

## Chapter 18

# Lithuania: will new legislation increase the role of social dialogue and collective bargaining?

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The economy of Lithuania, the EU Member State hardest hit by the global financial crisis, started to recover in 2011. Stable economic growth has continued to this day. Both the employment rate and wage growth in Lithuania, however, have significantly lagged behind the overall economic recovery. Furthermore, wage share as a percentage of GDP has remained at the bottom and income inequality at the top among EU Member States during the past decade (see Appendix A1). Similar to the situation in several other Central and Eastern European countries such economic and social developments have been greatly influenced by, among other things, the domination of neoliberal market-based policies and the relative absence of industrial relations and social dialogue from policymaking processes. Lithuania is among the countries in the EU with the lowest trade union density and collective bargaining coverage. Despite this, Lithuania has fairly strict regulations on employment and social conditions, which are guaranteed mainly by prescriptive legal regulation (Table 18.1).

During the past decade neither employers nor employees' representatives have been satisfied with a situation in which, according to the employers, very tough regulation of the labour market discourages the creation of new jobs and hampers the country's ability to attract foreign direct investment. In turn, employees' representatives were

Table 18.1 Principal characteristics of collective bargaining in Lithuania

Key features	2000	2016
Actors entitled to collective bargaining	Trade unions and employers, at all levels	Trade unions or works councils and employers at company level; trade unions and employers at industrial, territorial and national levels
Importance of bargaining levels	Company level	
Favourability principle/derogation possibilities	Favourability principle applies	
Collective bargaining coverage (%)	15 <sup>1</sup>	10 <sup>2</sup>
Extension mechanism (or functional equivalent)	n.a.	Available, but never applied in practice
Trade union density (%)	14 <sup>3</sup>	9 <sup>4</sup>
Employers' association rate (%)	20 <sup>5</sup>	14 <sup>6</sup>

Notes: <sup>1</sup> 2002, <sup>2</sup> 2012, <sup>3</sup> 2003, <sup>4</sup> 2012, <sup>5</sup> 2007, <sup>6</sup> 2012.

Source: Appendix A1.

dissatisfied with undeveloped industrial relations and the minor roles afforded to social dialogue and collective bargaining in determining employment and employees' social conditions. In response to this, a national reform of employment and social security laws, commonly known as the the new social model (*Socialinis modelis*) was initiated in Lithuania in 2014. The main labour laws in force hitherto, in particular, the Labour Code of the Republic of Lithuania, were fundamentally amended within the framework of the new social model. The new Labour Code came into effect in Lithuania on 1 July 2017 introducing, among other things, fairly radical amendments to the provisions regulating industrial relations, including collective bargaining.

From 1 July onwards, the right to conduct collective bargaining is granted exclusively to trade unions, instead of trade unions and works councils, as in the old version of the Labour Code; collective agreements apply only to members of signatory trade unions, instead to all of the employees of the company, as in the old Labour Code; and employers are obliged to initiate the election of a works council. The new Labour Code is expected to facilitate social dialogue and collective bargaining, to create more favourable conditions for the parties to reach an agreement on the most acceptable conditions, to enhance the competitiveness of Lithuanian companies, to create more new jobs and to contribute to wage growth. It is very difficult to say yet whether these expectations will be fulfilled in practice, what influence the new Labour Code will have on industrial relations and how it will impact collective bargaining.

## **Industrial relations context and principal actors**

It should be noted that assessment of the collective bargaining situation and industrial relations in general before and after the new Labour Code is severely hampered by the absence of reliable data representing the entire economy, as well as by the absence of relevant research. Unfortunately, as of the beginning of 2018 no information was available in Lithuania on the number and contents of company-level collective agreements and/or the main collectively agreed issues. This situation is currently changing as, pursuant to the new Labour Code, companies have to report on newly signed company-level collective agreements. The database of such agreements is slowly emerging, though so far it is far from complete. Likewise, there is no reliable information on collective bargaining coverage, association rate of employer organisations or related information at industrial level. All the information presented below is based rather on expert judgements, interviews with social partners and practical experiences of the authors.

The main national social dialogue institution in Lithuania is the Tripartite Council of the Republic of Lithuania (*Lietuvos Respublikos Trišalė taryba, LRTT*). The LRTT was established in 1995 following an agreement on tripartite partnership signed by the government, trade unions and employers' organisations. The LRTT is based on the principle of equal tripartite partnership and seeks to tackle social, economic and labour problems by mutual agreement of the parties. All legislative drafts submitted to the parliament on relevant labour, social and economic issues are supposed to be agreed in advance at the LRTT.

The new Labour Code introduced nine criteria on the basis of which social partner organisations can be represented at the LRTT. The most important criteria are: membership of international trade union or employers' organisations, having members or representatives in different regions or industries, being active for at least three years, covering at least 0.5 per cent of the employees in the country for trade unions and having at least 3 per cent of salaried employees in the country employed by their companies for employers' organisations.

Six employers' organisations are currently represented in the Tripartite Council: the Lithuanian Confederation of Industrialists (Lietuvos pramoninkų konfederacija, LPK), the Confederation of Lithuanian Employers (Lietuvos darbdavių konfederacija, LDK), the Association of Lithuanian Chambers of Commerce, Industry and Crafts (Lietuvos prekybos, pramonės ir amatų rūmų asociacija, LPPARA), the Chamber of Agriculture of the Republic of Lithuania (Lietuvos Respublikos Žemės ūkio rūmai, LRŽŪR), the Investors' Forum (Investuotojų forumas, IF) and the Lithuanian Business Confederation (Lietuvos verslo konfederacija, LVK). The last two organisations listed joined the Council only in 2017. There are two main national trade union confederations in Lithuania: the Lithuanian Trade Union Confederation (Lietuvos profesinių sąjungų konfederacija, LPSK) and the Lithuanian trade union Solidarumas (Lietuvos profesinė sąjunga 'Solidarumas', LPS 'Solidarumas'). At the outset of 2017 two more trade union confederations joined the Tripartite Council: the National Joint Trade Union (Respublikinė jungtinė profesinė sąjunga, RJPS) and the Lithuanian trade union Sandrauga (Lietuvos profesinė sąjunga 'Sandrauga', LPS 'Sandrauga'), but since mid-2018 only the latter has been represented at the LRTT.

