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► Workers' representatives in selected Central and Eastern European countries:

Filling a gap in labour rights protection or trade
union competition?

Edited by Cristina Mihes



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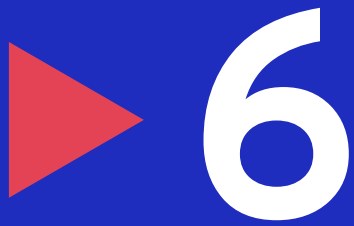
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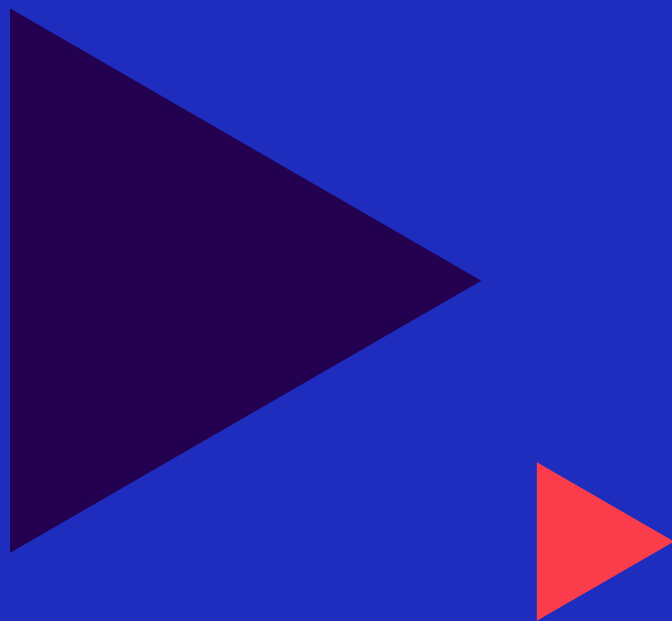
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The case of Lithuania

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► 1. Evolution of the collective worker representation model in Lithuania

Collective industrial relations in the Republic of Lithuania are based on the international and constitutional principle of freedom of association. Lithuania has ratified all the main conventions of the International Labour Organization, which guarantee the right of participants in labour relations to organize to defend their interests.¹⁰⁶ The right to form associations is also guaranteed by the Constitution of the Republic of Lithuania; its article 35 establishes the right of citizens to form societies, political parties and associations. From the perspective of labour relations, this principle is detailed in article 50 of the Constitution, which declares the right of trade unions to be established freely and function independently, and in article 51 of the Constitution, which guarantees the right of workers to strike in defence of their social and economic interests.

Labour law is a codified branch of law in Lithuania. The main legal act regulating industrial relations is the Labour Code of the Republic of Lithuania. There are also a number of laws regulating specific areas of industrial relations.¹⁰⁷ After the restoration of the independence of the State of Lithuania on 11 March 1990, labour law has been reformed substantially three times:

(i) in 1990–2003, when individual laws were adopted rapidly to move from socialist regulation of labour relations to a legal regime of labour in line with the free market;

(ii) in 2003–2017, when the first Labour Code of independent Lithuania was adopted; the Code, *inter alia*, also transposed the provisions of the labour law of the European Union into national law (during this period, some areas of industrial relations were regulated by laws, which, together with the Labour Code, constituted a unified system of labour law);

(iii) after 2017, when the current Labour Code was adopted, one of the objectives sought by its adoption was to modernize the legal regulation of labour relations in the light of the changing labour market, economic globalization and the transformation of labour relations.

It should be noted that the legal framework for worker representation was at the epicentre of all the above-referred labour law reforms. After 1990, Lithuania urgently needed to create the legal regulation for free, independent trade unions and legal conditions for free and voluntary collective bargaining. The relevant laws were adopted immediately.¹⁰⁸ In the first decade, trade unions were the only representatives of workers in Lithuania – at the workplace, at both sectoral and national levels.¹⁰⁹

