

AMENDMENTS OF THE LITHUANIAN LABOUR CODE DESIGNED TO INCREASE LABOUR MARKET FLEXIBILITY AND TO FOSTER SOCIAL DIALOGUE

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Introduction

In the face of the economic and financial crisis, Lithuania started discussing, for the first time since the adoption of the Labour Code of the Republic of Lithuania (LC), the opportunity of using labour law for tackling economic problems. In fact, we are of the opinion that the LC, though drafted and adopted not long ago, is far from corresponding to the current labour market needs and requires fundamental reviewing. However, the legislator hesitates about taking such actions and tries to cope with the existing problems by implementing modifications of a temporary nature and, more than that, in many cases leaving the right of final decision to social partners (i.e., the right to agree on the application of conditions that are more favourable for an employer in collective agreements is vested upon social partners).

The report firstly presents an assessment of some provisions of the LC in terms of its correspondence to the needs of Lithuanian labour market and to the principles of flexicurity, followed by an analysis of specific amendments to the LC which, after being considered by social partners and different public authorities for a number of months, were finally adopted in a pretty modified and reduced scope at the Parliament of the Republic of Lithuania (PRL) on the 23rd of July, 2009.

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1. Assessment of the existing Lithuanian Labour Code in terms of its correspondence to the needs of Lithuanian labour market and to the principles of flexicurity

1.1. Assessment of the existing Lithuanian Labour Code in terms of its correspondence to the needs of Lithuanian labour market.

The LC, as adopted on 24 June 2002 and effective from 2003, finalised the 10-year labour law reform and was considered to constitute a modern enactment demonstrating its correspondence to the principles of a market economy as well as EU and international labour standards.

It should be noted, however, that the LC has retained the features characteristic to Soviet labour law, such as detail and strict imperative regulation and high standards for protection of workers. This is exhibited in complicated bureaucratic restrictions (excessive formalisation of entering into and performance of employment contracts), predominance of a standard employment contract (contract of full-time employment of a permanent nature) and absence of flexible forms of employment as well as high costs and long procedures involved in termination of employment contracts, wide range of supplementary guarantees for many groups of workers (minor employees, employees who raise children, employees of pre-pension age, etc.).

Under such regulation, there are very limited opportunities to adapt by agreement to the new needs of an employer or employee in the context of changing economic and social conditions, as the **LC does not allow modification of detail legislative regulation, which not always meets the needs of the parties concerned, by individual agreement.**

Some opportunities in this area are vested upon social partners, but collective bargaining is badly underdeveloped due to poorly-developed social partnering (low trade union density, absence of strong trade union at the enterprise level). It is difficult to expect any changes in this area in Lithuania in the nearest future. Accordingly, ensuring better flexibility of labour relations through collective agreements is hardly possible. (Unless "all-out efforts" are made to reinforce social dialogue in Lithuania).

Therefore, with the view to considering current economic and labour market needs, we find it unavoidable for the legislator to gradually liberate possibilities for the parties concerned to agree on more flexible working conditions on an individual basis (actually, by cancelling Article 94 § 2 of the LC which prohibits the contractual parties to establish working conditions, which are less favourable to employees than those provided by the law) by lifting some excessive restrictions (for example, restrictions involving summary recording of working time, overtime work, etc.) or by setting up new quantitative limits. In fact, this trend has already been followed. The parties to employment contracts have been recently allowed to agree on part-time work without any restrictions; proposals are hovering to lift restrictions involving the length of a working day or working week; etc. It is also worth noting that there are attempts to combine liberalisation of individual regulation with permitting collective agreements to derogate from the statutory regulation. In our opinion, however, low density of such agreements and poor content will prevent this method from being used as the sole alternative.

As the main needs of current labour market are inevitably related to the need for increased flexibility (while ensuring protection of workers to a maximum extent at the same time), this section further presents the assessment of the LC in terms of its correspondence to the principles of flexicurity.

1.2. Assessment of the existing Lithuanian Labour Code in terms of its correspondence to the principles of flexicurity

1.2.1. Regulation of working time

Flexible regulation of working time means that the parties to labour relations are given certain freedom to agree on the duration of working time acceptable to them. It does not imply promotion of overtime work or complete non-intervention of the State in the regulation of working time and leaving this issue for sole discretion of the parties to labour relations. In fact, flexibility in the regulation of working time is reflected not only by a possibility to agree on longer than usual working time, but also by a possibility to cut this length whether by a mutual agreement of the parties concerned or at employee's unilateral request. Accordingly, flexibility should manifest in the parties' opportunity to freely agree on the duration of working time, concurrently ensuring that requirements concerning minimum rest periods are realistically observed, and leaving all other issues to the parties' discretion.

When assessing the flexibility of regulating working time in Lithuania, the first thing to note is that the LC entrenches usual and/or shorter working hours or part-time working day or working week. Article 144 of the LC contains an imperative provision that working time may not exceed 40 hours per week and a daily period of work must not exceed 8 working hours. Accordingly, all work exceeding the above rates shall be considered overtime work. In terms of flexibility, such provisions alone should not be met with criticism, because employee-employer interests should be proportionally balanced, i.e., an employer may expect longer working time provided he pays correspondingly more for the working time exceeding that defined in the employment contract (according to the LC, the pay for overtime work shall be at least one and a half of the average wage established for the employee).

However, in Lithuania flexibility opportunities are minimised in practice due to legislator's will to define the maximum working time of 48 hours per 7 days, overtime included. It's worth noting that Article 160 of the LC entrenches a provision stipulating that the duration of uninterrupted rest between working days/shifts may not be shorter than 11 consecutive hours per 24-hour period. It means that apart from 8 hours of work and 11 hours of rest there are 5 more hours per 24-hour period which employees could use at their discretion. This time amount to 25 hours per 5-day working week, but the law allows only 8 hours of overtime work (and additional earnings) out of the above-mentioned 25 hours. (In addition, the LC provides for a limitation that employee's overtime work shall not exceed 4 hours in two consequent days and 120 hours per year). Of course, one can discuss that the time free of work is intended for the satisfaction of personal responsibilities and needs, but these needs are different in each individual case and could be satisfied, to a certain extent, within the established

obligatory daily hours of rest. Therefore, restricting the opportunity for an employer and employee to agree is difficult to justify in terms of flexibility.

Likewise, criticism should be given to the provisions of Article 150 of the LC stipulating that **overtime works** are prohibited in general cases. The LC prescribes that overtime works are permitted only in special (exceptional) cases. The list of these exceptional cases is very specific and includes only such situations when deviation from usual labour organisation is due to certain external factors, e.g., when the work could not have been finished during the working time because of technical obstacles, if interruption of work may result in deterioration of production materials or breakdown of work equipment. However, the need for overtime work may also exist under usual conditions of labour organisation, for example, in case of unexpected increase in the number of orders. The easiest way for an employer to respond to such changes is the opportunity to agree on overtime work with employees on an individual basis until additional workers are employed or other circumstances change, as the case may be. The aforesaid agreements are prevented by the current regulation. On the other hand, the opportunity to agree on overtime work on individual bases would constitute a threat of pressure from employers on employees to do overtime work. Therefore, it is necessary to identify the instances when overtime work is obligatory and when it is up to employees to agree on the performance thereof.