Almost all national organisations of employers and trade unions have both industrial and territorial affiliates. The strongest industrial unions are in the public sector, particularly in education and health care. The most active trade unions in the private sector operate in the food industry and transport.

## **Extent of bargaining**

The current Labour Code allows collective agreements, depending on the type, to be concluded by trade unions and employers and their organisations. Until 1 July 2017, works councils could also sign company-level collective agreements. The spread of collective bargaining and collective agreements thus depends on the particular activities of the social partners and their organisations. According to Statistics Lithuania the number of trade union members in Lithuania in 2016 was 91,500 or approximately 7.7 per cent of salaried employees. During the past decade this share has tended to decline. Union membership in Lithuania in 2012 was 9 per cent (Appendix A1). The association rate of employer organisations was close to 16 per cent in 2016 (Statistics Lithuania 2017; see Appendix A1.G).

Low trade union density, as well as a number of other related factors, determines the low collective bargaining coverage in the country. Lithuania is positioned towards the bottom of the EU ranking with regard to collective bargaining with coverage at 10 per

cent in 2012 (Appendix A1). According to other sources (Eurofound 2013; 2015), this indicator might be somewhat higher, reaching between 15 and 20 per cent, although the latter figure is too optimistic.<sup>1</sup> In such circumstances, it can reasonably be argued that collective agreements generally have no great influence on employment relations in Lithuania.

Despite the absence of specific research in Lithuania allowing for substantiated conclusions about the reasons why collective bargaining coverage is low, we can still identify two principal reasons why this is so, namely low trade union density and the absence of genuine industrial collective bargaining. Low trade union density is strongly influenced by the absence of industrial relations traditions at company level and is closely related to the poor financial and human capacities, including legal, analytical and organisational skills, of trade union organisations, which impedes collective bargaining development at company level.

The absence of collective bargaining at industrial level is determined by several factors, which differ between the public and private sectors. In the public sector all main employment and working conditions, including remuneration issues, are strictly regulated by national legislation; thus there is little room for manoeuvre for collective bargaining. Moreover, the state has taken the position of ‘third party’ within national social dialogue and, in the majority of cases, the state has not been involved in industrial collective bargaining although it has a role as an employer. It should be noted that the state could have considerably more influence on, and be more active in promoting, industrial collective bargaining and acting as the guarantor of such bargaining by establishing institutional structures for bargaining-related dispute resolution; adopting laws that promote collective bargaining, with clearly defined parties to collective bargaining, their rights and duties, as well as bargaining procedures; expanding the scope of application of collective agreements; providing statistics and analysis with regard to the main industrial relations indicators, such as average wage data in certain industries; providing technical support to social partners; and organising training for the social partners on collective bargaining related issues.

In the private sector, there is an incongruity between the respective structures of trade unions and employers’ organisations at the industrial level that has prevented the parties from engaging in collective bargaining. Moreover, employers’ organisations have been reluctant to take up the role of social partners and/or sign collective agreements, claiming the absence of a mandate from their members to do so (Blaziene and Gruzevskis, 2017). At both the company and industrial levels, the extent of collective bargaining is also affected by generally low trade union density in Lithuania. Low union

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1. There is no reliable statistical information in Lithuania regarding collective agreements. So far, the Ministry of Social Security and Labour has registered, in direct filing order, only national, industrial or territorial collective agreements. With the coming into force of the new Labour Code on 1 July 2017, all types of collective agreements, including company-level collective agreements, are supposed to be registered and made publicly available in accordance with the procedure prescribed by the government. This will provide a more comprehensive picture of the trends of conclusion and operation of collective agreements. Taking this into account, information on coverage of collective agreements is presented in this chapter only on the basis of secondary sources.

representation at the company and industrial levels makes it difficult for trade unions to initiate collective bargaining.

The structure of the Lithuanian economy, which is unfavourable for collective bargaining, also contributes to low trade union density. There is a high prevalence of companies with 50 employees or fewer; such companies account for more than 95 per cent of the total number of enterprises operating in Lithuania and employ about 50 per cent of all workers. As a rule, the smallest companies have the least developed industrial relations. Likewise, industries are relatively small in Lithuania: companies often transact business in several areas, which complicates the unification of workers in a particular industry.

In this context, a measure aimed at facilitating collective bargaining implemented during the 2007–2013 programming period should be mentioned. The measure was aimed at promoting higher bargaining coverage through the conclusion of collective agreements in enterprises, as well as at regional and industrial levels. The results achieved by the measure include, among other things, 12 industrial, 21 regional and 263 company collective agreements signed during the period 2011–2015. Despite the number of agreements concluded, the measure did not have a significant impact on the collective bargaining situation in Lithuania nor on the social and economic conditions of the employees covered by these agreements (Research Council 2015; ESTEP 2016). The majority of the agreements concluded were ‘formal’ and their contents primarily repeated existing legal norms and no collective wage agreements were signed.

With regard to the duration of the 22 industrial and territorial collective agreements, which are formally in effect today, it should be noted that 18 of them are of indefinite duration. One collective agreement has been valid for more than 10 years with no updates. The remaining four collective agreements have been concluded for a period of two to six years. Although most collective agreements are of indefinite duration, the Labour Code valid at the time these agreements were signed specified that such agreements were valid until the date specified therein or until the conclusion of a new agreement.<sup>2</sup> This leads to a situation in which a number of industrial and territorial collective agreements have been formally in place for a number of years. In practice, however, they have no material impact on the social and economic situation of the employees they cover and are not taken into account for the purpose of measuring collective bargaining coverage in the country.

