

Overtime Work Flexibility in Baltic States

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This paper gives an overview of how well the Baltic States have introduced the European flexibility policy in their overtime work regulations, to meet the goals of European Commission strategy “Europe 2020”. In this work, an analysis from the flexibility aspect is carried out, regarding how the overtime work in Baltic States is defined, what kind of restrictions have been established regarding the form of overtime agreement, time limits and persons, also what kind of overtime work compensation mechanisms are being used in the Baltic States. In the article good flexibility practice is pointed out, and the problem areas concerning overtime work are analysed. Additional suggestions are given, how the overtime work regulations in Baltic States can be made even more flexible.

Keywords: Labour law, working time, overtime work

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Introduction

European markets are facing big challenges, because of high expectations connected with competitiveness of the European economy. Pressure arising from high levels of unemployment¹ and low employment levels bring into focus the need for more flexible labour markets².

With the need to increase the competitiveness of European labour markets, the European strategy “Europe 2020”³ for smart, sustainable and inclusive growth was launched by the European Commission. One of the “Europe 2020” strategy’s headline targets was to have 75% of the population aged 20–64 employed by the year of 2020. European Commission has also issued Green Paper “Modernising labour law to meet the challenges of the 21st century”⁴, where the need to prosper flexible

work relations, modernise labour regulations and increase employment has been emphasized.

The fact that the European population is aging and elderly people are expected to be active in the labour market brings up the need for more flexible, variable and health sustainable working time⁵. It is the reason why the working time flexibility has become a timely subject in labour law. Flexible working time is also seen as one of the most important remedies to increase at the national and EU level the employment rate, economical growth and competitiveness.

Working time flexibility (numerical internal) can be achieved through adjusting the number of working hours (e.g. working overtime or part-time) and their placing (working shifts or weekends) to allow the employer to adjust production and enable the employee to combine work and private life⁶. In general, the working time flexibility reflects the possibilities to make first of all overtime work, part-time work and shift work⁷.

According to the project "An agenda for new skills and jobs", launched withing the strategy "Europe 2020", the Commission puts up a goal to modernise labour markets and increase the employment level⁸. To meet the goals of strategy "Europe 2020", the European Commission has pointed out the need to modernise the legislative framework of working time. The author finds that all the member states of the EU have to review the existing regulations of working time, and analyse whether the existing regulations are flexible enough to help reach the goals arising from strategy "Europe 2020". According to prof. M. Muda, flexible labour regulation means from one aspect the bigger freedom to enter into employment contracts and from the other aspect the need to give employers opportunities to react rapidly to market fluctuations⁹.

While providing the flexibility in labour regulations, the member states of the EU have to take into consideration the minimum requirements prescribed by EU directives. According to European Court in judgement of *Pfeiffer v Kreuz*¹⁰ the objective of minimum requirements concerning working time (including overtime work) is to guarantee the better protection of safety and health for the workers.

In the current research the author analyses how well the Baltic States have introduced the European flexibility policy in their overtime work regulations. The author notes that effective flexibility practice in one member state can be an example for creating more flexible labour regulation in another member state. As Baltic States economies are tightly connected, the unified flexibility approach can promote the competitiveness and economical growth in all Baltic States.

In the current research the author analyses from the flexibility aspect how the overtime work in Baltic States is defined, what kind of restrictions have been established regarding the form of overtime work agreement, time limits and persons, to whom the overtime work cannot be applied. The author also investigates, what kind of overtime work compensation mechanisms are being used in the Baltic States, and whether the regulations can be improved with respect to flexibility.

1. Definition of overtime work

The definition of overtime work differs in practice, because of the treshold used for identification. Overtime work can be defined based on the contractual working time, usual working time or statutory working time¹¹.