One of the major challenges for Lithuania in the context of the European integration process and the implementation of the *acquis communautaire* in labour law was the model of worker representation and the creation of a model for information and consultation procedures that would actually work. Trade union density had always been and remains a major issue (in recent years, trade union density in Lithuania has not exceeded 10 per cent and was around 7 per cent on average) (OECD 2021). This was why the first Labour Code (in force from 1 January 2003 to 1 July 2017) introduced an alternative workers representative – the works council. According to article 19 of the Labour Code,¹¹⁰ trade unions were in the position to represent and defend the rights and interests of workers or, if there was no trade union in the enterprise, workers could delegate their defence and representation functions to a sectoral trade union or could elect a works council. Thus, the preference in employee representation was given by the Labour Code to trade unions which operated in accordance with

106 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); Right of Association (Agriculture) Convention, 1921 (No. 11); Workers' Representatives Convention, 1971 (No. 135); Collective Bargaining Convention, 1981 (No. 154) all these conventions were ratified by Lithuania in 1994.

107 Law on Trade Unions, Law on Safety and Health at Work, Law on European Works Councils and so on.

108 Law on Trade Unions, 21 November 1991; Law on Collective Agreements, 4 April 1991; Law on the Regulation of Collective Disputes, 11 March 1992.

109 It should be noted that, after the restoration of independence, "representatives elected collectively by workers" were known for a short time only. As it is known, the number of workers who were members of trade unions reduced to a dangerously low level after the reinstatement of the independence. That was why the 1991 Law on Collective Agreements provided that, where there was no trade union in an enterprise or where there were several trade unions which had not agreed on joint representation, the collective agreement of the enterprise could be signed by the representatives elected collectively by workers. The Law did not specify how such representatives should be elected, but it was clear that the aim of such statutory provision was to enable workers who were not members of a trade union to sign a collective agreement. This statutory provision, however, did not last long. Trade unions gained a monopoly right to make collective agreements over time and the above-referred provision on the representatives elected collectively by workers was repealed when the Law on Collective Agreements Act was amended in 1994.

110 Labour Code of the Republic of Lithuania, Law No. IX-926, adopted on 4 June 2002 (valid until 30 June 2017).

the Law on Trade Unions. The other form of collective representation of workers – works councils – was a new organizational structure that had not existed in Lithuania until that time. Article 21 of the Labour Code stipulated that a works council had all the rights of collective representation entities; however, they could not perform the functions that were recognized by law as the prerogative of trade unions. In other words, works councils were able to participate in information and consultation procedures, initiate collective bargaining, sign collective agreements and even declare a strike in the event of an industrial conflict, that is, perform all collective labour law functions at the company level. The collective representation of workers at a level higher than the company was the exclusive right of trade unions.

It should be noted that although works councils were for the first time introduced in Lithuanian labour law in 2003 (when the then Labour Code came into force), in reality they started to operate only at the end of 2004 when the Law on Works Councils came into force.¹¹¹ The authors of the Labour Code did not initially intend to have a separate law on works councils – all related issues were to be regulated in the Labour Code. However, when the trade unions that were against the introduction of works councils started blocking the discussion of the draft Labour Code and delaying its adoption, it was decided to provide for only a general legal framework in the Labour Code and to regulate all the issues related to the election and operation of works councils in a special law. This allowed some more time for negotiations with trade unions on the model of works council that was being created.

To sum up, it appears that, when choosing a system for worker representation between 2003 and 2005, Lithuania opted not for a solidarity-based worker representation model enabling co-functioning of several types of worker representatives in parallel but rather for an alternative in which workers may be represented by one of the two representatives, that is, either by a trade union or by a works council.

It is difficult to assess the effectiveness of works councils between 2004 and 2017, as no official statistics were collected at the time, nor was there any relevant case law. It should be mentioned that several research studies were carried out between 2006 and 2009. A survey of employers and employees carried out during the research study (Institute for Labour and Social Research 2006) showed that 40 per cent of the respondent workers said the establishment of the works council had been initiated by the employer, and 22 per cent of the respondents reported voluntary assistance of the employer in electing the works council/workers' representative by the workers who had initiated such an election. A survey of relations between works councils

and employers revealed a highly positive nature of these relations: the majority of the respondents (71 per cent) said that the relations between the works councils and the employer were normal and constructive dialogue was in place; another 24 per cent of the respondents described the relations with the employer as “warm and friendly”.