The LC sets forth limitations not only in respect of the duration of overtime work and cases when overtime work is permitted, but also in respect of the group of persons to whom overtime work can be assigned. In no event can overtime work be assigned to persons under 18 years of age; to persons who are studying in secondary and vocational schools without interrupting work - on study days; when factors in the working environment exceed the permitted levels, as well as in other cases established by laws and collective agreements. We don't find this prohibition as constituting the limitation of flexibility, because it is proportionate to the protected values. The limitation that pregnant women, women who have recently given birth, women who breastfeed, employees who are taking care of children under three years of age, are solely raising a child under fourteen years of age as well as disabled persons may be assigned to do overtime work only with their consent is also seen as proportionate in terms of flexibility.

According to the LC, the only opportunity to provide labour relations with more flexibility in case of overtime work is entering into a collective agreement of employment. The legislator does provide for opportunities to set exceptions involving overtime work and instances when this work can be assigned in collective agreements. It must be understood, however, that flexibility is directly related to quick adaptation opportunities, while collective bargaining and signing of collective agreements is not a one-day process. Therefore, we are of the opinion that better flexibility should be sought through granting more freedoms to the parties to employment contracts themselves.

It should be further noted that in spite of agreeing on additional circumstances when overtime works can be assigned, the parties to a collective agreement will be nevertheless obliged to follow the limitation that the duration of overtime work should not exceed 180 hours per year. It means that flexibility is actually exhibited in the opportunity to extend the list of exceptional cases when overtime works are permitted.

The need for liberalising overtime work regulation is reflected in the findings of a survey carried out by the Lithuanian Free Market Institute in 2005¹. During the survey, 1,093 employees of 16 to 74 years of age were polled. The poll uncovered that every third employee believed doing overtime work which is not paid respectively. Four out of five working individuals (81%) indicated that they would agree to work overtime and receive extra remuneration for such work. More than one third of the employees

¹ Sociological survey *Employees' attitudes towards various issues on the regulation of labour relations* [viewed on 26 May 2008] [interactive] at http://www.lrinka.lt/index.php/analitiniai_darbai/sociologinis_tyrimas_darbuotoju_poziuris_ivairiais_darbo_santykiu_reguliavimo_klausimais/3182

(37%) pointed out that regulation of working time restricts their opportunities to work in as much as this is agreed with the employer (this was particularly emphasised by young employees of 16 to 24 years of age). It's worth noting that proposals to liberalise labour laws, including regulation of overtime work, was considered by the Tripartite Council of the Republic of Lithuania (TCRL) on 22 January 2008. However, trade unions unilaterally opposed to assigning overtime work under individual agreements between an employer and employee. The trade unions' stance was also supported by the State Labour Inspectorate (SLI). It was stressed that assignment of overtime work has already been liberalised, as it is allowed if stipulated in a collective agreement in addition to the exceptional cases listed in Article 151 of the LC.

Approaching the situation from the employees' point of view, employment with more than one employer or employment with one employer under two or more employment contracts could serve as a certain alternative for overtime work. It is also a certain flexibility opportunity for employers but, in case of employment with the same employer under two employment contracts, the contracts of employment should be entered in respect of different job functions. It's worth noting that in case of employment under two employment contracts limitations are applied only with regard to the length of a working day, i.e., a working day shall not exceed 12 hours. There are no limitations applied to the length of a working week, except for general requirements relating to obligatory uninterrupted daily and weekly rest. Therefore, contracts of additional work and secondary job enable employees to exercise their employment opportunities to the maximum extent possible and also allow more flexible organisation of work by the employer.

It's worth noting that working time can not only be prolonged, but shortened as well, as compared to usual working hours. We don't think obligatory shortening of working time set forth in Article 145 of the LC is subject to the assessment in terms of flexibility, as this provision is aimed at ensuring protection of health to certain categories of workers. On the other hand, the opportunity to agree on part-time work, as set forth in Article 146 of the LC, is one of the forms of implementing flexibility in labour relations.

In case of a shortened working day or working week, employees shall receive payment in proportion to the time of work. Such an agreement can be formalised by signing a contract of employment or by later amendments thereto, but the clause of part-time work should be in all cases stipulated in the employment contract². Likewise, it is important to note that an employer is not allowed to take a unilateral decision to shorten a working day or working week, while an employee is granted such a right in certain cases. Irrespective of the employer's will, a working day or working week should be shortened on employee's request due to the employee's health condition if there is a relevant medical opinion; on request of a pregnant woman, a woman who has recently given birth, a woman who breast-feeds, an employee raising a child until it reaches three years of age, as well as an employee who solely raises a child until it reaches fourteen years of age or a child with limited functional capacity until it reaches eighteen years of age; on request of an employee under eighteen years of age, a disabled employee or an employee nursing a sick member of his family. The above-mentioned persons should submit appropriate opinions or certificates issued by competent authorities to verify their status.

The opportunity to work a shortened working day or working week contributes to better balancing of work and family responsibilities by employees, concurrently enabling them to retain their professional skills and qualifications. While assessing entrenchment of such provisions in employment contracts in terms of reliability, it's worth noting that the law ensures the employee's interests in that part-time work shall not result in any limitations when setting the duration of annual leave, calculating the length of service, promoting an employee, improving qualification, and shall not limit any other rights

² Resolution No. 1508 of 29 November 2004 of the Government of the Republic of Lithuania "On the Approval of the List of Conditions Related to the Procedure of Establishing Part-Time Work and Duration"// *Valstybės Žinios* (Gazette) No 17-6406, 2004.

of the employee. Accordingly, part-time work is not only a flexible form of labour organisation, but also a reliable one vis-à-vis employee's interests. In addition, shortened working hours agreed by the parties may serve to avoid dismissal of the employee due to economic conditions during a period when the employer is not able to maintain jobs under usual conditions of payment for work.

It should be pointed out that regulation of part-time work has been liberalised by cancelling provisions that a shortened working day shall not be less than a half of a statutory working day and a shortened working week shall not be less than 3 working days. Therefore, we see the existing regulation, which allows agreement on part-time work, as flexible and reliable vis-à-vis both parties to labour relations.

With the view to better flexibility of the regulation of labour relations, it is necessary to review the regulation of **summary recording of working time**. Summary recording of working time is now permitted in case of entering into employment contracts of a temporary nature or on the supply of services as well as in continuously working enterprises, agencies and organisations, also in individual workshops and sections, in jobs where the working day (shift) is organised in sessions and in some jobs where, due to technological processes, it is impossible to observe the duration of a working day or working week set for a specific category of workers. Introduction summary recording of working time may be also defined in a collective agreement. The opportunity to set forth summary recording of working time in a collective agreement is the only way for the parties to labour relations to express their freedom and will in determining the procedure for summary accounting of working time. Yet, flexibility is inseparable from increased individualisation of organisation of working time. Like in case with regulation of overtime work, regulation of summary recording of working time is too strict, and actually there are no opportunities left for an employer and employee to adopt a decision that is most favourable to them. Liberalised regulation of summary recording of working time would be beneficial for such workers who face difficulties in balancing their work and personal responsibilities or studying time. The existing protection of workers applied in case of summary recording of working time, i.e., limitation of the duration of work during a reporting period and regulation of the maximum length of a working day and working week should also suffice if summary recording of working time is permitted by an agreement of the parties.