With regard to genuine industrial collective bargaining, due mention should be given to collective bargaining in education, which has been in progress for a number of years and, hopefully, will be concluded in 2017–2018 with the crowning achievement of a robust education employees’ collective agreement that, among other things, covers certain issues of wage remuneration. Likewise, special mention should be given to an industrial collective agreement signed in health care in 2017. This collective agreement also contains provisions on work remuneration.

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2. The new Labour Code stipulates that ‘[a] collective agreement shall be valid for a maximum period of four years unless said agreement specifies otherwise’.

According to the Labour Code valid up to 1 July 2017,

where the provisions of an industrial or territorial agreement are of consequence for an appropriate industry of production or profession, the Minister of Social Security and Labour may extend the scope of application of that industrial or territorial collective agreement or separate provisions thereof, establishing that the agreement shall be applied with respect to the entire industry, profession, sphere of services or a certain territory if such a request has been submitted by one or several employees' or employers' organisations that are parties to the industrial or territorial agreement.

Lithuania thus has an explicit extension mechanism.

National or cross-industry, territorial and industrial collective agreements may be compulsorily extended by an order of the Minister for Social Security and Labour to bind all the employers of the appropriate territory or industry if such a request has been submitted in writing by both parties to the collective agreement. The request must specify the following: the name of the collective agreement; the coverage to which the agreement is to be extended; the scope of extension, whether the entire collective agreement or only separate provisions thereof are to be extended; the grounds for extending the scope of the collective agreement; and the projected number of employees to whom the extended collective agreement will apply. The Minister for Social Security and Labour shall take a decision regarding the extension of the scope of the collective agreement within 60 calendar days of receiving the request.

Although the provision above was in force in the versions of the Labour Code both before and after 1 July 2017, it has never been applied in practice. It is likely that there are several reasons for this. The main reason is probably the absence of bargaining traditions, particularly at the industrial level, in the country. Collective bargaining and collective agreements are more an 'exception' than a 'norm' in Lithuanian working life.

Although collective bargaining coverage is generally low, collective bargaining and collective agreements are usually in place in companies with unionised workers. In compliance with the Labour Code valid until 1 July 2017, collective agreements used to apply to all the employees of the signatory companies. From 1 July 2017, after the entry into force of the new Labour Code, collective agreements are to apply only to the employees of the company who are trade union members. Indeed, the new Labour Code stipulates that the trade union and the employer may agree on the application of a company or plant collective agreement to all of the employees (for details see below). This Labour Code provision may lead to a further reduction of collective bargaining coverage unless other conditions change, such as an increase in trade union membership or the introduction of collective bargaining at industrial level. The legislators, however, expect the restriction of collective agreements only to trade union members to encourage non-unionists to join a trade union. According to trade unionists, however, the application of a collective agreement exclusively to members of the trade union that signed the collective agreement hampers the signing of collective agreements because 'employers

delay initiation of real bargaining on the grounds of not being able to apply two systems of remuneration for work in their companies' (Interview 2017).

A further new measure in force in Lithuania from 1 July 2017 is the barring of works councils from conducting collective bargaining and signing collective agreements. Formally, this amendment will act to reduce collective bargaining coverage. The Lithuanian Law on Works councils (*Lietuvos Respublikos darbo tarybų įstatymas, DTĮ*), was adopted in 2004 and allowed works councils to conclude collective agreements. Even though works councils were not very widespread in Lithuania<sup>3</sup> and, according to the experts, agreements signed by them had no material effect on the social and working conditions of employees,<sup>4</sup> the introduction of the new legal regulation might reduce collective bargaining coverage even more.

In Lithuania, collective bargaining usually takes place in the public sector or public-related industries, such as education, health, railways, culture, forestry, post and energy, and in large and medium-sized, more often multinational, private sector companies in food, alcohol, tobacco and other manufacturing industries. The duration of the majority of collective agreements signed in Lithuania at company level is two to three years, although sometimes agreements are signed for an indefinite period. As a rule, bargaining for a new collective agreement is initiated several months before the existing agreement expires. It should be noted that even though between 2004 and 2017 collective agreements were signed between employers and works councils at company level in Lithuania, there are no studies that provide evidence of the content and scope of such agreements. The prevalent view is that works councils are strongly dependent on employers and therefore cannot be equal partners in bargaining and represent/defend employees' interests in an appropriate manner (Interview, 2017). Again, no research has been carried out in Lithuania to confirm this view.

## Level of bargaining

According to the Labour Code of the Republic of Lithuania valid until 1 July 2017, collective agreements could be concluded at four levels: the state or national level; the industrial level, including production, services and professions; the territorial level, embracing municipalities or counties; and the enterprise level, covering agencies or enterprises and including structural subdivisions. From 1 July 2017, collective agreements can be concluded in Lithuania at the following five levels: national or cross-industry; territorial; industrial, including production, services and professions; employer or company; and workplace or plant. According to the Labour Code the latter is possible only in cases stipulated in collective agreements concluded at the national, industrial or company levels. The new Labour Code thus introduced two new types of collective agreements, in particular, cross-industry and plant-level collective agreements.

3. According to the State Labour Inspectorate, around 5 per cent of entities that submitted information to the State Labour Inspectorate in 2016 had functioning work councils; according to Eurofound 2013, 15 per cent of private sector entities with more than 10 employees had works councils.
4. Interviews with trade union and works council members conducted by the authors during 2016–2017.



According to the current legislation:

- parties to a national or cross-industry collective agreement shall be one or several national trade union organisations as one party, and one or several national employer organisations as the other party;
- parties to a territorial collective agreement shall be one or several trade union organisations, as one party, and one or several employers' organisations, as the other party, functioning in the specified territory;
- parties to an industrial collective agreement shall be one or several industrial trade union organisations as one party, and one or several employers' organisations of an appropriate industry of production, services or profession, as the other party. Industrial collective agreements may be restricted to a certain territory;
- parties to a company-level or a plant-level collective agreement shall be the trade union of the relevant company and the employer;
- collective agreements in companies with several trade unions may be also concluded between the joint representation of trade unions and the employer.