In order to assess trade unions' views on closer cooperation between works councils and trade unions, the survey included an opinion of high-ranking trade union officials, that is, the leaders of national, sectoral and territorial trade union organizations. Findings of the survey of trade union leaders showed that even 12 respondents out of 25 believed cooperation between works councils and trade unions would be useful for both parties, while 6 respondents were of the opinion that such cooperation was vital in the pursuit of common goals. Another six respondents expressed the opinion that cooperation between trade unions and works councils was hardly possible in Lithuania, and only one respondent said that trade unions would never cooperate with works councils in Lithuania (Institute for Labour and Social Research 2008).

Between 2009 and 2011, data on existing works councils were collected by the State Labour Inspectorate. It should be noted that this was not a purposeful and complete collection of data, but only the systematization of information found during inspections of enterprises. In 2011, the State Labour Inspectorate inspected 12,325 enterprises (15,935 and 12,411 in 2009 and 2010, respectively) and found out that 305 enterprises had trade unions registered (347 and 298 trade unions in 2009 and 2010, respectively); in 89 enterprises, the function of employee representation and protection was transferred to sectoral trade unions (as compared to 124 and 83 enterprises having the employee representation and protection function transferred to sectoral trade unions in 2009 and 2010, respectively), and 153 enterprises had works councils in place or their functions were implemented by employee representative (as compared to 207 and 166 enterprises with works councils or employee representatives performing the functions of the works councils in 2009 and 2010, respectively) (Ministry of Social Security and Labour 2012).

Practice has shown that, despite good intentions, there were no constructive cooperation relations developed between trade unions and works councils; works councils were not active even in information and consultation procedures; collective bargaining and collective agreements between works councils and employers were uncommon, often teetering on the edge of lawfulness and compliance with the Labour Code; and there was not a single strike called by a works council. Regardless, public presentation of practical examples

111 Law on Works Councils, 26 October 2004, No. IX-2500 (in force until 1 July 2017).

and publications in mass media suggested that the divide between trade unions and works councils did not narrow in Lithuania. On the contrary, the alternative provided for the Labour Code became very popular – instead of setting up trade unions or works councils in enterprises

to transfer the representation function to a sectoral or regional trade union which then established its units in the particular enterprise. This made the work of works councils more nominal than real, and the information and consultation model largely failed in practice.

► 2. The current model of works councils

The third reform of Lithuanian labour law, with the entry into force of the Labour Code in 2017 as its main highlight, removed the universal representation mandate held by works councils and aimed to change the system of employee representation, *inter alia*, to create the system of collective industrial relations more favourable for trade unions and to strengthen the employee rights to information and consultation (Davulis 2017).

The regulations on the legal status of works councils in the Labour Code (2017) have undergone significant changes:

(1) mandatory requirement for employers with 20 or more employees on average to have a works council (article 169 (1) and (4));

(2) requirement for employers to form a works council on their own initiative (article 169 (1)) and to be actively involved in the election process, that is, to set up an election commission to carry out the election of the works council (article 171 (2)), to create conditions for employees to participate in the election and pay them their average remuneration for this time (article 171 (6)), to provide the material and technical provisions for the works council election (article 171 (13)) and so forth;

(3) direct involvement of the State Labour Inspectorate in the process of forming of works councils, that is, the chairperson of the works council must inform the State Labour Inspectorate in writing about the formation of the works council, its management bodies and the

name of the enterprise where the works council has been formed (article 173 (6)); the employer must inform the Inspectorate in writing about the termination of activities of the works council if a new works council is not formed within six months (article 176 (3));

(4) imperative provision that the competence of works councils is limited only to their right to participate in information and consultation procedures at the employer level (article 165 (4)), that is, the rights of the works council as a collective representative of workers have been considerably narrowed.

Furthermore, the Labour Code states that where there is a trade union in an enterprise and it represents more than one-third of the employees of the enterprise, the works council shall not be elected and the trade union shall carry out information and consultation procedures (article 169(4)). The Code also provides that, in small enterprises with up to 20 employees, an employee trustee may be elected, who shall be equivalent to a works council and perform similar information and consultation functions (article 177). It should be noted that the election of an employee trustee is not compulsory and depends only on the initiative of employees. If an employee trustee is not elected, information and consultation procedures in small enterprises take place directly between the employer and the collective of employees.