Work time regime is usually common to all employees, but an employer may arrange work in shifts at his discretion. Introduction of shift work is not restricted by the existence of any exceptional circumstances. Therefore, shift work can be introduced by employer's decision subject to the existing needs. This undoubtedly contributes to better adaptation to economic changes. It's worth noting that shift schedules should be agreed upon by an employer with the representatives of enterprise, agency or organisation employees 14 days in advance. There have been recent proposals to shorten the term of early notice giving to 7 calendar days and to 3 working days, if this is necessary for production purposes. Such proposals were not supported. In fact, the 14 days' notice of work (shift) schedules is quite long. With the view to increasing flexibility of labour relations, unless this term is shortened, it would be rational to at least provide for likely exceptions when shortening thereof is allowed.

1.2.2. Drawing up, modification and termination of employment contracts

Drawing up of employment contracts

Flexible regulation of labour relations is primarily exhibited in formalising labour relations in employment contracts. In terms of flexibility, it is important to identify what formal requirements are raised for the agreement of the parties, what limits of freedom to agree the parties can exercise. In the most general sense, an agreement between an employee and employer on the essential terms and conditions of an employment contract is necessary to enter thereto, i.e., an agreement on the workplace and job functions. Special conditions that should be agreed upon depend on the employment contract. In other words, the minimum of these two elements is sufficient in case of non-term employment contract only. In case of fixed-term employment contracts, it is necessary to agree on the term of employment which should be expressed explicitly and unambiguously. The same rule applies in case of subtypes of fixed-term employment contracts, i.e., temporary and seasonal

employment contracts. Entering into contracts of employment on secondary jobs involves the implementation of certain formalities, i.e., the contract should stipulate an agreement on secondary duties (job) and the employer should be informed on the time the employee commences and ends his work at his primary workplace, etc.

When analysing the general conditions of employment contracts, it is important to note that they have a very high degree of imperative legal regulation in Lithuania. The examples below are regulated both in the very Labour Code and in legislation implementing the LC:

Firstly, though the theory of law qualifies a contract of employment as a consensual contract, i.e., coming into being from the moment the parties concerned reach consensus, Article 98 of the LC entrenches a concept of illegal work (which is quite loose and contradictory, by the way) whereunder illegal work means work performed without being documented in a written agreement although all the above-mentioned essential conditions of an employment contract have been agreed upon. Certainly, accordance to Article 99 § 3 of the LC, an employee starts work only upon entering into a written employment contract with him, but Article 99 § 1 stipulates that an employment contract shall be deemed concluded when the parties have agreed on the conditions of the employment contract. In practice, inconsistency of these two provisions of the LC leads to a quite high number of recorded illegal work. The SLI regards work performed without a written employment contract as illegal work and takes no efforts to find out whether the parties concerned have agreed on the essential conditions of an employment contract but have not documented them or the employee is performing illegal work in fact. In this case, only a proper and explicitly formulated definition of illegal work could help avoid unreasonable recording of administrative violations of law and imposition of relevant administrative penalties on employers.³ A problem of illegal work should not be confused with national taxes. All persons are obligated to pay statutory taxes irrespective of the legal form they receive certain income (royalties, remuneration for work under contract agreements, etc.). However, the problem of collecting taxes and other obligatory payments or contributions falls within the ambit of tax administration rather than labour law.

Secondly, the issues of documenting an employment contract are regulated in detail by Resolution No. 115 of 28 January 2003 of the Government of the Republic of Lithuania (GRL) "On the Approval of a Model Form of an Employment Contract" and Resolution No. 503 of 24 April of the GRL "On the Approval of the Rules for the Registration of Employment Contracts, the Procedure for Issue, Holding and Submission of Employee's Identification Document to Controlling Authorities". In compliance with the aforesaid resolutions, each employment contract irrespective of its type (even a temporary employment contract concluded for one day) should be made in two written copies, entered into the register of employment contracts, and employees should be issued employees' identification cards which should be also recorded in the register of employees' identification cards. However, it is not obligatory for an employee to carry his identification card with him all times if this is confirmed by the employer's order setting forth, for example, that employment contracts shall be kept with the personnel office of the enterprise. Such being the case, the purpose of administrative and financial costs for proving one and the same fact – existence of labour relations – remains to be absolutely unclear. One has to remember that when a duty to issue employees' identification cards was introduced nearly 10 years ago, one of the main objectives thereof was to make the process of detecting illegal work easier for SLI inspectors. Yet, practical benefits of this still remains vague if, for

³ In compliance with the provisions of Article 41³ (Illegal Work) of the Code of Administrative Violations of Law, illegal work shall incur a penalty on employers or their authorised persons in the amount of *3 to 10 thousand litas* for every illegally employed individual. The same action committed by persons with the history of administrative penalties for the same violation shall incur a penalty on the employers or their authorised persons in the amount of *10 to 20 thousand litas* for every illegally employed individual. On the other hand, if work performed without a written employment contract is not regarded as illegal work when the parties concerned prove their agreement on the essential conditions of employment contract, such a fact should be qualified as a violation of labour laws (Article 41 of the Code of Administrative Violations of Law) and incur penalties on employers or their authorised persons in the amount of *5 hundred litas to 5 thousand litas*.

example, builders are working on a site in Vilnius while all employees' identification cards are kept at the headquarters of the construction enterprise, let's say, in Plungė. It proves once again that some administrative measures entrenched in legislation disproportionately encumber the employment process.

Thirdly, one of the obligatory elements in the employment process is submission of information on a new employee to a territorial division of the State Social Insurance Fund; dismissal from work should be also communicated in a separate notice. This requirement applies even in such cases when employees are hired for short-term jobs.

Modification of employment contracts

An employment contract may be modified both by a **mutual agreement of the parties** and, in individual cases, on a unilateral basis. Conclusion of an employment contract involves agreement on the essential conditions of the employment contract. As these conditions serve as a precondition and basis for an employment contract to be valid, they can be modified exclusively subject to prior written consent by an employee. Such a requirement is not considered a limitation of flexibility, because the essential conditions of an employment contract are a key agreement between an employer and employee confirming the agreement and conformity of their interests. In addition, the law does not set any minimum deadline the maturity of which gives grounds to claim the adherence to the early consent requirement. Therefore, in terms of time, such consent may be made right before the modifications of the conditions.