Although the Labour Code operative after 1 July 2017 states that collective agreements shall apply to the employees who are members of signatory trade unions only, a company-level or plant-level collective agreement may apply to all the employees of the company if so agreed by the trade union and the employer and approved by the general staff meeting or conference of the company. A 'conference' in this context is a meeting of employees' representatives elected within the structural units of a company, establishment or organisation. Where a company has no functioning trade union, a collective agreement may be concluded by the industrial trade union and the employer and shall apply, subject to approval by the general staff meeting or conference of the company, to all the employees.

A company-level or plant-level collective agreement shall be binding on the employer party to the agreement. Collective agreements concluded at the national or cross-industry, territorial and industrial levels shall apply to employees represented by trade unions or members of trade union organisations and shall be binding upon their employers that:

- are members of the employer organisation that signed the collective agreement;
- joined the signatory employer organisation after the conclusion of the collective agreement;
- were members of the employer organisation when the collective agreement was concluded but left the organisation thereafter. In this case, application of the collective agreement ceases to be binding on them three months after the withdrawal from the employer organisation unless the collective agreement expires earlier;
- fall within the extended scope of the collective agreement (for details see below).

If an employee is covered by several collective agreements:

- in the event of company-level and industrial collective agreements, provisions of the industrial collective agreement shall apply unless the industrial collective agreement



- allows the company-level collective agreement to derogate from the provisions of the industrial agreement;
- in the event of company-level and territorial collective agreements, provisions of the territorial collective agreement shall apply unless the territorial collective agreement allows the company-level collective agreement to derogate from the provisions of the territorial collective agreement;
  - in the event of industrial and territorial collective agreements, *lex specialis* provisions of the collective agreement shall apply. In this case the favourability principle shall not apply as the *lex specialis* principle is more important (Davulis 2018: 557).

Even though the Labour Code provides for, and defines options for concluding, collective agreements at different levels, company-level agreements are nevertheless dominant in practice. Industrial collective bargaining is very rare in Lithuania and there are just a few valid industrial agreements. Despite several agreements signed between actors – trade unions, employers’ organisations, government and NGOs – at the national level since the country regained independence, there are no national-level collective agreements in Lithuania. Likewise, there is no articulation between different levels. While there are no extensive studies on this issue, it can nonetheless be assumed that pattern bargaining is absent from Lithuania, as is coordination across different industries.

## Depth of bargaining

Depth of bargaining addresses the extent of local representatives’ involvement in the formulation of wage claims and the implementation of agreements. Before 1 July 2017 both trade unions and works councils had powers to conduct collective bargaining and enter into collective agreements. From 1 July 2017 onwards, collective bargaining, the signing of collective agreements and the initiation of industrial labour disputes over interests are the exclusive right of trade unions. Where a company or plant has several functioning trade unions, a company-level or plant-level agreement may be concluded between the trade unions or joint representation of trade unions and the employer. In these circumstances the joint representation arrangements made by the trade unions are underpinned by an agreement. When there is no trade union in a company, the general staff meeting may authorise an industrial trade union to negotiate the collective agreement with the company.

The party willing to initiate collective bargaining shall present itself to the other party to the bargaining. The party seeking collective bargaining shall present clearly formulated demands and proposals and indicate the representatives it will delegate to conduct the bargaining. The party receiving the request must join collective bargaining within 14 days by giving a written response to the party initiating the process and indicating the representatives it delegates to conduct the bargaining. In practice, participants in the collective bargaining process are, as a rule, members of the company trade union’s executive and, quite frequently, experts, usually legal and/or financial professionals, appointed by an industrial trade union. Ordinary trade union members or, even more so, ordinary employees of the company are typically not involved in collective bargaining. The employer also delegates representatives. In practice, a negotiation group usually

includes representatives of the human resources department, the company lawyer and/or deputy director.

According to the document ‘Research on collective agreements and their role in creating quality labour relations’ (Research Council 2015), the trade union and, less frequently, its lawyers usually draft a company collective agreement. Only in a minority of cases are collective agreements drafted by trade unions and employers together. In the majority of cases, representatives of the industrial trade union participate in drafting, negotiating and/or signing the collective agreement within the company. Research findings show that, on average, negotiating a collective agreement takes six months in the private sector and three to four months in the public sector.

According to trade union representatives interviewed within the framework of the abovementioned research (Research Council 2015), the chairs of company-/plant-level trade unions and/or their representatives usually face the following problems in the process of collective bargaining:

- lack of or no access to information necessary to conclude a collective agreement, such as corporate, financial and other documents. This problem is particularly relevant for private sector trade unions;
- employer inactivity and claims of lack of authority;
- insufficient legal regulation of the procedures in the Labour Code, particularly a lack of precise and specific norms. This problem is particularly relevant for public sector trade unions.

The generally poor negotiating experiences among the social partners have led to the situation in which industrial agreements more often than not contain provisions that have simply been transposed from legislation rather than establish new rights and obligations. Such provisions are thus recommendations rather than binding provisions (for more details on the content of collective agreements, see below on the scope of agreements). Although ordinary trade union members typically play a minor role in collective bargaining, the experience of trade unionists shows that companies with high trade union membership usually end up with conditions that are more advantageous for employees than companies in which union membership is low (Interview 2017).

The involvement of trade union members in the process of collective bargaining is also to a certain extent limited by the fairly strict strike regulations in Lithuania and striking practices that disadvantage trade unions. From 2000 to 2014, the average strike volume per 1,000 employees in Lithuania was only four, one of the lowest in the EU28, alongside Latvia, Poland and Slovakia – see Appendix A1.I). Prior to the entry into force of the new Labour Code on 1 July 2017, the right to take a decision to call a strike in a company or a structural unit of a company was vested in the trade union or works council operating in it. A strike could be called in the company if the relevant decision was approved by a secret ballot of more than half of the employees, or of more than half of the employees of a structural unit of the company, if a strike was called there. The right to take the decision to call a strike at the industrial level was vested in industrial trade union organisations, after discussions held at the Tripartite Council of

the Republic of Lithuania. The employer had to be given, at least, seven days written notice of the beginning of the intended strike. When a strike was declared, only the demands that had not been met during the conciliation or mediation processes might be put forward.

