers' organisation ETTK. The draft agreement to be negotiated has already been prepared.
- The right to strike in the public sector should be granted, with provisions for agreement on minimum work in essential services. Subsection 1 of Article 7 of the Civil Service Act says: "An official is a person who is employed in a public-law service and position of trust by the state or by a local government". According to subsection 1 of Article 59 of the CSA, an official is not allowed to strike. Also an official is not allowed to participate in other collective actions which interfere with the performance of functions of the authority that has recruited the official, or of another authority arising from the law. The pressuring action is collective if at least half of the officials of the authority participate therein. Subsection 4 of Article 7 of the CSA says: "An employee is recruited for the job in an authority specified in Article 6 of this Act, which does not involve the exercise of official authority but only work in support of the exercise of official authority. The employee shall work under the employment contract". Employees working under the employment contract are allowed to strike (i.e. teachers, healthcare employees, etc.).
- Secondary solidarity strike actions as well as strikes for the fundamental rights of the workers should not be prohibited.
- EAKL is considering an initiative to discuss the law with private-sector employers to try and find a common understanding with them on the legislation and practice of collective bargaining. EAKL has already started negotiations with employers' confederations to conclude a good-practice agreement with them on extending collective agreements (criteria of representativeness, introduction to third parties).

### 2. Equal pay and discrimination

The discussion to change the law to start collecting data on gender-based wage discrimination, which employers oppose, should be pursued.

There is a possibility for initiatives in this area, and collecting examples of what the trade unions have done could be useful.

### 3. The position of shop stewards

- There are problems in the enforcement of the existing law.
- There is no institution with which a complaint can be filed.
- The labour inspectorate or ombudsmen are in practice unable to intervene.
- There are examples of trade union discrimination.

In June of last year, EAKL proposed changing the individual employment contracts act so as to give shop stewards and other trade-union board members additional guarantees in case of cancellation of the employment contract by the employer. This could only be done in court or by a labour dispute committee. The proposal was not taken into account at that stage.

### 4. Social dialogue

- A roadmap for discussions with employers should be developed.
- European-level agreements should be implemented.

EAKL and the employers' confederation have met bilaterally on a regular basis to discuss the labour market and social issues and sometimes also to prepare our shared views and present them to the government. The first autonomous European social-partner agreement on teleworking was also signed at national level in spring 2017. EAKL and the employers' organisation ETTK have agreed to continue the process of implementing the European social-partner agreements going forward.

EAKL will once again initiate the tripartite meetings.

## **5. Public servants**

There are many public-administration employees and employees in public service working under the employment contract who do not have the right to bargain collectively in Estonia.

The government has refused to conclude a collective agreement for other groups of public service employees who are employed under an employment contract in a public-service institution or organisation; therefore they are not deemed civil servants, claiming that there should be equal treatment throughout the public administration. The public administration employees who are not civil servants are allowed to organise but not to go on strike. There are no criteria for extending collective agreements.

EAKL will continue to demand the right for collective bargaining for public administration employees and civil servants. For civil servants who will not have the right to strike, EAKL demands that arbitration be possible.

### **Actions**

#### **Short term**

- EAKL insists on its demands to be involved in drawing up the new collective labour law.
- EAKL asks to change the law to start collecting data on gender-based wage discrimination.
- EAKL is continuing to negotiate with ETTK on the implementation of the European social-partner framework agreements.
- EAKL is continuing to demand the right to enter into collective bargaining by public administration employees and civil servants. For civil servants who will be not guaranteed the right to strike, EAKL demands that arbitration be possible.

#### **Long term**

- Strengthening the social dialogue at national level, renew tripartite consultations.
- Strengthening collective bargaining, especially sectoral collective bargaining. Improving knowledge, skills and capacity-building via the training of leaders and negotiators; sharing experiences with proficient Nordic trade unions on the design and provision of training courses on collective-bargaining techniques.
- Concentrating on organising new members. Developing and building a unionisation strategy (member organising and ongoing recruitment), taking into account new forms of employment and SMEs. Capacity-building for organisers, joint training/mentoring programmes, in cooperation with Baltic trade unions and experienced Nordic trade unions, study visits.
- Raising awareness of the ILO Core Conventions. Training courses, sharing experiences.