2.1. Election of the works council

After the Labour Code entered into force, there was a transition period of six months: employers with 20 or more employees on average on the date of entry into force of the Labour Code (1 July 2017) had 6 months to form an election commission of the works council to organize the works council election. Until the works council was elected and started operating, the information and consultation functions provided for in the Labour Code were carried out by the trade unions operating in the enterprise. As a result of such legal

regulation of the transitional period, the second half of 2017 saw the so-called boom of elections of works council in Lithuania, as all enterprises with 20 or more employees had to elect their works councils by 1 January 2018 at the latest.

The Labour Code (Article 170) defines the compulsory number of members of the works council, which depends on the number of employees working in a company:

- (1) up to 100 employees – 3 members of the works council;
- (2) from 100 to 300 employees – 5 members of the works council;
- (3) from 300 to 500 employees – 7 members of the works council;
- (4) from 500 to 700 employees – 9 members of the works council;
- (5) more than 701 – 11 members of the works council.

All employees who are at least 18 years of age and who have worked in the enterprise for at least 6 months may be elected as members of the works council. The employer and its representatives (persons in the management of the enterprise) may not be elected to the works council. The works council is elected for a term of three years (article 169(3) of the Labour Code). If there are one or more trade unions in an enterprise, one seat on the works council is reserved for the candidates nominated by them in the elections.

The procedure for the election of the works council is governed by article 171 of the Labour Code. As already mentioned, the election of the works council shall be organized and carried out by the election commission set up by the employer. The election commission shall be composed of at least three and at most seven members; the employer's representatives may constitute no more than one-third of the members of the commission. The election commission shall meet for its first meeting and start organizing the election of the works council no later than seven days after its formation. At the first meeting, the election commission shall elect a chairperson from among its members and shall set the date of the works council election, which may not be later than two months after the date of the formation of the election commission. Employees appointed to the election commission may not be dismissed from work on the initiative of the employer during the mandate of the election commission. They shall be paid average remuneration for the time spent organizing and holding the works council election. The mandate of the election commission shall expire at the first meeting of the works council.

Candidates for the works council may be nominated by employees entitled to vote. Only employees who have the right to vote may be nominated as candidates, with the exception of the members of the election commission. Each employee may nominate one candidate by writing to the election commission and submitting the candidate's written consent to be elected to the works council. Employer-level trade unions shall be entitled to

nominate at least three employees who have the right to vote as candidates for the works council, and the candidate who receives the most employee votes shall be deemed elected.

The works council shall be elected by secret ballot in direct elections, on the basis of universal and equal suffrage. All employees who have had an employment relationship with the employer for at least three uninterrupted months may participate in works council elections and have the right to vote. The employer must create conditions for employees to participate in the election and pay them their average remuneration for this time. In practice, works council elections often are conducted by remote voting, provided that the employer and the election commission guarantee the secrecy of such voting. Material/technical provisions for works council elections shall be provided by the employer.

It shall be deemed that the works council election has taken place if more than half of the employees who have the right to vote participated in the election. If a works council election is deemed null and void due to insufficient employee participation, a repeat election must be held within the next seven days. Such a repeat election shall be considered to have taken place if one-fourth of the employees entitled to vote participated. The candidates who received the majority of votes shall be deemed to be elected members of the works council. If several candidates receive an equal number of votes, the candidate with the longer length of employment at the enterprise, institution or organization shall be deemed elected. Persons on the reserve list of members of the works council may, in consecutive order, become works council members in the event of a vacancy on the works council.

2.2 Statistics on works councils

Since July 2017, the State Labour Inspectorate (SLI) has been collecting information on the works councils formed in Lithuania,¹¹²

Table 1. Works councils in Lithuania 2017–2022

	2017 (from July)	2018	2019	2020	2021	2022
Number of works councils elected	1,094	2,920	407	315	1,045	218
Total number of members in works councils	3,870	11,021	1,536	1,142	4,239	902

The statistics show a real trend in the formation of works councils. As mentioned above, works councils could be elected (under the provisions of the 2017 Labour Code) for a three-year term until 2018. It is, therefore, likely that the term of office of many of the works councils elected during this period ended near the beginning of 2021. However, due to Covid-19 pandemic constraints applicable at the time, works councils were not re-elected, and old works councils continued to function or ceased to function at all in a large number of enterprises.