In addition to the fairly strict regulatory requirements, Lithuanian case law is also unfavourable for the organisation of strikes. In recent years, Lithuanian courts have been fairly willing to issue negative rulings on the lawfulness of strikes and the demands being put forward. Moreover, the courts have explained and applied provisional safeguards in a very (economic) liberal and broad manner, holding that

strikes may have negative economic effects on the employer and the society as a whole. This argument denies the very essence of a strike, which is to pose economic threats to the employer for a settlement of the existing industrial dispute and to draw the attention of the society to existing problems. [...] At the same time, courts tend to extend the list of agencies of public interest, frequently even depriving employees of the possibility to exercise their right to strike (Petrylaite 2015).

In 2011, for example, a strike by the employees of brewery UAB Svyturys-Utenos Alus was postponed on the grounds that the brewery was 'satisfying the vital needs of society' (Blaziene 2011).

The regulation of strikes has been facilitated by the new Labour Code. Although from 1 July 2017 the right to call a strike is given only to the trade union or trade union organisation, the decision to call a strike at the company level requires approval by at least one-quarter of all union members. Calling a strike in an industry requires a relevant decision from the industrial trade union. The employer or employers' organisation and its individual members must be given written notice at least three working days before the beginning of a token strike or at least five working days before the beginning of a real strike. When a strike is declared, only the demands heard by the labour disputes commission, labour arbitration or in the mediation process may be put forward.

According to the new Labour Code, the parties to a collective agreement or their designated representatives exercise control over the implementation of a collective agreement. The procedure, methods and time limits for reporting are established in the agreement. When exercising this control, the parties to the agreement must provide each other with necessary information within one month of receiving the request. Disputes arising in relation to implementation or inadequate implementation of the collective agreement, including in relation to the employees and employers falling within the scope of the agreement, shall be settled in accordance with the procedure for settling labour disputes over rights. In practice, if the employer fails to meet the terms of the collective agreement, the trade union will refer the case to a court, which, as a rule, orders the employer to fulfil their obligations within a certain period of time. Unlike trade unions, works councils normally do not apply to a court regarding the non-implementation of collective agreements because they have neither the necessary financial resources nor adequate competences.

## Security of bargaining

Security of bargaining encompasses the factors that determine the trade unions' bargaining role. The new Labour Code introduced radical changes to the provisions that regulate employee representation, particularly those dealing with the operation of trade unions and works councils. In the version of the Labour Code valid until 2017, a works council had the right to represent and defend the rights and interests of employees only if 'an enterprise, agency or organisation has no functioning trade union and if the staff meeting has not transferred the function of employee representation and protection to the trade union of the appropriate industry of economic activity'. This regulation was intended to create the principle of priority for trade unions in representing the rights and interests of employees. According to the Labour Code valid from July 2017, workers' representatives are trade unions, works councils or trustees. According to the Labour Code, if the average number of employees is below 20, employee representation rights may be exercised not by a works council, but by an employee trustee elected at a general meeting of the employees. An employer is required to initiate the formation of a works council when the average annual number of employees in the company is 20 or more. A works council shall not be established in a unionised company in which more than one-third of the employees are trade union members.

A company-level trade union can be set up where it has at least 20 members or its members account for at least 10 per cent of the total employees of the company, provided this is equivalent to three or more employees. Trade unionists have the right to join and/or set up an industrial or territorial trade union organisation, provided that there are at least five company-level trade unions. Industrial and territorial trade unions may join national-level trade union organisations.

The new system of employee representation distinguishes between works councils and trade unions. The primary role of works councils is to represent employees in information and consultation processes, while trade unions have an exclusive right to represent employees in the collective bargaining process (Sorainen 2017). Both the old and new versions of the Labour Code provide sufficient guarantees for workers' representatives. According to the Labour Code in force from 2017, workers' representatives shall act freely and independently from any other parties to social partnership. The employer or other parties to social partnership are prohibited from exerting influence over decisions of workers' representatives or otherwise interfering with their activities. Employers, their statutory representatives or authorised persons are prohibited from influencing admission to work or proposing job retention for not joining a trade union or leaving it or setting up and funding organisations with a view to discouraging, preventing or exerting control over trade union activities. National and municipal authorities are supposed to refrain from interfering with the activities of workers' representatives unless statutory grounds for violations of law exist. Workers' representatives are entitled to refer to bodies for labour dispute resolution and other competent institutions regarding cases of unlawful interference in their activities and request the termination of those activities, issue directions to carry out certain steps or order compensation for damage.

The new Labour Code also stipulates that the employer shall provide premises free of charge and access to equipment for the performance of functions of members of the executive bodies of the company-level trade union, members of the works council and works trustees. Other conditions of material and technical supplies shall be laid down in agreements between the social partners. Certain funds may also be allocated for the activities of workers' representatives in accordance with laws, provisions of labour legislation and/or agreements between the social partners. Workers' representatives are entitled to address, in the procedure established by law, bodies for labour dispute resolution and other competent institutions regarding violations of their rights and valid interests. Any person who causes damage to workers' representatives by unlawful conduct is liable for the damage in the manner prescribed by law.

Members of the decision-making bodies of trade unions, members of works councils and trustees normally perform their duties during company working time. According to the Labour Code, the aforementioned persons shall be released from work for at least 60 working hours per year for the performance of their duties and receive their average wage for this period. The Labour Code further states that the employer must create conditions for the training and education of workers' representatives. For this purpose, workers' representatives shall be given at least five working days per year at a time agreed with the employer. During this period, workers' representatives shall receive their average wage for at least two working days, unless labour-law norms and/or social partners' agreements specify otherwise.