In general, short-term and long-term actions are closely related, and long-term actions pursue the aims of short term actions.

## **Common Baltic priorities**

### **Conventions C87 and C98**

Several questions relating to freedom of association and the right to collectively bargain have arisen during the project, and these need to be investigated and discussed further. The problems encountered during the project are of a different nature but warrant further investigation and expert analysis.

In the legal analysis, Niklas Bruun calls attention to some common areas where further analysis is warranted. All three countries have restrictions on what can be negotiated through collective bargaining. This is problematic both in relation to restrictions on what can be agreed in collective agreements but also how to enforce them. There is also a special problem involving the public sector, as the government's authority as an employer and collective-bargaining partner is limited to non-budgetary issues. The number of collective agreements in the Baltic States is low. Active dialogue at sectoral and company level is virtually non-existent in the countries, as exemplified by the few collective agreements at sectoral and enterprise level. Education and training in this area is needed. Improving the negotiation and bargaining skills of trade-union leadership at different levels is important to strengthen trade-union recognition. In this context, it is important to ensure that central and branch levels are able to assist members in resolving crises. It is also important that any beneficial outcomes provided to workers receive positive public recognition. Joint training courses with employers should also be considered.

The broad definitions of essential services and of the group which exercises public authority are the subject of discussion in all countries and it is worth taking a closer look at this issue. This discussion is also relevant to the discussion of the right to strike, notably for the groups of public servants defined here.

Another point of concern raised during the project is that there seems to be no mechanism in any of the three countries for resolving labour-market conflicts in case of strikes. Labour legislation in the Baltic States appears to have no effective or applicable rules governing mediation or arbitration once a strike has been declared. This lack of dispute-settlement mechanisms deserves further investigation by experts as it effectively eliminates the use of a strike as an ultimate resort. The matter is further complicated by the lack of legal precedents.

There also seems to be a general common problem involving access to justice for workers in cases where workers' rights have been violated. Estonia, for example, has no relevant institutions to turn to in cases of infringement, as the labour inspectorate or ombudsman is unable to intervene in labour conflicts. Lithuania, on the other hand, has complicated the procedures to the extent that they have been rendered ineffective, i.e. by allowing strikes to be postponed. In any case, the problem of access to justice requires further investigation. In-depth reviews of each country should be made to identify the mechanisms that undermine effective enforcement of fundamental labour rights.

In addition to further research in the above-mentioned areas, legal communities, trade union lawyers, labour lawyers and legal specialists in general should also be better informed and educated to ensure that they are sufficiently familiar with ILO standards and jurisprudence.

### **Unionisation**

There is a common need in all Baltic States to strengthen organising to ensure the representativeness of trade unions. To strengthen unionisation efforts, the project suggests that in-depth country analyses of labour-market structures in the Baltic States be made and that individual strategies be drafted at both sectoral and enterprise level to determine how to strengthen the unionisation process. Unionisation and negotiation practices are mainly rooted in the public sector. One feature of action would be not only to preserve, but build on the experiences of the public sector. The main challenge with private employers would then be to convince them about the specifics of processes that already work.

In a unionisation context, it is also worth mentioning that at present no structure for regular education and training of trade-union members exists in any of the Baltic States, but training is mainly carried out through the ETUI platform. Training programmes – as well as the training of course instructors – need to be developed in the different national contexts, and many forms of cooperation are applicable here, both in terms finding forms of cooperation and synergies between the Baltic States but also in a wider context. Multiple ways of financing such programmes could be considered – from EU and state funds to redirecting percentages of membership fees to training.

Further information and sharing best practices should be considered as Nordic trade unions are also looking for new strategies to counter declining membership, and there are widespread challenges to unionisation arising from digitised working life, atypical working forms and the proliferation of micro-sized, small and medium-sized enterprises. Defining common interests would be a way for trade unions to approach micro-enterprises and their employees.