In case of non-term employment contracts, the essential contractual conditions are confined to the employee's place of work and job functions. This rule is also applied in respect of other types of employment contracts but, as it is mentioned above, certain contracts provide for other essential conditions. For example, in case of a fixed-term employment contract the term of the contract must be agreed by the parties. It's worth noting that a term of a fixed-term employment contract can be extended for an unlimited number of times within the 5 years' period, because the term is only one of the essential conditions of fixed-term employment contracts and can be amended subject to early consent of an employee in writing. In this case employees are not provided with the protection defined in Article 111 (which provides for becoming of a fixed-term employment contract a non-term one), because a fixed-term employment contract becomes a non-term contract only if, after the expiry of its term, another fixed-term employment contract is concluded with the same employee for the same work. Such regulation could be assessed as particularly flexible at first view. Flexibility, however, is not a mere legalisation of employer's interests to freely dispose of labour force. It should be noted that efforts are taken at the EU level to find a balance between flexibility and social security, and to equalise the level of social security for workers employed under non-term or fixed-term employment contracts as well as employees' chances to improve. The regulation permitting extension of the term of an employment contract for an unlimited number of times within the 5 years' period should therefore be assessed as not conforming to the principles of flexicurity. Some Member States have set a maximum number of times for extending the term of an employment contract. Once this number is exceeded, a contract shall become a non-term contract. Introduction of such a limitation is supposed to improve the situation of workers employed under fixed-term employment contracts and be proportionate to the interests of employers and employees. Likewise, entering into non-term employment contracts could be encouraged by setting a minimum term for which a fixed-term employment contract could be extended. Introduction of such a limitation would relatively reduce the opportunities of flexibility, but it would ensure better reliability of employment contracts, because the existing regulation allows not only extension of a contract for an unlimited number of times, but for minimum durations, too. Therefore, limitations of the number and duration of the extensions would enable taking control over employers abusing of their freedom of action. On the other hand, the mentioned limitations would not affect decisions of the employers who responsibly plan their activities, as there would be no limitations applied to the original agreement on a fixed-term employment contract.

In some cases employment contracts can be modified **unilaterally** by one or another party to an employment contract. Employee's rights to modify an employment contract unilaterally basically relates to the right to claim the establishment of the above-mentioned shortened working day or working week.

In terms of flexibility, employer's opportunities to modify the conditions of an employment contract unilaterally should be given special mention. Article 120 of the LC sets forth the employer's right to modify the conditions of an employment contract in the event of changes in production, its scope, technology or labour organisation, as well as in other cases of production necessity. In systematic interpretation of the LC, employers can claim the above-mentioned circumstances for the unilateral modification of complementary (special) conditions of employment contracts only. Such regulation provides employers with special opportunities to respond flexibly to changing economic conditions. The employer's opportunity to flexibly respond to the changed economic conditions is likewise ensured by Article 122 of the LC which allows transfer of employees to another work with their written consent for the period of idle time, taking into account profession, speciality, and qualification of the employees.

Termination of employment contracts

One or another party to labour relations can be interested in terminating an employment contract in certain cases. Article 125 of the LC stipulates that one party to an employment contract may offer the other party in writing to terminate the employment contract by agreement between the parties. In case of refusal to terminate an employment contract by any of the parties, the consequences of such refusal shall be different for the parties. Employer's refusal to terminate an employment contract shall not restrict employee's opportunities to resign. The employee will simply lose the opportunity to agree on his severance pay and, in order to terminate the employment contract, will be obliged to adhere to the term of giving a notice of termination of the employment contract. The situation is much more complicated in case of employee's refusal to resign. Certainly, termination of employment contracts by agreements between the parties best conforms to the interests of both of them, as they can agree on the most acceptable procedure of dismissal. However, when assessing flexibility of the regulation of labour relations, particular emphasis should be given to the opportunities of the parties concerned to act independently of the other party's will in termination of labour relations. Opportunities of unilateral actions vis-à-vis an employee and employer should be analysed separately.

Termination of employment contracts on the initiative of employees

The law imposes no limitations on the employee's choice to terminate labour relations except for his duty to give a duly notice of termination to the other party to an employment contract in advance. Article 127 § 1 of the LC contains a general rule that a period of giving a notice to an employer on the employee's intention to terminate a non-term employment contract or a fixed-term employment contract shall be 14 days. In fact, this period is quite short for the employer to solve the problem of future shortage of labour force. It's worth noting that the term of notice giving by employers to employees is by 4 times longer, i.e., 2 months (or 4 months in exceptional cases) in advance. The 14 days' term of notice giving to employers is supposed to be disproportionate taking into account the term of notice giving obligatory for employers. Yet, it should not be considered as fundamentally violating the interests of employers, because they are entitled, after receipt of resignation application and during the period of notice, to offer postponement of this term under conditions acceptable to the employee.

One more exception from the general rule defining the 14 days' term of notice giving is permitted under certain circumstances set in the LC. Article 127 § 2 of the LC entitles employees to give a notice of termination to their employer 3 working days in advance where the employee's request to terminate the employment contract is justified by his illness or disability restricting proper performance of work, or for other valid reasons established in the collective agreement, or where the employer fails to fulfil his obligations under the employment contract, violates laws or the collective agreement.

Likewise, employees shall be entitled to terminate an employment contract by giving 3 days' notice of termination provided they are already entitled to the full old-age pension or are in receipt thereof. Such a short statutory term of notice giving is certainly in conformity to the interests of employees, but it is doubtful whether it could be deemed proportionately flexible vis-à-vis employers. The opportunity to use the short term of notice giving is assessed with special criticism with regard to persons entitled to the full old-age pension or in receipt thereof. In the process of population ageing, segregation of older and pension-age employees from other labour force for the mere reason of receiving or being entitled to receive pension is seen by us as unreasonable.

In general, except for the obligation to compensate an employer for the expenses incurred by him in relation to employee's training and/or qualification improvement (Article 95 § 5 of the LC sets forth that an employment contract may stipulate that in case of termination due to employee's fault, the employee shall undertake to compensate the employer for the expenses incurred by him during the last working year in relation to the employee's training, in-service training, study visits), we can say that employee's opportunities to terminate labour relations unilaterally are not limited. The established terms of notice giving to employers should be seen as minimum, and shortening thereof in certain cases can be hardly justified for being not fully proportionate with the view to balancing the interests of the parties to labour relations.

Termination of employment contracts on the initiative of employers

Employer's opportunities to terminate labour relations and expenses related thereto play an important role in taking a decision by employers to admit a person to work or not. An employee is considered to be the weaker party in labour relations, so laws regulating labour relations are more aimed at protecting employees from dismissals or, at least, to possible mitigating of the negative consequences of dismissal from work. Therefore, employer's opportunities to dismiss an employee unilaterally are much more limited compared to employee's opportunities to resign without suffering additional expenses in relation thereto. Whereas employers have to plan their actions in longer perspectives and to foresee certain relevant consequences.

First of all, it should be noted that, in the most general sense, the LC prohibits unilateral termination of labour relations by employers with certain exceptions. The first exception applies in case of termination of non-term employment contracts. An employer may terminate a non-term employment contract for valid reasons (Article 129 § 2 of the LC stipulates that only the circumstances, which are related to the qualification, professional skills of an employee, etc., shall be recognised as valid), if the employee cannot be transferred to another work. We believe that, under conditions of rapid technological progress, the opportunity to dismiss an employee incapable of working under changing conditions and/or not meeting the professional or qualification requirements raised to him, is an important flexibility guarantee in labour relations.

Technological progress often determines not only the necessity to acquire new skills for employees, but often means refusal of some part of human labour in the process of work. To this effect, Article 129 § 2 of the LC sets forth that economic, technological grounds or restructuring of the workplace, as well as for other similar reasons shall be also considered valid reasons to terminate an employment contract without any fault on the part of an employee.

The presence of valid reasons is also obligatory in case of terminating fixed-term employment contracts, but in this case employees should be paid their average wage for the remaining period of the employment contract. At first view, the LC grants full freedom for employers to refuse of employees working under fixed-term employment contracts. However, the statutory obligation to prove valid reasons for dismissal and to pay for the remaining period of the employment contract principally reduces this flexibility opportunity to a minimum. To this effect, it is worth reiterating that employees are entitled to terminate, upon their request, both non-term and fixed-term employment contracts by suffering no palpable financial loss.