According to the Labour Code, workers' representatives may not be dismissed from work on the initiative of the employer or at the employer's volition, and the mandatory terms and conditions of their employment contract may not be made worse without the consent of the State Labour Inspectorate (Valstybinė darbo inspekcija, VDI) during the period for which the workers' representatives have been elected and six months after the end of their mandate. Likewise, membership of a trade union and involvement in the activities of a trade union or workers' representative bodies shall not be considered a breach of work duties. The Labour Code stipulates that labour-law norms or social partners' agreements may provide for other guarantees.

In practice, a trade union's capacity to bargain depends on a variety of factors, including the number of union members in a company, the relationship with the industrial trade union, the attitude of the employer, the union's ability to organise strikes, the personal/negotiating characteristics of the trade union chair and the use of membership fees. Trade unions in companies with a high membership and robust ties with the industrial union have greater bargaining power, as a very influential factor in the bargaining power of a company-level union is the organisational, financial and human capacities of the industrial union. The industrial trade unions that efficiently organise their activities and use membership fees effectively can afford to hire highly qualified experts and thus contribute significantly to collective bargaining in their member companies. An example of this is the Lithuanian Trade Union of Food Producers (Lietuvos maistininkų profesinė sąjunga, LMPS). Although an industrial collective agreement has not been signed and collective bargaining is not in place in the food industry, this industry can nonetheless be characterised as highly effective. The LMPS reformed collecting

membership fees by concentrating the majority of fees at the industrial level, in contrast to many other industries in which the bulk of fees go to company-level unions. The effective management of funds enabled the LMPS in food to employ qualified experts, including lawyers and economists, who are involved in collective bargaining at the company level and greatly reinforce the union's negotiating position. Considerable funds are also assigned for training and improving the qualifications of company-level union representatives.

Most of the factors that influence trade union bargaining strength are subjective to some degree. One objective factor that does not depend on a specific trade union is the legal regime regarding strikes and its practical implementation (see 'Depth of bargaining'). In short, due to the relatively strict regulation of strikes and negative case law outcomes, an environment that is unfriendly to strikes has been established in Lithuania, which negatively impacts on trade union bargaining power.

Among the factors that have a significant influence on the bargaining role of unions is national-level tripartite social dialogue, implemented through the Tripartite Council of the Republic of Lithuania and other tripartite commissions and committees. Since the establishment of the Council no social and labour market-related legislation has been adopted in Lithuania without prior consideration at the Council. Other tripartite commissions and committees function under the Public Employment Office (Lietuvos darbo birža, LDB), the State Social Insurance Fund Board (Valstybinio socialinio draudimo fondo taryba, VSDFT) and some other, more minor institutions. Social partners at the national level also participate actively in various working groups engaged in legislation drafting and policy design. Although the direct effects on collective bargaining cannot be identified, the level of activity among the social partners at the national level can be described as contributing to the positive image of the social partners in Lithuania and, at the same time, as creating better preconditions for the development of collective bargaining.

Because legislation in Lithuania provides for rather high social guarantees for employees, collective agreements typically have no material effect on employees' working conditions and social guarantees. A number of collective agreements contain provisions on various additional social benefits/allowances, days off and training/study opportunities, not covered by social guarantees (for more details, see scope of agreements). Once signed, however, a collective agreement becomes legally binding. When an employer fails to comply with a signed collective agreement, the trade union has the possibility of direct recourse to a court and the court will order the employer to observe the agreement or meet their obligations.

## **Scope of agreements**

Parties to a collective agreement have the right to define the issues to be placed on the bargaining agenda, as well as the content of the agreement. When negotiating the content of a collective agreement, however, the parties are required to take due account of labour law. Parties involved in collective bargaining at any level must comply with



the *in favorem* principle, which means that the working conditions guaranteed by law are the minimum and collective or individual subjects can agree additional guarantees and conditions more favourable to employees. To comply with the new Labour Code, no collective agreement or any other local regulations on working conditions is considered valid if it places employees in a worse position than that defined by the Labour Code, laws and other regulations. This means that not only the Labour Code and laws take precedence over collective agreements, but also resolutions of the government and regulations adopted by other national and municipal authorities.

Collective agreements usually contain several types of provision:

- *Contractual* provisions. This part of the collective agreement contains specific commitments on the part of the employer and employees that become legally binding upon signing the collective agreement and the parties must comply with these commitments within set time limits. Most of the contractual provisions of the agreement relate to improvements of working conditions and employees' health and safety; for example, an employer may commit in a collective agreement to provide employees with a rest room or a medical post.
- *Regulatory* provisions. These provisions contain legal rules that define certain local working conditions and standards to be observed by the employer and employees. The regulatory section of an agreement may include provisions that reinforce guarantees of labour rights for employees, including additional advantages/benefits, such as number of vacation days. It is prohibited to set out provisions that prevent the application of one or another legal rule or establish working conditions that are inferior to those stipulated by the Labour Code, other applicable laws and regulations. Examples of regulatory provisions include those covering information and consultation procedures, and higher pay for night work, work on public holidays and overtime work.
- *Organisational* provisions define the procedure for amending and reviewing the collective agreement, monitoring its implementation, examination of disputes related to the application of the agreement and liability for non-compliance.
- *Information* provisions. Even though not required by law, collective agreements often contain information references reiterating legal provisions. These provisions perform the employee communication function because, by becoming familiar with the collective agreement, employees learn their essential rights and obligations entrenched in labour laws.

