



**Country report: (1) Background information on the
national systems of board-level representation**

Lithuania

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The Lithuanian industrial relations system is fundamentally oriented towards the enterprise level. Although collective bargaining at higher levels (for example, national, territorial or sectoral) is allowed and there are legal rules governing the procedure, scope of application and even extension of agreements to third parties in the 2002 Labour Code (in force since 1 January 2003), in practice there are no significant industry-wide collective agreements regulating wages, working hours and other working conditions. This is mainly due to the lack of power of the national and sectoral trade unions, which is reinforced by their political infighting and the ingrained cynicism of employees (trade union membership remains very low, at 6–10 per cent). Furthermore, strict rules on strikes – which are at the margins of permissibility as regards international labour standards – make industrial action difficult. The state and its institutions continue to resist collective bargaining at higher levels, arguing that they are not considered to be a party to industry-wide collective agreements by the new (2002) Labour Code.

As a result, collective bargaining takes place at the level of the individual enterprise. The exclusive rights of representation of all workers in an enterprise for the purposes of collective bargaining or industrial action are vested in the trade union established in a given enterprise (enterprise-level trade union) or the joint negotiating body of several trade unions present in one enterprise. Accordingly, the workers' general meeting must approve the draft agreement before the parties will sign it. Valid collective agreements are applicable to all employees. Approval of the workers' general meeting is also necessary if the trade union wishes to call a strike.

The exclusivity of trade union rights means that there is no collective interest representation in enterprises without enterprise-level trade unions. There are no official data but we can assume that only a very small percentage (3–5 per cent at most) of enterprises have a valid collective agreement. In order to increase the number of valid collective agreements in enterprises the 2002 Labour Code introduced two new institutions of workers' representation, should such institutions be absent from an enterprise. The employees' general meeting may transfer the right to negotiate and to conclude an agreement on behalf of all employees to the sectoral trade union (to my knowledge, this option has never been used), or it may elect a works council. However, the special law on works councils has not yet been adopted.

The Lithuanian model of workers' representation at enterprise level seems to be unique and also quite mysterious. It has an evident structural problem which lies in the fact that the works council elected by all the employees at the enterprise is not an autonomous institution with its own competences, but rather a kind of surrogate for an enterprise-level trade union in the case of its absence from the enterprise: that is, if there is a trade union at an enterprise it enjoys exclusive rights of representation and no works council can be established. However, the Labour Code has nothing to say about what happens to a works council if a trade union emerges subsequently. Secondly, the legislator does not clearly differentiate between the competences of trade unions and of works councils: they are both considered to be workers' representatives at the enterprise and both enjoy all workers' representation rights, including the right of collective bargaining. This situation reflects the difficulties which surrounded the drafting of the Labour Code. Confronted by the marginal trade union representation at enterprises and the need to facilitate enterprise-level collective bargaining, the legislator accepted the employers' proposal to allow a new form of employee representation. In fact, pressure from the national trade unions prevented the introduction of the classical dual model of workers' representation with a clear division of competences between trade unions and works councils. The chosen "middle way" (the so-called "Lithuanian solution") seems to have done more harm than good, however, since the unsolved problems of the relationship between works councils and trade unions have increased the legal uncertainty.

The situation concerning employee representation in enterprises for the purpose of collective bargaining is also relevant to the participation issue. The legislative framework regarding information, consultation and workers' participation at enterprise level is also found in the Labour Code of 2002. When defining these forms of social partnership, the legislator uses the notion "workers' representative" but without specifying who or what this is to be. As already mentioned, enterprise-level trade unions or, in their absence, the sectoral trade union or the works council may play this role. As far as information and consultation are concerned, the Labour Code stipulates the right of workers' representatives to be informed and consulted about the general situation in the enterprise, collective dismissals, transfer of businesses or parts of businesses, and so on, but without going into details. The notion of "participation", however, is not understood as a right of the workers' representatives to influence the election or appointment of members of the company's supervisory or administrative organ, but rather to the requirement to obtain the

consent of workers' representatives for particular actions on the part of the employer (for example, approval of internal work regulations, work – shift – schedules, and so on). Other decisions of the employer require the weaker “consideration” of the workers' representatives.

The idea that workers should participate in the election or appointment of management was first introduced by Soviet labour legislation in 1988 in order to promote the principles of self-government in state enterprises. After the restoration of independence in Lithuania these rules were quickly abolished (1990) as a relic of the Soviet regime which contradicted the principles of private property and the undisputed right of the owner to manage a private enterprise. So far this attitude has not been disputed even by the trade unions. Workers' participation on enterprise boards was abolished even before privatisation had got under way. As a result, in Lithuania no labour law today specifically requires or provides for workers' representation at board level in either private or state-owned enterprises. Lithuanian company law follows the German model, with a division between administrative and supervisory boards (single, unitary boards are allowed and are even quite popular in small companies). There is no legal obligation for enterprises to permit workers to elect/appoint members of the administrative or supervisory boards nor for shareholders to discuss the possibility of employee involvement. The only way to get employee representatives on to the board of a joint stock company is through the votes of employee shareholders. To be sure, it is not prohibited for the statutes of joint stock companies to provide for the appointment of board members by the employees, but to my knowledge no company has ever taken that step.