The State Labour Inspectorate notes that, according to the data of 2022, employees were represented by works

councils and trade unions in 39.64 per cent of enterprises, of which: works councils operated in 12.11 per cent of enterprises; a single-person trustee of employees (in enterprises with up to 20 employees) – in 25.51 per cent; enterprise trade unions in 3.13 per cent and sectoral trade unions – in 0.33 per cent of enterprises. These are not representative statistical indicators, but data collected by the SLI during inspections of enterprises. Nevertheless, these data suggest that employees are collectively represented in around 40 per cent of companies in Lithuania.

2.3. Legal status and activities of works councils

As already mentioned, in Lithuania, works councils are involved in information and consultation procedures with the employer. That is the only function entitling the works council (article 174 of the Labour Code):

- (1) to participate in information, consultation and other participatory procedures by which the employees and their representatives are included in the employer's decision-making process;
- (2) to receive the information necessary for the performance of their functions from the employer and from state and municipal institutions and establishments;
- (3) to submit proposals to the employer on economic, social and labour issues, decisions of the employer that are of relevance to the employees, and the implementation of labour law provisions;
- (4) to initiate a collective labour dispute on rights if the employer fails to fulfil the requirements of labour law provisions;
- (5) to discuss, where necessary, economic, social and labour issues of importance to the employer's employees and convene a general meeting (conference) of the

employees of the employer or of the workplace, upon coordinating the date, time and place of the meeting/conference with the employer.

In carrying out its functions, the works council must take the rights and interests of all of the employer's employees into account and not discriminate against individual employees, groups of employees or employees from different workplaces; inform employees about its activities on a yearly basis by publicly providing employees of the enterprise, institution or organization with an annual report on works council activities or by another method established in the regulation on works council activities; inform the employer and the employer-level trade union in writing about its authorized members.

If an enterprise has one or more trade unions, the Labour Code (Article 174) obliges the works council to cooperate with them in good faith, to share information provided by the employer and to jointly resolve issues of concern to employees.

The employer and the works council may enter into a written arrangement to discuss the exercise of the works council's competence, the organization and

¹¹² The chairperson of a newly elected works council must communicate this information to the SLI in writing not later than within one month. Data from: State Labour Inspectorate. Monitoring of the Labour Code. Accessed via: https://www.vdi.lt/Forms/Tekstas1.aspx?Tekstai_ID=17

funding of its activities, the establishment of additional guarantees for works council members for the duration of their activities and other related key issues that promote cooperation between the works council and the employer. Employees' terms of employment, remuneration, working and rest time and other matters that are regulated by the collective agreement applicable to the employer's employees may not be negotiated in an agreement between the works council and the employer. An agreement between the works council

and the employer shall be concluded for a fixed term. The duration of its validity may not be longer than one year after the end of the term of office of the works council that concluded it. Either party may terminate the employer-works council arrangement by notifying the other party thereof in writing at least three months in advance. This provision shall also apply in the case when a new works council is elected and the agreement between the employer and the previous works council is still in effect.

2.4. Guarantees for the performance and non discrimination of works council members

The employer provides the premises free of charge and allows the use of available working facilities (office equipment, internet and so forth) for the performance of functions of the works council (article 167 of the Labour Code).

Members of works councils normally carry out their duties during working hours. For these duties, each member of the works council shall be given a minimum of 60 hours of work per year (for which time they shall be exempt from the performance of their direct job functions) for which the employee's average remuneration shall be paid. The employer must also create conditions for the education and professional development of works council members in the area of employee representation. For this purpose, each member of the works council shall be granted at least five working days per year, of which at least two working days shall be paid at the average remuneration (article 168 of the Labour Code).

During the term of office and six months after the end of the term of office of members of the works council, the employer may not:

- (1) dismiss employee representatives on the initiative or at the will of the employer;
- (2) worsen, on its own initiative, the indispensable employment contract terms compared to the employment terms of the employees of the same category.