According to Estonian Employment Contracts Act (ECA)¹² § 44 (1) overtime work is defined as work over the agreed time. If not agreed otherwise, then it is

presumed according to ECA § 43 (1,2) that an employee works 40 hours over a period of seven days and 8 hours a day. If an employer and employee agree that the working time is divided within the recording period unequally, then the summarised working time is being applied. As prescribed in ECA § 43 (3) in the case of calculation of the summarised working time, the agreed working time of the employee per a period of seven days during the calculation period is taken into account. In the case of calculation of the summarised working time, overtime work means work exceeding the agreed working time at the end of the calculation period. It means, that overtime work in the case of summarise working time is not calculated daily, but mostly at the end of the calculation period which is longer than one week. The Supreme Court of Estonia has foreseen an exception in the overtime work regulation, when the piece-work is being applied. The Supreme Court of Estonia stipulates in the ruling no. 3-2-1-6-08¹³ that when the employee is getting paid by the work done (piece-work) not by the time worked, then the overtime work regulation does not apply when the employee works over the individually agreed working time. This interpretation ables employers to avoid paying overtime supplements, when parties have agreed to piece-work.

In Estonian labour law practice some discussions have arisen on the subject, how to identify overtime work in the case of part-time work¹⁴. According to the opinion of Estonian labour law professor H.Siigur, overtime work is considered to be only the work which is being done over the general working time, whether it is generally established full time work or shorter working time prescribed by law¹⁵.

In the judgement of *Lakeberg v Nordrhein*¹⁶ the European Court held that there is a difference in treatment between part-time and full-time workers where the applicable national provisions provide that all workers are required to work a minimum of three hours per month over and above their own normal working hours in order to be able to claim an overtime supplement. The author agrees that in some EU member states the statutory norm (often called the maximum working time), is thus a threshold marking the point at which extra pay or time off for overtime work begins. Additional hours worked in excess of the negotiated hours but below the statutory threshold are not classed as overtime work in regulatory terms (like in Italy, Spain and Sweden). That is why in many EU member states the overtime work applies to part-time workers the same way it applies to full time workers¹⁷. But in this case the labour legislation or collective agreement has to prescribe it directly. At the moment, Estonian ECA does not provide this kind of regulation.

According to Latvian Labour Law (LL)¹⁸ section 136 (1) the overtime work means work performed by an employee in addition to regular working time. According to LL section 131 (1) the regular daily working time of an employee may not exceed 8 hours and regular weekly working time 40 hours. The Cabinet may determine regular shortened working time also. According to Latvian labour law, overtime work can be calculated daily or over a longer calculation period. Work exceeding the daily working time of 8 hours is considered to be overtime work. It is interpreted restrictively and, for instance, where the duration of working time is reduced by agreement, overtime work is still computed only after 8 hours of work. Moreover, overtime work is considered as both, the work in case of aggregated working time, performed by an employee beyond 56 hours a week and 160 hours within a four week period, as well as the time worked by an employee after the end of a shift¹⁹.

In the Republic of Lithuania, the overtime work is determined in Labour Code (LC)²⁰ art 150 (1), according to which the overtime work is considered to be such

work, which is being done: 1) more than 40 hours per week (art 144 (1)); 2) over the legally determined shorter working time (art 145); 3) more than applicable part-time work foresees (art 146); in the case of extra to agreed working time at the end of the calculation period (art 149 (1,2)).

Although LC art 144 (2) prescribes that daily period of work must not exceed 8 hours, the legislator has despite this regulation foreseen 40 hours per week to be the threshold, when the calculation of overtime work starts. It means that the overtime work is being calculated not on a daily basis, but over the agreed calculation period minimum of one week. It means that the hours worked over 8 hours per day are not taken into consideration while calculating overtime work, but the hours exceeding the agreed working time at the end of the calculation period.

Comparing the principles of defining overtime work in Estonia, Latvia and Lithuania, it appears that Estonia and Lithuania share the same standpoints, according to which the overtime work is calculated over a longer period than one day (overtime is not calculated daily). The overtime work is considered to be the work done over the agreed time at the end of agreed calculation period. The author finds Estonian and Lithuanian regulation more flexible for employers who can avoid paying daily overtime supplements, when at the end of the calculation period the total agreed working time is not exceeded. In Latvia both – daily calculation and the recording period based calculation of overtime work is applied. The author considers the daily calculation of working time more costly for employers, but at the same time it helps better to protect the interests of employees.