In order to dismiss an employee without his fault, an employer should not only notify the employee on the intended dismissal in accordance with the statutory time limits, but should also bear in mind pending expenses in relation thereto, i.e., his obligation to pay a severance pay to the employee. Article 140 § 1 of the LC relates the amount of a severance pay with the length of service of the employee concerned. The amount of severance pays varies from 1 month's to 6 months' average wage subject to the length of service. In case of terminating a fixed-term employment contract, compensation shall be paid in addition to the above-described severance pay. The amount of the compensation shall be equal to the number of the remaining months of employment an employee would have worked unless the contract had been terminated. It should be noted that interests of employees are deemed to be better secured in case of non-term employment contracts. However, the aforesaid regulation of severance pays leads to a situation when employees whose length of service under non-term employment contracts is 20 years and more would receive lower severance pays in case of dismissal than employees (in all cases) with whom fixed-term employment contracts are terminated more than six months before expiry of the term of the contract. The above-mentioned difference should be assessed with criticism, because in both cases employees will face same employment problems. Moreover, relating the amount of severance pays to the duration of employment contracts encourages employers to employ people for considerably shorter periods than the maximum 5 years' period in order to suffer fewer expenses in case of termination of the employment contract.

An employer should comply with the requirements of early notice of termination irrespective of the type of an employment contract (whether non-term or fixed-term). Article 130 § 1 of the LC entrenches a general rule that an employer shall be entitled to terminate an employment contract by giving the employee a written notice two months in advance. This term is prolonged up to four months to the employee who will be entitled to the full old age pension in not more than five years, persons under 18 years of age, disabled employees and employees raising children under 14 years of age. Moreover, employment contracts with such employees may be terminated only in extraordinary cases where the retention of the employees would substantially violate the interests of the employer. It is indeed a question under debate whether this provision does not, in its essence, reduce opportunities of the mentioned persons to get employed, because employers are aware of difficulties to be faced in case of their dismissal. No doubt that the above-mentioned categories of people are attributable to the group of people who need special security or measures promoting employment, but excessively protectionist measures should not only be negatively assessed in terms of flexibility, but can also backfire on the protected people themselves.

While assessing the regulation of termination of labour relations without any fault on the part of an employee in terms of flexibility, it should be noted that employer's opportunities to terminate an employment contract are fairly restricted by various protectionist measures, as compared to the employee's freedom to do the same. Necessity of such measures is out of question, but the scope of application thereof should be possibly reduced with reference to social security and increased employment opportunities when looking for other jobs rather than to high protection of employees against dismissal from work.

2. Presentation and critical assessment of the recently adopted (or/and proposed) temporary changes

2.1. Short description of recently adopted (or/and proposed) temporary changes

On 9 December 2008, the PRL supported a new programme of the GRL which provided for urgent actions to be taken during the economic crisis in order to create preconditions for more flexible regulation of labour relations. Within the programme of implementation of its programme, the GRL elaborated and submitted the PRL the Draft Law Amending and Supplementing Articles 99, 109, 111, 127, 129, 130, 140, 141, 146, 147, 150, 151, 152, 168, 188, 195, 203, 206 and 256 of the Labour Code of the Republic of Lithuania (hereinafter referred to as "Draft 1") on April 2009. Elaboration of Draft 1 was facilitated by a current situation prevailing on the labour market when it has become

necessary to create legal preconditions for more flexible organisation of labour process in order to maintain jobs. The GRL suggested creating such legal preconditions that would put fewer burdens on employers willing to dismiss employees during the period of the crisis due to economic reasons without any fault on the part of employees.

The draft was considered by social partners at the TCRL and committees of the PRL. On the 23rd of July 2009 the PRL approved the Draft Law Amending and Supplementing Articles 109, 127, 129, 130, 141, 152, 188, 203, 206 and 256 of the Labour Code of the Republic of Lithuania (hereinafter referred to as "Draft 2"), which retained only a part of the amendments to the LC submitted by the GRL (see Annex 1).

According to the authors of Draft 1, the draft provided for a number of more flexible employment conditions and guarantees, as compared to the currently valid LC, to be agreed in collective agreements, thus creating the conditions for the more flexible regulation of labour relations and also for the promotion of social dialogue. Likewise, the draft was aimed at creating legal preconditions for the implementation of flexicurity principles in practice. It is worth noting that many provisions of Draft 1 (as well as Draft 2) would have stayed valid only until 31 December 2010 (i.e., within the expected period of crisis).

The provisions of Draft 1 could be conditionally divided into four basic groups:

1. Simplification of the procedure for filling in some documents
2. Regulation of fixed-term employment contracts
3. Regulation of the termination of employment contracts
4. More flexible regulation of labour processes in enterprises

A brief review of the proposed amendments to the LC is presented below by these four groups:

2.1.1. Simplification of the procedure for filling in some documents

The GRL suggested setting forth that employment contracts record books and working time logs could be filled out in an electronic format (amendments of Article 99 § 2 and Article 147 § 6 of the LC). Though social partners at the TCRL did not oppose to this proposal, the PRL queried about the suggestion to regulate the issue in the law being too excessive, as such provisions might as well be validated in governmental resolutions. As a result, the PRL decided to refuse of the aforesaid suggestions and omit them in Draft 2.

2.1.2. Regulation of fixed-term employment contracts

a. In Draft 1, the GRL suggested nullification of Article 109 § 2 of the LC which stipulated that "It shall be prohibited to conclude a fixed-term employment contract if work is of a permanent nature, except for the cases when this is provided by laws or collective agreements". Such regulation would create preconditions for the parties to an employment contract – employer and employee – to freely agree on the type of the employment contract (whether fixed-term or non-term) to be concluded irrespective of the nature of work. By introducing this proposal the GRL expected to create preconditions for creating more jobs. Trade unions, however, rejected the aforesaid proposal during the considerations at the sittings of TCRL. The PRL did the same by omitting the amendment in Draft 2.

b. The GRL proposed to provide for additional security of workers employed under fixed-term employment contracts. Namely, such employees should not be applied less favourable employment conditions, qualification improvement and employees' promoting opportunities as compared to those employed under non-term employment contracts (insertion of new paragraph 5 to Article 109 of the LC). This proposal was unilaterally supported by social partners at the TCRL and adopted by the PRL.

c. Procedure of termination of fixed-term employment contract prior to expiry thereof (amendments of Article 129 § 5 of the LC). As it was mentioned before, the current LC provides that an employer shall be entitled to terminate a fixed-term employment contract before the expiry thereof only in extraordinary cases where the employee cannot, with his consent, be transferred to another work, or upon the payment of the average wage to the employee for the remaining period of the employment contracts. The GRL suggested that an opportunity be provided in a collective agreement to agree on cases when an employer is entitled to pay lower severance pay than the above mentioned in case of termination of a fixed-term employment contract during the period of crisis. In no event such severance pay could be less than one month's average wage of an employee. The suggestion was supported at the TCRL and included in Draft 2 after being revised at the PRL.