If the employer has to take one of these decisions in respect of a works council member, it must obtain the consent from the SLI. Consent shall be granted if: (i) a change or termination of the employment contract is planned due to objective work organization or related reasons; and (ii) the employer proves that its intention is not due to the employee's membership of the works council.

Table 2. Data of the State Labour Inspectorate on employers' requests for termination of employment contracts with employee representatives, 2017-2022¹¹³

	2017 (from July)	2018	2019	2020	2021	2022
Requests received from employers	15	44	56	44	54	65
Requests granted	11	37	53	38	50	57

In deciding whether or not to give a consent for termination of the employment contract with a member of the works council (article 168 (3) of the Labour Code), the State Labour Inspectorate considers the termination of the employment contract only from the perspective whether the termination of the employment contract

is not potentially related to the representation of the employees or to the activities of the employee as a person exercising the representation of employees. It does not, however, assess the justification of the dismissal and employment or other issues related to the lawfulness of the dismissal.

113 A similar guarantee applies to members of works councils, trade unions and OSH committees operating in enterprises. The table shows just general figures.

► 3. Representation of employees in OSH committees, participation in employer's decision-making

As mentioned above, in Lithuania, works councils have one function – to represent workers in information and consultation procedures. This function is detailed in the Law on Safety and Health at Work by granting the right to the works council (trustee of employees) to represent the interests of employees in the creation of safe and healthy working conditions (article 10). Article 13 of the Law states that at least one OSH representative shall be elected in each workplace. The election of this representative shall be organized by the works council at a meeting of the enterprise staff.

In accordance with articles 210-211 of the Labour Code and article 10 of the Law on State and Municipal Enterprises of the Republic of Lithuania, the works council shall nominate its representatives to the board (that is, the collegial management body of the enterprise) of the state or municipal enterprise. It should be noted that the board, as the management body of an enterprise, shall

be formed in the cases provided for by the articles of association of a particular enterprise. Thus, it is allowed to not form any board in the above enterprises; however, where they are set up, they must include employee representatives. The members appointed by employee representatives have the same rights and obligations as the other board members.

In other enterprises, collective agreements also may provide for the possibility of employee representatives to observe or attend meetings of the employer's collective management or supervisory bodies in an advisory capacity – when the meetings discuss matters relating to the working conditions of the employees of the enterprise. In such a case, employee representatives have the right to express their opinions on the issues of employee working conditions discussed at the meetings (article 212 of the Labour Code).

► 4. Works councils and non-standard forms of employment

According to the provisions of the Labour Code, works councils represent employees, that is, individuals who work under an employment contract. It should be noted that it is irrelevant in this case what type of employment contract (for example, fixed-term, temporary, seasonal and so on) the employees have. Lithuanian labour law, however, does not treat self-employed persons and persons working on digital platforms as employees. As a result, these persons may not elect and be represented by works councils.

Lithuania also has a specific situation with regard to works councils in the civil service. Civil service relations, as well as the legal status and social guarantees of civil servants, are established by the Law on the Civil Service of the Republic of Lithuania,¹¹⁴ which provides for the subsidiary application of labour laws, that is, the Labour Code and other labour laws are applicable to civil servants to the extent their status and social guarantees are not regulated by the Law on the Civil Service. The approach to the application of the provisions of the

Labour Code regulating the legal status of works councils in the civil service is not uniform. The Law on the Civil Service does not regulate the procedure for the election of works councils; however, it does state that members of works councils may participate as observers in the selection commission to the position of civil servants, as well as in the performance assessment of civil servants. Such legal regulation is viewed differently. There is no consensus in the academic literature whether the election of works councils in the civil service is possible and whether such election should be subject to the provisions of the Labour Code, or whether special rules nevertheless should be laid down directly in the Law on the Civil Service (Krasauskas 2022). The case law, on the other hand, is categorical and states that the provisions of the Labour Code establishing the legal status of works councils are not applicable for the regulation of legal relations in the civil service and that, in general, works councils may not be formed in public authorities employing civil servants.¹¹⁵

114 Law on Civil Service, 8 July 1999, No. VIII-1316.

115 Rulings of 20 February 2019 and 4 November 2020 of the Supreme Administrative Court of Lithuania.

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