Common training courses and sharing ideas in this area should be considered.

### Multiple institutions for worker representation

All three Baltic States have multiple and potentially overlapping institutions providing worker representation. Beside trade unions, a “trustee” institution exists in all three countries. Lithuania has an additional problem arising from its newly formed works councils. The situation varies from one country to the next and it is perceived differently by the trade unions. In all cases, however, there is a need to clarify the roles of the different forms of representation and to find strategies to strengthen trade unions in relation to these institutions. Assessing how trade unions should relate to the other institutions or possibly use them to further workers’ interests is important to maintain and increase representativeness. The “trustee” institution can, on one hand, be considered a positive form of worker representation in the absence of a trade union, but it can also be counterproductive if the institutions are controlled by employers and used to discriminate against trade unions.

Appendix A to the strategy paper clarifies the roles and identifies the problems relating to these institutions by country.

### C144 Tripartite Consultation

In all countries, the project has raised a discussion about the practice of social dialogue and tripartite consultation. The relations between governments, employers and workers have been affected by financial crises in all countries. Latvia appears to have the most well-functioning social dialogue at national level, including information and consultation with social partners.

In Estonia, the social dialogue shows signs of improving at national level but still appears to depend on which political party is in power. Tripartite consultation in relation to ILO is conceived as generally being one-way information from the government, lacking a permanent structure and rarely being of a consultative nature.

In Lithuania, the social dialogue is also mainly informative without a real possibility for workers to participate. There is an active tripartite council at national level but the workers’ voice is usually ignored. Both workers and employers have also pointed out how the state imposes changes to the tripartite council without consulting the other partners beforehand and that the government needs to approve the partners on the council and require that they meet certain criteria.

Regarding the social dialogue and the functioning of tripartite consultation in the countries, the project suggests that additional country-specific studies be carried out to assess the individual situations and revise individual strategies for improving the functioning of the social dialogue and tripartite consultations and ensuring that workers’ voices are heard.

While Convention No. 144 is mainly about tripartite consultation on ILO labour standards, it can well be extended to joint tripartite drafting of reports for the



ILO supervisory system. Such reports do not need to be consensual, if the partners do not agree on a certain issue. The process itself would help promote a discussion on the application of ILO decisions and recommendations in each of the three countries.

## **NFS**

The Nordic commitment to collaboration and strengthening trade unions in the Baltic States has varied greatly over the years since Baltic independence and many lessons have been learned from joint projects. The discussions in the project have raised the following ideas for deepened cooperation that should be subjected to political discussion in the Baltic trade unions and the NFS to find a suitable future plan of action.

An annual meeting between the Nordic and Baltic political leadership should be considered, i.e. through a permanent agenda item on one of the NFS board meetings and extending invitations to Baltic leaders to attend the meeting in question.

An annual Nordic–Baltic conference on Decent Work, with the aim of discussing common challenges and developing relations between unions should be considered.

The NFS should discuss the possibility of inviting Baltic trade unions to the NFS Congress.

The NFS should discuss inviting Baltic colleagues to relevant Nordic expert groups and meetings whenever possible, such as the Nordic ILO group.

Nordic unions should discuss inviting Baltic representatives to the Nordic Geneva school.

Nordic unions should discuss inviting Baltic representatives to Nordic events during the labour conference.

The NFS should contemplate and assess the possibility and benefits of organising a “Baltic–Nordic Trade Union Summer School”.

Nordic and Baltic Unions should jointly discuss setting up opportunities to deepen relations between them through common mentorship programmes at different levels between political leadership, lawyers and other trade-union employees.

Nordic and Baltic Unions should jointly discuss making Nordic study trips to the Baltic States and vice versa, including visits to workplaces.

Nordic and Baltic Unions should jointly initiate common forms of training courses on relevant trade union functions and activities, including the training of course instructors and shop stewards.