Currently valid legislation does not define the content of collective agreements: that is, there is no detailed list of provisions. The parties define the content and structure of a collective agreement. Annexes to a collective agreement constitute an integral part of it. The annexes may specify incentive payment procedures or provide a list of employees in jobs exposed to dangerous or harmful agents. The legislator provides a model list of provisions to be covered by a collective agreement. The list is neither exhaustive nor compulsory, but the provisions are grouped as follows:

- (i) Provisions regarding remuneration for work: forms, system and level of remuneration for work, bonuses, compensatory allowances and additional pay,



- regulatory mechanisms for wages/salaries subject to price movements and inflation, implementation of the indicators set in the collective agreement.
- (ii) Employment-related provisions: employment, in-service training, retraining, conclusion, amendment and termination of employment contracts.
  - (iii) Provisions regarding working time and rest periods: length of working time and rest, leaves, benefits to employees as regards education.
  - (iv) Occupational health and safety-related provisions: improvement of working conditions and occupational health and safety, situation of women and children, environmental protection.
  - (v) Other work, social and economic conditions in the parties' interest, provisions regarding the procedure for amendment and duration of the collective agreement, collective agreement implementation monitoring, liability for breach of agreements, social partnership instruments to avoid industrial disputes and strikes.

In practice, collective agreements also contain provisions regarding issues that are not regulated by law. Such provisions are frequently related to social welfare, financial support, medical services, healthcare services for employees, financial support for employees in difficult family situations, transport services and employees' home improvements. These provisions do not directly regulate employment relations or define working conditions. They might be described as factors influencing the motivation to work and compensating for low pay.

The current Labour Code states that a derogation from its rules or from other rules prescribed by labour legislation is allowed in a national, industrial or territorial collective agreement, provided that a balance is achieved between the interests of the employer and employees. This provision excludes rules related to maximum working time and minimum rest period, entering into or expiration of the employment contract, minimum wages, occupational health and safety, and gender equality and non-discrimination on other grounds. Disputes related to the validity of such rules shall be settled in the procedure prescribed for labour disputes over rights. If it is established that a provision of a collective agreement is contrary to the rules laid down in the Labour Code or other labour law regulations, or that no balance between the interests of the employer and employees has been achieved in the collective agreement, the provision is disallowed and therefore should be replaced by the relevant provision of the Labour Code or labour law regulation. In any case, collective agreements may put employees in a better position than that defined in the Labour Code or other labour law regulations. Insofar as there is no current case law arising from the new Labour Code, it is difficult to judge how the aforementioned principles will be applied in practice.

Virtually no research has been conducted in Lithuania that could serve as a basis for evaluating the content of collective agreements, which is difficult to access by the general public and researchers. Fragmentary research and interviews with trade union representatives suggest that the contents of collective agreements mainly reiterate the provisions of the Labour Code and other secondary legislation relevant to the parties. Some collective agreements contain contractual provisions whereby employers commit to perform one-off actions, such as providing a rest room or hold a celebratory event. It should be noted that freedoms allowed by the Labour Code to regulate certain issues

in a collective agreement, such as work rationing and information and consultation procedures, are underused. Even though information provisions are found in agreements in both the public and private sectors, there is a higher prevalence of organisational arrangements, provisions related to cooperation with trade unions, more favourable work organisation procedures and other similar provisions in public-sector collective agreements due to the stricter regulation of this sector (Research Council 2015).

## **Degree of control of collective agreements**

The degree of control of collective agreements refers to the extent to which the terms mentioned are applied in practice. Similarly to many other post-Soviet countries, the terms and conditions of employment in Lithuania are governed strictly, and in detail, by the Labour Code and other legislation. Collective agreements therefore generally do not play a significant role in determining the terms and conditions of employment. Budgetary planning alone, for example, is enough to limit the bargaining power of the public sector trade unions regarding terms and conditions additional to those laid down in laws and other regulatory acts. Thus information provisions are found more frequently in public-sector collective agreements. Private-sector collective agreements, particularly in large and medium-sized production companies, contain a higher level of regulatory and contractual provisions.

There is a control system to ensure compliance with labour laws, other regulatory acts and collective agreements by the parties to employment relationships. There are government and non-government bodies that regulate compliance with labour laws, other regulatory acts and collective agreements. This means that the state also recognises and encourages non-governmental organisations supervising implementation of labour laws and monitoring the performance of public authorities in the field of labour laws.

The central institution exercising control over employer compliance with the Labour Code, labour laws and collective agreements is the State Labour Inspectorate. Issues within the competence of the State Labour Inspectorate include control of accidents at work; occupational diseases and occupational health and safety; prevention of violations of labour law regulations and the Labour Code; control of laws and other regulations governing occupational health and safety; and employment relationships within companies, agencies, organisations or other organisational structures, irrespective of the form of their ownership, type and/or nature of activities, including cases in which the employer is a named person. Other public authorities also exercise government control over collective agreements in certain fields. For instance, the Office of the Equal Opportunities (Ombudsperson Lygių galimybių kontrolieriaus tarnyba, LGKT) verifies implementation of equal opportunities for women and men by employers.

Trade unions or works councils exercise non-governmental control over labour laws, other regulations and collective agreements. Works councils exercise such control only in non-unionised companies, agencies and organisations. In case of an employer's failure to comply with labour laws, trade unions are entitled to seek annulment by the employer of decisions in breach of the rights of union members, to take part in labour

dispute resolution and to perform other functions provided for in the law. Failure of the parties to observe the adopted agreements gives rise to a collective industrial labour dispute over rights. The Labour Code valid from 1 July 2017 defines a collective industrial labour dispute over rights as a disagreement between employees' representatives, on one hand, and the employer or employer organisations, on the other, with regard to non-compliance or inadequate compliance with labour regulations or mutual agreements. Labour Disputes Commissions (Darbo ginčų komisijos, DGK) hear collective industrial labour disputes over rights. Labour disputes over rights relating to strikes or lockouts are heard directly before the court.

A body hearing a labour dispute over rights is empowered to order restoration of rights prejudiced by non-compliance or defective compliance with labour regulatory acts or mutual agreements; to award pecuniary and non-pecuniary damages, as well as to impose fines or penalties in the cases prescribed by labour regulatory acts or agreements; to terminate or change legal relations; and to order performance of other acts prescribed by law or labour regulatory acts. A body hearing a collective industrial labour dispute over rights is empowered to impose a fine on the party in breach of labour regulatory acts or agreements between the parties in the amount of up to €3,000. The fine should be proportional to the gravity of the infringement and constitute a deterrent to future infringements of the law.