2.1.3. Regulation of the termination of employment contracts

a. Revision of the procedure applied to pension-age employees in case of termination of employment contracts on their initiative (amendment of Article 127 § 2 of the LC). This amendment was sought by the GRL to take into consideration the requests of social partners and to avoid cases of abuse often met in practice when pension-age employees enter into successive non-term employment contracts with new employers and become entitled (irrespective of the length of service with a particular enterprise) to termination of the employment contract in the simplified procedure (i.e., by giving a 3 days' notice to the employer) and receiving a severance pay in the amount of 2 months' average wage. Draft 1 and Draft 2 actually specify this provision in more details and stipulate that a pension-age employee can exercise this right only in case he has acquired the right to full old-age pension while working with the enterprise (employer), which should pay the above-mentioned severance pay to the employee. These proposals of the GRL were supported both at the TCRL and PRL. They are expected to stay valid for an unlimited period of time.

b. Review of the list of employees with whom employment contracts may be terminated on the initiative of an employer only in extraordinary cases when there is no fault on the part of an employee (amendments of Article 129 § 4 of the LC). As it was mentioned before, the current LC stipulates that an employment contract with employees, who will be entitled to the full old-age pension in not more than 5 years, persons under 18 years of age, disabled persons and employees raising children under 14 years of age may be terminated only in extraordinary cases where the retention of the employee would substantially violate the interests of the employer. The definition of "extraordinary cases" is subject to assessment and employers, when applying it in practice, are in each case at risk that a court may not recognise one or another case as "extraordinary" and, as a result, recognise the dismissal as illegal. In addition, there is quite a big circle of employees to whom the aforesaid additional protection is applicable. According to the representatives of employers, dismissal of the above-mentioned employees is therefore unreasonably encumbered by this LC's provision. Moreover, it does not encourage admission of such persons to work. Taking this into consideration, Draft 1 proposed to suspend the aforesaid protection within the period of crisis in respect of employees under 18, as these persons should normally give priority to studies rather than to employment. In addition, it was provided that, if so agreed by the parties concerned, collective agreements may stipulate that this limitation should be applied to employees raising children under 10 years of age instead of 14.

The aforesaid amendments were principally initiated by the TCRL. However, the PRL refused of the amendments in revised Draft 2 and suggested that guarantees be reduced only in respect of employees of pre-pension age, i.e., it was proposed to allow application of the limitation at issue to employees, who would be entitled to the full old-age pension in not more than 3 years, stipulating this in collective agreements. Unless otherwise agreed in a collective agreement, the special protection to persons who will be entitled to the full old-age pension in not more than 5 years would continue to apply.

c. Regulation of time limits for giving a notice of termination of an employment contract on the initiative on the employer without any fault on the part of an employee (amendments of Article 130 § 1 of the LC). As it was mentioned before, the current LC stipulates that an employer shall be entitled to

terminate an employment contract by giving the employee a written notice two months in advance. Employees referred to in Article 129 § 4 of the LC must be given a notice of dismissal from work at least four months in advance. Draft 1 suggests providing an opportunity to shorten these time limits to one and two months respectively in a collective agreement during the period of crisis. This suggestion was not opposed by the TCRL and was likewise retained in Draft 2.

d. Payment during the period of notice for time off from work granted to look for a new job (amendments of Article 130 § 3 of the LC). The LC stipulates that during the period of notice the employer must grant the employee some time off from work to seek for a new job (the length of time shall not be less than 10% of the employee's rate of working time during the term of notice). Time off from work shall be granted in accordance with the procedure agreed between the employee and the employer. According to the valid LC's provisions, the employee shall retain his average wage for this time. Draft 1 suggested that payment lower than the average could be paid during the period of crisis if so agreed in a collective agreement. In no event such payment could be lower than the minimum hourly pay, as approved by the GRL, for each hour granted to look for a new job. This suggestion was not opposed by the TCRL and was likewise retained in Draft 2.

e. Reduction of the amounts of severance pays (amendments of Article 140 of the LC). Draft 1 suggested stipulation of other amounts in a collective agreement during the period of crisis by derogation from the LC. In no event such amounts could be less than a half of the amounts indicated in the LC. The suggestion was not opposed by the TCRL, but it was nevertheless omitted in Draft 2.

f. Procedure for settling accounts with an employee being dismissed:

- Postponed payment of high severance pays (amendments of Article 141 § 1 and 206 § 1.1 of the LC). The LC sets forth that an employer must make a full settlement of accounts with an employee being dismissed from work on the day of his dismissal. It's true to say that the current LC allows for other procedure for settling accounts being established in special laws or an agreement between employer and employee. After some revision of the provisions of Draft 1, Draft 2 stipulates that in cases when employees are entitled to a severance pay in the amount of at least five monthly average wages, the severance pay, as per decision of the employer, may be paid within 3 months from the date of dismissal from work in equal instalments payable at least once per month. Introduction of this amendment is proposed for the period of crisis only. The proposal was supported at the TCRL;
- Payment in case of delayed settling of accounts (amendment of Article 141 § 3 of the LC). The current LC stipulates that in case of delayed settlement of accounts with an employee without any fault on the part of the employee, the employer shall pay employee's average wage for the period of delay. Draft 1 suggested allowing non-payment for the delay in cases of bad economic situation of the employer defined in a collective agreement. The TCRL did not oppose to the amendment, but it was nevertheless omitted in Draft 2.

2.1.4. More flexible regulation of labour processes in enterprises

a. Part-time work. Draft 1 proposed to supplement Article 146 § 1 of the LC with a provision that during the crisis an employee can be assigned part-time work at the employer's proposal in cases defined in a collective agreement. In case of refusal of part-time work by an employee, he can be dismissed from work under Article 129 of the LC in accordance with the established procedure for termination of the employment contract, but only if this is necessary to ensure further functioning of the enterprise. This proposal was dismissed in Draft 2 for several reasons. The main one involved the EU law whereunder part-time work can be scheduled only by a mutual agreement between the employee and employer.

b. Working time schedules. Draft 1 proposed legalisation of a permanent provision stipulating that no working time schedules shall be formed if an employee fully or partially handles his working time at his discretion in accordance with the job function, provided that the procedure and rules to be

complied with by the employee in his work are stipulated in the collective agreement or the rules of procedure (amendment of Article 147 § 3 of the LC). When considering this proposal it was queried at the committees of the PRL about the provision at issue being a subject to ambiguous construing: 1) as granting an employer the right not to regulate working time for a certain group of employees; and 2) as entrenching one of a working time regimes, i.e., work with no fixed hours. Though the proposal was not opposed by the TCRL, it was nevertheless dismissed in Draft 2.

c. Regulation of overtime works (amendments of Article 150 § 2, Article 151 § 7 and Article 152 § 1 of the LC):

- Draft 1 proposed to cancel the provisions stipulating that overtime works are generally prohibited and may be assigned only in exceptional cases. It further suggested that overtime work could be assigned not only in cases specified in the LC and collective agreement, but also, if there is no collective agreement, in cases listed in a written agreement between the employee and employer. Both proposals were dismissed in Draft 2 adopted by the PRL;
- Likewise, Draft 1 proposed and Draft 2 approved the proposal to cancel limitation of maximum overtime work, namely that overtime works shall not exceed for each employee 4 hours in two consequent days and 120 hours per year. Instead, it was stipulated that overtime works shall not exceed 4 hours per day or per shift. It is worth noting that no amendments to weekly or annual maximum overtime works were proposed in the drafts at issue.