Nordic and Baltic Unions should initiate exchange programmes and consider the short-term exchange of personnel and various types of mentorship programmes and peer learning that could be beneficial for improving cooperation, sharing experiences and deepening an understanding of the differences in the Baltic Sea region.

As regards Nordic enterprises with investment and activity in the Baltic States, the Nordic countries should pressure the parent companies to comply with fundamental rights at work and relevant international agreements. At sector level, Nordic and Baltic unions should discuss and develop cooperation at enterprise level for joint cross-border consultations, but also assess the possibility of forming procedural agreements at enterprise level when labour-rights issues arise.

## **BASTUN**

The project suggests that a discussion of the project and its findings be held in the BASTUN network to identify if similar analysis is needed in other countries in the region or if other BASTUN-countries could contribute to achieving the goals set in the Baltic States. BASTUN can also be a forum in which to strengthen bilateral relations to further developments in the region.

## **ILO**

The ILO and the bureau for workers’ activities AKTRAV have regular activities

where Baltic trade unions could also be involved in training courses and activities. It is possible for AKTRAV to organise specific workshops in one or more countries separately or jointly.

In this context, workshops could be organised around a number of topics identified during the project as both individual and common priorities. Good common topics worth considering are social dialogue and fundamental labour rights.

Specific training courses on the application of international labour standards held for legal experts and trade-union lawyers could also be considered.

AKTRAV could also look at the possibility of facilitating the participation of Baltic trade unions at the International Labour Conference and other ILO events, as well as at forming a Baltic group at the International Labour Conference.

The possibility of arranging a joint Nordic–Baltic trade-union seminar supported by AKTRAV should also be considered, dealing with, for example, the failure to implement ratified ILO conventions and others.

Specific training courses on the supervisory mechanisms of the ILO and how potential violations of workers’ rights can be addressed or, if necessary, brought to the ILO, as well as discussions on assistance from Nordic Unions in this process should also be considered.

#### *Way forward*

As a way forward, the project strategy group proposes the formation of a special Nordic–Baltic task force, specifically charged with developing a time-bound action plan for the development of cooperation in the region. The aim of this group would be to further develop the recommendations in this paper based on the political priorities set by the NFS board and the Baltic trade unions.

We recommend that national discussions be held and commitments be made as soon as possible after the common political discussion at the BASTUN High Level meeting and final project conference in Riga on 22 November 2017 and that the task force could complete its work during 2018.

#### *Copenhagen, 12 October 2017*

Project Strategy Group: ***An analysis of the Baltic States: Determining whether any given legislation or practice complies with the ILO Core Conventions and Convention 144 on Tripartite Consultation***

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# Workers' representation in Estonia, Latvia and Lithuania

# Latvia

I. Workers representatives	Trade Unions	Work Councils	Trustees
	<p>Law on trade unions Article 7 (2) The number of founders of an undertaking trade union may not be less than 15 or less than one fourth of the total number of the employees of the undertaking which may not be less than 5 employees.</p> <p>(3) The number of the founders of a trade union established outside an undertaking may not be less than 50.</p> <p>Article 10 (1) The status of a legal person is granted to a trade union as from the moment when it is entered in the Register of Associations and Foundations.</p>	<p>Latvia does not have work councils as workers' representation model</p>	<p>Labour Law (LL) Article 10(2) Authorised employee representatives may be elected if an undertaking employs five or more employees. Authorised employee representatives shall be elected for a specified term of office by a simple majority vote at a meeting in which at least half the employees employed by an undertaking of the relevant employer participate. The course of the meeting shall be recorded in minutes and decisions taken shall be entered in the minutes. Authorised employee representatives shall express a united view with respect to the employer.</p>

## Relevant legal provisions

LL Article 10 (1) Employees shall exercise the defence of their social, economic and occupational rights and interests directly or indirectly through the mediation of employee representatives. Within the meaning of this Law, employee representatives shall mean:

- 1) an employee trade union on behalf of which a trade union institution or an official authorised by the articles of association of the trade union acts;
- 2) authorised employee representatives who have been elected in accordance with Paragraph two of this Section.