The overtime work regulation for part-time workers is more advantageous for the employees in Estonia and Lithuania, because the calculation of overtime work according to ECA and LC starts when the work is being done over the agreed shorter working time, not over the regular working time, as it is in Latvia. The author finds that Estonian and Lithuanian overtime work regulation concerning part-time work takes better into consideration employee's interests but is more costly for the employers. According to economical aspect the overtime regulation in Latvia, concerning part-time work helps to serve more employer's interests and is considered more flexible, as it helps employers to apply overtime work with less expenses. Also the European Court supports Latvian overtime work regulation, as it allows the overtime benefits to be applied to part-time workers similar to full-time workers. At *Helmig and Others*²¹ the European Court held that there is no difference in treatment between part-time workers and full-time workers where the relevant national provisions provide for overtime supplements only in respect of hours worked in addition to normal working hours as fixed by collective agreement, and not with respect to those worked in addition to the normal working hours fixed for an individual.

2. Restrictions of overtime work

2.1. Formal restrictions of overtime work

The willingness to use flexible working time depends on the fact, how easy it is to apply it and what kind of (and how many) formal restrictions have to be taken into consideration while applying the specific flexible working time regime. Less the state regulates the organisation of working time, the bigger decision-making options parties of work relations have at the company and economical sector level, making the working time more flexible²². The flexibility parameters for overtime work include the facts, how easy it is to apply overtime work and enter into the overtime work agreements.

According to ECA § 44 (1) the agreement of employee and employer is needed to apply overtime work. The agreement of overtime work can be in any form parties agree on. ECA § 4 (2) prescribes that the employment contract has to be entered into in writing, but the failure to meet the formal requirement does not bring about the voidness of the employment contract. The same interpretation applies to overtime work agreements in Estonia. It means that parties can conclude contracts and additional agreements besides the written form also in any other suitable form, even verbally.

The most important criteria in the case of applying overtime work in Estonia is the employee's agreement to perform overtime work. The form of the agreement is secondary as it can be done in any form. The regulation allows employers to apply overtime work rapidly when the negotiations between the parties go smoothly and parties achieve the agreement quickly.

According to LL section 136 (2) overtime work is permitted if the employee and the employer have so agreed in writing. The same kind of regulation is stipulated in LC. According to LC art 119, any additional work or duties must be agreed upon and stipulated in an employment contract. An employment contract has to be concluded in writing (LC art 99 (2)).

The author finds that Estonian labour regulation where the written agreement between the parties is not a necessity is more flexible and allows parties to apply overtime work more rapidly. In the situation where the overtime work is needed in the case of emergency, the speed of overtime agreement is even more important, because it can help to prevent the damages arising from the unforeseen circumstances²³.

2.2. Temporal restrictions of overtime work

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. Also the flexibility is reflected by a possibility to agree on longer than usual working time²⁴. The possibilities to agree on working time are not absolute. In every EU member state the legislators have established maximum limits for working time. Working time limits are needed to protect employees' health and help to combine better the work and family life.

ILO Hours of Work Convention (No. 1)²⁵ introduced a maximum standard working time of 48 hours per week and eight hours per day as an international norm. According to previously mentioned convention, in several exceptional cases, working time is allowed to exceed these limits, as long as daily working time remains not higher than ten hours, and weekly working time not higher than 56 hours. The European Union's Working Time Directive 2003/88/EC sets the threshold of total working time, including overtime work, at 48 hours per week, on average over a 17-week period. Daily working time is implicitly limited by a requirement for 11 hours rest during a 24-hour period. The European Court in judgement of *Pfeiffer v Kreuz*²⁶ points out that the 48-hour upper limit on average weekly working time, including overtime work, constitutes a rule of community social law of particular importance, from which every worker must benefit. Although the European Union's Working Time Directive 2003/88/EC²⁷ allows generally for the application or introduction of national provisions more favourable for employees, only certain specifically mentioned provisions of the directive may form the subject-matter of derogations. The implementation of such derogations is subject to strict conditions, intended to secure effective protection for the safety and health of workers.