d. Regulation of additional annual leave (amendments of Article 168 § 2 of the LC). Draft 1 suggested stipulating that the duration of additional annual leave, the terms and conditions as well as the procedure for providing it shall be determined by the GRL not in all enterprises, as is the case with the current LC, but only in such enterprises, agencies and organisations that are financed from the budgets of the State, municipalities and the State Social Insurance Fund as well as other funds established by the State. Likewise, it was proposed to stipulate the duration of additional annual leave, the terms and conditions as well as the procedure for providing it in collective agreements or employment contracts with private enterprises if the collective agreement is not concluded. Draft 2, as adopted by the PRL, dismissed the above-mentioned proposal of the GRL basically for the reason of likely discrimination of private sector employees on the ground of the above-referred amendment.

e. Organisation of remuneration for work (amendments of Article 188 § 1 of the LC). The current LC stipulates that the conditions for determining the wage, rates, tariffs and qualification requirements for professions and positions, work quotas, the procedure of setting tariffs for work and the employees shall be laid down in collective agreements. Application of this provision in practice raises problems for enterprises with no valid collective agreements, because they turn to be not obliged to determine an objectively grounded system of the remuneration for work. Taking this into account, the GRL proposed to entrench in the LC that when no collective agreement is signed, the above-mentioned procedure should be determined in the rules of procedure or other local (internal) level regulatory schemes after being agreed upon with the representatives of employees. Being supported at the TCRL the proposal was retained in Draft 2. It should be noted that, if approved, the proposal would stay in force for the period of crisis only.

f. Pay for idle time (amendments of Article 195 §§ 1 and 4 of the LC). The current LC stipulates that the pay for idle time which is not the employee's fault shall be at least at the government's prescribed minimum hourly rate for each idle hour. Draft 1 suggested allowing other rates to be fixed in collective agreements during the crisis, but no less than 0.75 of the government's prescribed minimum hourly rate for each idle hour. The suggestion was dismissed in Draft 2.

g. Notification of a change in payment conditions (amendments of Article 203 of the LC). The LC stipulates that where new payment conditions are established, the employer must notify his employees in writing within one month, at the latest, before the conditions become effective. The GRL suggested allowing other time limits (at least 2 weeks in advance) to be fixed in collective agreements

during the period of crisis. The TCRL supported the suggestion which was likewise retained in Draft 2 after being revised by the Parliament.

h. Contract of full liability (amendments of Article 256 § 1 of the LC). The LC stipulates that a contract of full liability may be concluded with the employees whose work is directly related to safe-keeping, acceptance, release, sale, purchase and transportation of material assets and in respect of the personal protective equipment issued to the employee for use at work. A list of specific kinds of work and duties shall be provided for only in a collective agreement. Taking into account the Lithuanian case-law, it was proposed to supplement this paragraph with a provision stipulating that during the period of crisis, when no collective agreement is signed, the above-mentioned list could be set in the rules of procedure after being agreed upon with the representatives of employees. Though opposed by trade union representatives at the TCRL, the proposal was retained in Draft 2.

2.1.5. Validity of the amendments to the LC

It should be noted that amendments relating to non-discrimination of workers employed under fixed-term employment contracts (proposal to add new paragraph 5 to Article 109) and amendments relating to termination of employment contracts on the initiative of pension-age employees (Article 127 § 2) would be of a permanent nature, while other amendments would be valid only during the expected period of crisis, i.e., by 31 December 2010. Defining such a term as a calendar date in the draft law seems to be doubtful indeed. It is currently supposed that the validity of the above-discussed provisions could be extended, where necessary, by a separate law. In this light, however, there would be problems in practice concerning extension of the validity of provisions in collective agreements and individual agreements entered between employees and employers on the basis of the aforesaid amendments to the LC. In addition, according to some experts, the nature of some amendments to the LC, currently set as temporary, should in fact be permanent (e.g., concerning organisation of a system of remuneration for work, contracts of full liability, etc.).

2.2. Assessment of the recently adopted (or/and proposed) temporary changes

Within six years after the adoption of the LC, there were no significant changes in individual labour law in Lithuania. Discussions of the opportunity to use labour law for tackling economic problems started only in the face of the economic and financial crisis. However, we are of the opinion that the package of the amendments to the LC, which was drafted by the GRL (Draft 1) and subsequently adopted by the PRL with some modifications (or, more precisely, in a fairly “squeezed” version) (Draft 2), cannot be assessed unambiguously whether in terms of social policy or law.

Firstly, it is obvious that the considered and adopted amendments have not been based on certain systematic (whether new or reformed) employment strategies. The areas falling within the package of amendments are very different and have unequal impact on the labour market situation in short-term and long-term perspectives. Some issues, such as, for example, entering into contracts of full liability (amendment of Article 256 § 1 of the LC), general provisions of determining the conditions of remuneration for work (amendment of Article 188 § 1 of the LC), a gap in the legal regulation enabling employed pension-age employees to claim several severance pays in case of termination of employment contracts (amendment of Article 127 § 2 of the LC), are nothing else but mending legislative gaps or attempts to settle some problems of the application of law. These amendments will definitely not change national perspectives of employment and will not bear high importance either – ways to settle the aforesaid problems are or could be easily found in the case-law.

Many different targets being sought by the package of legislative amendments are also seen in adding paragraph 5 to Article 109 of the LC. Equalising the legal statuses of workers employed under non-term and fixed-term contracts suggested in this paragraph is dictated by the need to transpose EU directives rather than by the Lithuanian labour market regulation needs.

Secondly, there are serious queries about a realistic impact of the recommended legislative amendments on changes in the labour market situation. On the one hand, many amendments are

insignificant in the light of current labour market problems. For example, it is doubtful whether permission to fill out employment contracts record books and working time logs in an electronic format (amendments of Article 99 § 2 and Article 147 § 6 of the LC) would considerably improve employment opportunities. On the other hand, some of the amendments at issue could be a weighty contribution in alleviating the situation of employers. These include allowing employers to settle accounts with employees being dismissed later than on the very date of dismissal (amendment of Article 141 of the LC), permission to conclude fixed-term employment contracts for jobs of a permanent nature (amendment of Article 109 § 1 of the LC), lifting the prohibition to do overtime work and introducing milder limitations to the duration of overtime work (Articles 151, 152 of the LC), reduced payment for idle time which is the employer's fault (Article 195 § 1 of the LC). Yet, it should be noted that even the latter amendments are fragmentary and, even more so, most of them have not been supported by the PRL.