1. Rights and obligations	Trade Unions	Work Councils	Trustees
– Rights to collective bargaining (yes/no)	yes		yes but only in case there is no trade union in the enterprise. Thus priority for collective bargaining is given to trade unions
– Right to information and consultation	yes		yes
– Protection of representatives	yes, specifically provided in Law on Trade Unions: protection in case of disciplinary penalties, dismissal, guarantee of previous job position		no, only general protection against discrimination

### Relevant legal provisions

LL Article 18 (1) A collective agreement in an undertaking shall be entered into by the employer and an employee trade union or by authorised employee representatives if the employees have not formed a trade union.

LL Article 11 (1) Employee representatives, when performing their duties, have the following rights:

1. to request and receive from the employer information regarding the current economic and social situation of the undertaking, and possible changes thereto as well as relevant information regarding the employment in the undertaking of an employee appointed by the work placement service;
2. to receive information in good time and consult with the employer before the employer takes such decisions as may affect the interests of employees, in particular decisions which may substantially affect work remuneration, working conditions, and employment in the undertaking;
3. to take part in the determination and improvement of work remuneration provisions, working environment, working conditions, and organisation of working time, as well as in protecting the safety and health of employees;
4. to enter the territory of the undertaking, as well as to have access to workplaces;
5. to hold meetings of employees in the territory and premises of the undertaking;
6. to monitor how laws and regulations, the collective agreement and working procedure regulations are being observed in employment legal relationships. (5) Employee representatives and experts who provide assistance to employee representatives have the duty not to disclose information brought to their attention that is a commercial secret of the employer. The employer has the duty to indicate in writing what information is to be regarded as a commercial secret. The duty not to disclose information applies to employee representatives and experts who provide assistance to employee representatives also after their activities have terminated.

Law on Trade Unions Article 13 (2) A trade union notifies the authorised officials of the trade union who are authorised to represent the trade union and the rights and the interests of its members to the employer in writing.

(6) If the employer intends to give a written reproof or issue a reprimand in writing for violation of specified working procedures or an employment

contract to the authorised official of the trade union who performs the duties of the representative along with the contracted work, the relevant trade union shall be consulted in good time.

(7) The employer shall be prohibited to terminate the employment contract of the authorised official of the trade union who performs the duties of the representative, except in the cases specified by the law. The employment contract of the authorised official of the trade union shall be terminated in compliance with the provisions of the Labour Law.

(8) When, in compliance with the collective agreement or another agreement between the employer and the trade union, the authorised official of the trade union performs the duties of the representative and does not perform the contracted work during this performance, the previous work shall be ensured. If this is not possible, the employer shall ensure similar or equivalent work with not less favourable conditions and employment provisions. If this is not possible, the employment legal relationships shall be terminated in compliance with the provisions regarding the reduction of the number of employees.

2. Interaction: procedure if there are several trade unions or if there are different workers representatives models in one enterprise	Trade Unions	Work Councils	Trustees
	proportionate representation, requirement for joint (united) position		requirement for joint position

**Relevant legal provisions**

LL Article 10 (3) If there are several employee trade unions, they shall authorise their representatives for joint negotiations with an employer in proportion to the number of members of each trade union but not less than one representative each. If representatives of several trade unions have been appointed for negotiations with an employer, they shall express a united view.

(4) If there is one employee trade union or several such trade unions and authorised employee representatives, they shall authorise their representatives for joint negotiations with the employer in proportion to the number of employees represented but not less than one representative each. If representatives of one employee trade union or representatives of several such trade unions and authorised employee representatives have been appointed for negotiations with an employer, they shall express a united view.