Comparing the regulations of the Baltic States it is noticeable that the limits of overtime work vary to a large extent.

ECA § 46 (1) prescribes that the summarised working time shall not exceed on average 48 hours per a period of seven days over a calculation period of up to four months. It is a general working time restriction, which has to be taken into consideration while applying all types of working time²⁸. The exception is set in ECA § 46 (2) which specifies that the calculation period may be extended by a collective agreement to up to 12 months in the case of health care professionals, welfare workers, agricultural workers and tourism workers. As the work loads in the agricultural or tourism field are strongly influenced by the seasonality, then the low-seasonal working time balances the work intensity during the high-seasons.

According to ECA § 46 (3) an employer and employee may agree on a longer working time than provided for in ECA § 46 (1) if the summarised working time does not exceed on average 52 hours per a period of seven days over a calculation period of four months. Parties can agree on longer overtime, when the agreement is not unreasonably detrimental to the employee²⁹. Whether the agreement is detrimental to the employee or not has been left for the parties to decide and evaluate in every case when longer overtime is applied. Legislator has given employees the opportunity to estimate the positive and negative sides of longer overtime work and to waive the longer overtime work, when the disadvantages overweight the benefits arising from it. The obligation to evaluate employee's interests, profits and losses before applying the longer overtime work, provides the security for the employee. Flexibility is however guaranteed by the opportunity to negotiate the overtime work conditions and reach the agreement suitable for both parties.

The limit of allowed overtime hours in LL is laid down in section 136 (5), stipulating that overtime work may not exceed 144 hours within a four-month period. In case of aggregated working time, the employee cannot be employed for more than 24 hours in succession and 56 hours a week. According to LL section 140 (2), the employee and the employer may agree in the employment contract regarding the length of the accounting period, however, not longer than three months, but in the collective agreement – not longer than 12 months.

According to LC art 144 (3), the maximum working time, including overtime must not exceed 48 hours per 7 working days. According to LC art 152 (1) the overtime works shall not exceed for each employee 4 hours in two consequent days and 120 hours per year. A different annual limit may be established by collective agreement but may not exceed 180 hours per year³⁰.

Latvian overtime regulation concerning the limits of overtime work allowed is compared to other Baltic States the most flexible, allowing parties to apply overtime work to the maximum extent prescribed in ILO Hours of Work Convention (No. 1). At the same time Lithuanian limits of overtime work are too restrictive leaving not much space for agreements, and are not considered flexible.

The rigidity of Lithuanian regulation can be relieved according to the author's opinion by applying LC art 144 (5) which stipulates that the working day for the employees employed in more than one undertaking or in one undertaking but under two or more employment contracts, may not be longer than 12 hours. According to LC art 144 (5) the limitation is applied only with regard to the length of a working day, not to the length of a working week. LC does not give an answer, how many hours are available to work without overtime, if having two employment contracts – is it 48 or 60 hours per week. Even though the additional work and secondary job enable employees to exercise their employment opportunities to the maximum extent³¹, in practise LC art 144 (5) may cause situations where employers are signing

two or more employment contracts with the same employee in order to hide overtime³². In this occasion the regulation promotes unequal competition and leaves the employees out of overtime compensation and cannot be therefore considered legitimate.

2.3. Person-based restrictions of overtime work

The extent of flexibility of overtime work regulation is reflected by the fact, to how many people the overtime work can be applied. According to the author's point of view, the less the state sets the person-based restrictions, the more flexible the overtime regulation is.