Thirdly, it is obvious that the State hesitates about firm modification of the strict and detail legislative regulation full of various guarantees and rather tends to vest the main role upon social partners to adapt to downturn conditions. The suggested amendments retain many soviet-pattern provisions and guarantees. The only difference is that they are made milder, allowing for derogation from their application if this is stipulated in collective agreements. Having in mind that collective bargaining on sectoral, national or territorial levels are close to none in Lithuania, agreement on more favourable conditions of employment and work will be vested upon enterprise-level social partners, i.e., employer and trade union or works council (To this effect, it's worth mentioning that no more than <20% of the employed are covered by collective bargaining and/or collective agreements in Lithuania). Though this solution seems to create preconditions for the creation of a social partnership mechanism that would help employers and employees to respond flexibly to the changing conditions and overcome difficulties on the basis of compromise, it is hardly to be amply born out in Lithuania. With traditionally slack collective bargaining and low number of trade union-organised workers, collective agreements bear minor importance in Lithuania. In addition, one should not expect works councils or trade unions to have a strong mind to reduce statutory guarantees under downturn conditions. In Lithuania, there have been no agreements made so far whereunder employers would realistically undertake tackling employment-related problems and assume obligations to maintain/retain jobs. Therefore, we don't think it is worth expecting the rapid development of social pacts that would entrench opportunities to reduce the level of statutory guarantees for employees in exchange for job retention. An opposite situation is more likely when employer-favourable arrangements/agreements concerning non-application of the above-mentioned guarantees will be reached quite easily and expeditiously in the enterprises where employers are predominating at the works councils or influence employees' representative. In the latter case, a collective agreement will turn into an instrument of reducing security of employees instead of serving to ensure better security of them.

To this effect, one more inconsistency of a legal nature is worth mentioning. Don't the proposals to allow the parties to an employment contract or a collective agreement to agree on less favourable working conditions and employees' guarantees, as compared to those stipulated in the LC, generally contradict the *in favorem* principle entrenched in the LC? Article 4 § 3 of the LC stipulates that enterprises, agencies, organisations may adopt, according to their respective competence and in the manner prescribed by laws, local (internal) regulatory acts establishing only such working conditions, guarantees and privileges that are not regulated by labour laws and only in addition to the latter. Article 4 § 4 of the LC further stipulates that tripartite agreements, collective agreements and local (internal) regulatory acts relating to working conditions, under which the position of employees is made less favourable than that established by the LC and other regulatory acts, shall be null and void. Although this legal collision has been settled after long discussions, it is nevertheless our opinion that the fundamental principle of the LC would be violated in this case.

Fourthly, the State's hesitation to review the strict and detail regulation of labour law is exhibited in a temporary nature of the suggested amendments. Majority of the proposed and adopted legal rules, except for those regulating the issues relating to working time and fixed-term employment contracts,

are expected to be effective for a limited period of time, i.e., by the end of 2010. Accordingly, the flexibility measures proposed for better adapting to downturn are temporary. They will be effective for the period when the consequences of the global economic and financial crisis will supposedly be most painfully felt in Lithuania. Accordingly, they constitute an attempt to calm down the society and trade unions that the level of employees' protection will not be reduced in future, but tackling of deep-rooted problems relating to the reasonability and appropriateness of such social security goes slow.

Fifthly, some of the proposed amendments raise serious doubts as to their conformity to Community law. For example, cancelling the prohibition to conclude fixed-term employment contracts if work is of a permanent nature, as suggested in Draft 1 (amendment of Article 109 § 2 of the LC), does not by itself contradict Community law, but means Lithuania's non-fulfilment of the requirements to prevent abuse arising from the use of successive fixed-term contracts enshrined in directive 1999/70/EC. The proposal to allow an employer to unilaterally transfer an employee to part-time work instead of full-time work in the cases listed in the collective agreement "if this is necessary to ensure further functioning of the enterprise" contradicts directive 98/71/EC, as it entitles employers to dismiss employees who refuse of such work on the ground of this mere reason.

Summary

While assessing the current situation prevailing in labour relations in Lithuania with criticism, it should be noted that labour law mechanisms are used in archaic forms in Lithuania under the conditions of the economic and financial crisis: in Lithuania, collective agreements serve exclusively to improve the conditions of remuneration for work and working conditions, and when employers fail to fulfil these conditions dismissals from work are invoked. Perspectives of job retention are pushed away to some third or fourth plane. In addition, problems of idle time (layoffs) and reduction of costs of employment contract termination are prevailing both in public debates and in enterprises.

Neither the State nor social partners suggests any initiatives (or the proposed ones are very poor) related to partial retention of jobs, training and reskilling as well as State's support to maintaining jobs (with the sole exception of some recent amendments to the Law on Support for Employment which practical impact still raises many doubts). We believe it is necessary to initiate agreements between/among social partners on job maintenance. In case of Lithuania, this would be possible if opportunities to enter into such agreements are enshrined in the law. The legislator should consider entrenchment of additional flexible forms of employment, development of part-time work involving broader rights to employees to migrate from full-time work to part-time one. Likewise, we find it useful to provide for more flexible opportunities of regulating working time, because, as it was mentioned, it is very complicated today to deviate from the valid working time regulations. Finally, it is necessary to review the reasonability of enjoying additional protection from dismissals by numerous groups of employees, as this impedes searches for the optimal composition of employees and creates difficulties for the representatives of these groups of employees to get employed.

On the other hand, emphasis could be placed on one more problematic aspect of the suggested amendments. We can say that, when being implemented, many amendments to the LC would reduce employers' responsibility to employees (it would be easier for employers to dismiss employees from work, to pay lower severance pays, to restrict time of leave or opportunities to work under non-term employment contracts, etc.), but there are no countervailing mechanisms envisaged in parallel. Despite the fact that most of the suggested amendments have been disapproved, the presented draft gives grounds to maintain that the principle of flexicurity is wrongly understood in Lithuania, and there actually are no measures being undertaken or legalised to serve to employment security along with reducing job security. Such a situation is particularly dangerous under conditions of economic downturn, rapid increase in unemployment and shrinking resources of the State budget. It is our opinion that all this contradicts the 2009 Employment Summit and Commission's communication "A Shared Commitment to Employment" aimed at promoting better employment flexibility but not on account of social security and exclusion.

Annex 1. Comparison of Draft 1 and Draft 2

Draft 1	Draft 2
Article 1. Amendment of Article 99 § 2	
Article 2. Nullification of Article 109 § 2 and insertion of § 5	Article 1. Insertion of Article 109 § 5
Article 3. Amendment of Article 111 § 3	
Article 4. Amendment of Article 127 § 2	Article 2. Amendment of Article 127 § 2
Article 5. Amendment of Article 129 §§ 4 and 5	Article 3. Amendment of Article 129 §§ 4 and 5
Article 6. Amendment of Article 130 §§ 1 and 3	Article 4. Amendment of Article 130 §§ 1 and 3
Article 7. Amendment of Article 140 §§ 1 and 2	
Article 8. Amendment of Article 141 §§ 1 and 3	Article 5. Amendment of Article 141 § 1
Article 9. Insertion of § 1.7 in Article 146	
Article 10. Amendment of Article 147 §§ 3 and 6	
Article 11. Amendment of Article 150 § 2	
Article 12. Amendment of Article 151 § 7	
Article 13. Amendment of Article 152 § 1	Article 6. Amendment of Article 152 § 1
Article 14. Amendment of Article 168 § 2	
Article 15. Amendment of Article 188 § 1	Article 7. Amendment of Article 188 § 1
Article 16. Amendment of Article 195 §§ 1 and 4	
Article 17. Amendment of Article 203	Article 8. Amendment of Article 203
Article 18. Amendment of Article 206 § 1.1	Article 9. Amendment of Article 206 § 1.1
Article 19. Amendment of Article 256 § 1	Article 10. Amendment of Article 256 § 1
Article 20. Validity of the law	Article 11. Validity of the law