II. Right to strike	Trade Unions	Work Councils	Trustees
<b>1. Procedure (initiation, mediation, arbitrage, termination of strike)</b>	Previous to realisation of the right to strike conciliation commission, mediation and arbitration mechanisms hav to be exhausted. If they bring no results or employer does not respond to their initiation, trade union can submit declaration of strike. There is no special procedure how the collective dispute regarding interests shall be solved after the strike has been started.		
<b>2. Maximum number of days to organise a strike</b>	In practise: from the moment of strike application – 20 days, if the employer does not claim the legality of the strike, and 27 days if the employer claims the legality of strike		
<b>3. Restrictions to the right to strike (categories of workers prohibited from strike)</b>	Judges, prosecutors, members of the police, fire-protection, fire-fighting and rescue service employees, border-guards, members of the State security service, warders and persons who serve in the National Armed Forces are prohibited from striking.		

**Relevant legal provisions**

Strike Law and Labour Dispute Law.

3. Restrictions and main problems	Trade Unions	Work Councils	Trustees
4. Minimum essential services	<ul style="list-style-type: none"> <li>– medical treatment and first aid services;</li> <li>– public transport services;</li> <li>– drinking water supplies services;</li> <li>– electricity and gas production and supplies services;</li> <li>– communications services;</li> <li>– air traffic control services and the services, which provide air traffic control services with meteorological information;</li> <li>– services related to the safety of movement of all forms of transport;</li> <li>– waste and waste water collection and treatment services;</li> <li>– radioactive substances and waste storage, utilisation and control services; and</li> <li>– civil defence services.</li> </ul>		



### **Relevant legal provisions**

Strike Law Article 17 (1) The employer and the strike committee shall ensure that during a strike, the minimum amount of the work is continued in the services, undertakings (companies), organisations and institutions necessary to public, the discontinuation of which would cause a threat to national security or the safety, health or life of the entire population, certain groups of inhabitants or particular individuals.

(2) Services necessary to public within the meaning of this Law shall be:

- 1) medical treatment and first aid services;
- 2) public transport services;
- 3) drinking water supplies services;
- 4) electricity and gas production and supplies services;
- 5) communications services;
- 6) air traffic control services and the services, which provide air traffic control services with meteorological information;
- 7) services related to the safety of movement of all forms of transport;
- 8) waste and waste water collection and treatment services;
- 9) radioactive substances and waste storage, utilisation and control services;  
and
- 10) civil defence services.

(3) If necessary, not later than three days prior to the commencement of a strike, the employer and the strike committee shall agree in writing and designate from those employees who will participate in the strike a certain number of employees who will perform the work referred to in Paragraph one of this Section during the strike, as well as specify the amount of practical work of the employees referred to and give specific orders.

(4) The refusal of an employee to perform the practical work and follow the orders referred to in Paragraph three of this Section, the aim of which is to ensure the functioning of the relevant service necessary to the public or the minimum necessary work to be performed during strike provided for by the contract of employment or collective agreement shall be regarded as a violation of the work procedures, and the employee shall be held liable in accordance with the procedures prescribed by law.

# Lithuania

## I. Workers representatives

	Trade Unions	Work Councils	Trustee
1. <i>Rights and obligations</i>			
– Rights to collective bargaining (yes/no)	Yes	No	No
– Right to information and consultation	Yes*,**	Yes	Yes
– Protection of representatives***	Yes	Yes	Yes

\* Information and counseling are main functions of work councils. If more than 1/3 of workers are members of a trade union, a work council is not established and all its functions are given to a trade union.

\*\* In some cases, for example, if it is planned to fire many employees, employer has to inform and consult with WC and TU.)

\*\*\* All (trade unions, work councils and trustees) have some degree of protection. How many representatives are protected depends on a size of a particular company. This count ranges between 3–11 people.

### 2. *Interaction: procedure if there are several trade unions or if there are different workers representatives models in one enterprise*

When WC gets relevant information from employer, it has to share it with a trade union. There is a risk, that smaller trade unions will be overlooked and won't get information or get it late. Important: at least one member of a WC has to be a tradeunionist.

If there are more than one trade union in an enterprise a) they may elect their joint representatives from all TUs; b) they may choose one trade union, which will represent all other trade unions of that enterprise. This is more important, when TUs are small and do not have 1/3 of employees.