The Labour Code prohibits the calling of a strike during the term of the collective agreement if the parties comply with the agreement. In this context, the term 'collective agreement' is understood in its broad sense and the view is taken that strikes are prohibited not only when the company complies with the collective agreement, but also when the employer, being a member of the employers' organisation that has signed an industrial, territorial or national collective agreement, meets the obligations set out in this agreement.

The prohibition of strikes during the term of a collective agreement is related to the fulfilment of the obligations pertaining to industrial relations. By signing a collective agreement and agreeing upon future work, social and economic conditions, the parties thereto assume certain obligations. It is thus apparent that if the employer duly performs their obligations under a collective agreement, employees should also fulfil their commitments without requiring conditions going beyond those laid down in the agreement. In order to amend certain work, social or economic terms and conditions, employees and their representatives are supposed to initiate collective bargaining in accordance with the Labour Code and refer to the employer with a proposal for a new collective agreement.

## Conclusions

In summary, Lithuania can be regarded as having one of the least developed systems of industrial relations among EU Member States. Trade union density in Lithuania is less than 10 per cent and collective bargaining coverage is no more than 15–20 per cent. According to current legislation, collective agreements may be concluded at national,

industrial, territorial, company or plant level. In practice, however, the principal level of collective bargaining is the company and there actually are no industrial wage agreements in the country. Collective bargaining usually takes place in the public sector and in large and medium-sized companies, which are often multinational private sector companies.

Before 1 July 2017, collective agreements were applicable to all the employees of the company. After 1 July 2017, collective agreements apply only to the employees who are members of signatory trade unions. Before 1 July 2017, both trade unions and works councils had powers to conduct collective bargaining and enter into collective agreements. From 1 July 2017 onwards, collective bargaining, the signing of collective agreements and the initiation of industrial labour disputes over interests are the exclusive rights of trade unions. Similar to several other post-Soviet countries, the Labour Code and other legislation strictly regulate terms and conditions of employment in Lithuania. Collective agreements generally do not play a significant role in determining the terms and conditions of employment in the country.

Although virtually no research has been conducted in Lithuania that may serve as a basis for evaluating the content of collective agreements, fragmentary research and interviews with trade union representatives suggest that the content of agreements often reiterates the provisions of the Labour Code and other secondary legislation. It can be assumed that pattern bargaining and the coordination of bargaining across different industries is absent from Lithuania.

To summarise this chapter, Lithuanian social partners have not realised the full benefits of collective bargaining. A number of factors have influenced this situation, including the paternalist treatment of the social partners by the state, manifested in the rigid and detailed regulation of employment and social conditions, undeveloped industrial relations traditions and a lack of experience among the social partners that prevents them from using bargaining to its full potential.

The new Labour Code holds the promise of creating more favourable conditions for developing collective bargaining in Lithuania, enhances employee involvement in information and consultation, creates conditions for determining more advantageous employment and social guarantees to trade union members than to non-unionised workers of the company, and facilitates strike organisation. It is currently difficult to judge how, and to what extent, trade unions will succeed in making use of these provisions to promote collective bargaining and social dialogue.

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## Web pages

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- Lithuanian Confederation of Industrialists, [www.lpk.lt](http://www.lpk.lt)
- Lithuanian Trade Union 'Solidarumas', [www.solidarumas.lt](http://www.solidarumas.lt)
- Lithuanian Trade Union Confederation, [www.lpsk.lt](http://www.lpsk.lt)
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- State Labour Inspectorate, [www.vdi.lt](http://www.vdi.lt)
- Statistics Lithuania, [www.stat.gov.lt](http://www.stat.gov.lt)
- Trade Unions' News, [www.lprofsajungos.lt](http://www.lprofsajungos.lt)

All links were checked on 29 March 2019.

## Abbreviations

DGK	Darbo ginčų komisijos (Labour Dispute Committees)
DTĮ	Lietuvos Respublikos darbo tarybų įstatymas (Lithuanian Law on Works Councils)
IF	Investuotojų forumas (Investors' Forum)
LDB	Lietuvos darbo birža (Public Employment Office)
LDK	Lietuvos darbdavių konfederacija (Confederation of Lithuanian Employers)
LGKT	Lygių galimybių kontrolieriaus tarnyba (Office of the Equal Opportunities Ombudsman)
LMPS	Lietuvos maistininkų profesinė sąjunga (Lithuanian Trade Union of Food Producers)
LPK	Lietuvos pramoninkų konfederacija (Lithuanian Confederation of Industrialists)
LPPARA	Lietuvos prekybos, pramonės ir amatų rūmų asociacija (Association of Lithuanian Chambers of Commerce, Industry and Crafts)
LPS 'Sandrauga'	Lietuvos profesinė sąjunga 'Sandrauga' (Lithuanian trade union Sandrauga)
LPS 'Solidarumas'	Lietuvos profesinė sąjunga 'Solidarumas' (Lithuanian trade union Solidarumas)
LPSK	Lietuvos profesinių sąjungų konfederacija (Lithuanian Trade Union Confederation)
LRTT	Lietuvos Respublikos Trišalė taryba (Tripartite Council of the Republic of Lithuania)
LRŽŪR	Lietuvos Respublikos Žemės ūkio rūmai (Chamber of Agriculture of the Republic of Lithuania)
LVK	Lietuvos verslo konfederacija (Lithuanian Business Confederation)
RJPS	Respublikinė jungtinė profesinė sąjunga (National Joint Trade Union)
VDI	Valstybinė darbo inspekcija (State Labour Inspectorate)
VSDFT	Valstybinio socialinio draudimo fondo taryba (State Social Insurance Fund Board)