### 3. *Restrictions and main problems*

Effective communication gets more difficult and slower. Unnecessary confusion is created: information and consultation are main functions of WCs or trustees BUT trade unions have right to collective bargaining. Implementation of this right gets aggravated and it is clear that current situation is more complicated than it was before the new Labour Code.

## II. Right to strike

### 1. *Procedure (initiation, mediation, arbitration, termination of strike)*

Initiation of strikes is a right of trade unions. It is enough, if ¼ of trade unions members support strike. After the new Labour Code came into power it is easier to initiate strikes but still there are plenty illogical things. If workers want to strike, required procedures are quite long and complicated. There are just a few situations, when it is allowed to strike: a) if employer refuses to negotiate for a collective agreement or b) refuses to sign a collective agreement. It is not allowed to strike, if employer simply violates a collective agreement. Before the beginning of a strike it has to be established a conciliation commission (representatives of workers and employer). If problem is not solved, than it can be addressed to a) a mediation commission or b) an arbitration of a Territorial Labour Inspectorate. There is a need to create a system to resolve labour disputes. Now strikes may end without any result

### 2. *Maximum number of days to organise a strike*

After 7 days employer can apply a lockout.

### 3. *Restrictions to the right to strike (categories of workers prohibited from strike)*

There are some restrictions to strike for policemen, firefighters, other statutory officers. It is not allowed to strike for ambulance workers, in natural disasters zones.

### 4. *Minimum essential services*

Those whose work is crucial for normal life of society have to ensure minimal level of services (healthcare, electricity, water supply, heat supply, sewerage, civil aviation, telecommunication, railway, city's public transport services).

# Estonia

I. Workers representatives	Trade Unions	Work Councils	Trustee
1. Rights and obligations		No Works Councils	
– Rights to collective bargaining (yes/no)	Yes		Yes, if no TU
– Right to information and consultation	Yes		Yes
– Protection of representatives	Yes		Yes

Trade Unions Act <https://www.riigiteataja.ee/en/eli/518112013006/consolide>  
 Employees' Trustee Act: <https://www.riigiteataja.ee/en/eli/ee/530102013056/consolide/current>

II. Right to strike	
1. Procedure (initiation, mediation, arbitration, termination of strike)	Collective Labour Dispute Resolution Act <a href="https://www.riigiteataja.ee/en/eli/526102015001/consolide">https://www.riigiteataja.ee/en/eli/526102015001/consolide</a>
2. Maximum number of days to organise a strike	Warning no more than 1 h, sympathy strike no more than 3 days, the maximum duration of strike is not regulated
3. Restrictions to the right to strike (categories of workers prohibited from strike)	Public administration, rescue, police, army, court
4. Minimum essential services	Organisation of Continuity of Vital Services

§ 36. List of vital services and authorities organising continuity thereof

(1) The Ministry of Economic Affairs and Communications shall organise the continuity of the following vital services:

- 1) electricity supply;
- 2) natural gas supply;
- 3) liquid fuel supply;
- 4) ensuring the operability of national roads;
- 5) phone service;
- 6) mobile phone service;
- 7) data transmission service;
- 8) digital identification and digital signing.

(2) The Ministry of Social Affairs shall organise the continuity of emergency care for the purposes of the Health Services Organisation Act.

(3) The Bank of Estonia shall organise the continuity of the following vital services:

- 1) payment services;
- 2) cash circulation.

(4) Local authorities who organise services provided by a provider of a vital service and on whose territory lives over 10,000 residents organise in their administrative territory the continuity of the following vital services:

- 1) district heating;
- 2) ensuring the operability of local roads;
- 3) water supply and sewerage.

This report was published by the Council of Nordic Trade Unions (NFS). NFS is a regional trade union organisation that consists of 16 trade union confederations in the Nordic Countries. Together it represents nine million members from blue collar, white collar and academic sectors in Sweden, Finland, Denmark, Norway, Iceland, Greenland and the Faroe Islands.



**NORDENS FACKLIGA SAMORGANISATION  
POHJOLAN AMMATILLINEN YHTEISJÄRJESTÖ  
COUNCIL OF NORDIC TRADE UNIONS**