ECA § 44 (2) prescribes that overtime work can not be demanded from a minor³³. An overtime work agreement with a minor is void. The same restriction is used in LL and LC. In Estonia the overtime agreement is also void with an employee who comes into contact with hazards in the working environment and whose working time has therefore been shortened pursuant to law.

In addition to restrictions set for minors, according to LC art 150 (3), in no event can overtime work be assigned to persons who are studying in secondary and vocational schools without interrupting work – on study days, also when factors in the working environment exceed the permitted levels, as well as in other cases established by laws and collective agreements.

According to ECA § 44 (5), due to unforeseen circumstances pertaining to the enterprise or activity of the employer, overtime work cannot be demanded from a minor, a pregnant woman or an employee who has the right to pregnancy and maternity leave. The previous restriction is used only during unforeseen/exceptional cases (for example *force majeure*). Within the restriction, overtime work can be applied only when there is a previous consent from the employee.

According to LL section 136 (7) a previous written consent for applicable overtime is needed, when overtime work is applied to a pregnant woman, a woman for a period up to one year after giving birth, and a woman who is breastfeeding for the whole period of breastfeeding. The regulation applies simultaneously for basic and exceptional cases of overtime.

LC regulation, concerning overtime work where previous consent is needed is considered to be the most strict. According to LC art 150 (4) 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 or a disabled child under sixteen years of age, as well as disabled persons may be assigned to do overtime work only with their consent. The regulation applies only in exceptional cases, because there are no basic cases of overtime work prescribed in LC³⁴.

Taken into consideration the person-based restrictions of overtime work, it is noticeable that the most extensive restrictions are established by Lithuania and therefore the overtime regulation there is least flexible. Unlike in Estonia and Latvia, while applying overtime work, Lithuania has taken under special protection the people, who raise disabled persons. According to Estonian and Latvian overtime regulation, there are no restrictions which prohibit beforementioned people to do overtime work whatsoever, making Estonian and Latvian overtime regulation therefore more flexible. The author finds that the shortage of person-based restrictions cites to flexibility of labour regulation. It is also worth noting that in every

EU member state the population groups and the protected values may differ, which explains the variability of person-based restrictions of overtime work.

3. Overtime work compensation

The most common ways of compensating for overtime work is by payment or time off in lieu. Sometimes both – time off and payment may be used. Usually countries differ in how their companies compensate for overtime work. According to European Company Survey³⁵ 35% of companies generally pay for overtime, 23% normally compensate for overtime with time off in lieu and 37% of companies use both compensation mechanisms. However, in a very small minority of companies (4%), overtime work is not compensated at all. Companies not compensating overtime hours were most frequently reported in the Netherlands (14% of companies) and Lithuania (11%).

In different EU countries the compensation mechanisms of overtime work have been established either by law or by collective agreements, sometimes by both at the same time³⁶. As collective agreements are not very common in Estonia, the compensation of overtime work is mainly regulated by ECA which establishes the minimum conditions of overtime compensation. According to ECA § 44 (6) employer will compensate the working hours of overtime with equal free time of done overtime if the compensation of overtime has not been agreed upon in money.

In case the employer decides to compensate overtime by giving free time, then the free time is considered to be the compensation and additional monetary compensation is not needed. However, according to ECA § 44 (7) when compensating overtime with money, the employer must pay the employee 1,5 times the wage.

In accordance with LL section 68 (1) an employee who performs overtime work is entitled to a supplement of not less than 100 per cent of the hourly or daily wages rate specified for him or her, but if piece-work pay has been agreed upon, a supplement of not less than 100 per cent of the piece-work rate for the amount of work done. A collective agreement or a contract of employment may specify a higher supplement for overtime work.

LC art 193 (1) prescribes that the pay for overtime shall be at least one and a half of the hourly pay/monthly wages established for the employee. According to LC, the overtime work can be compensated only by money. But it does not mean that other overtime compensation mechanisms do not exist in Lithuania. For example, if the number of working hours set for a particular category of employees is exceeded during the summary recording of the working time, a working day shall be shortened for employees on their request or they shall be given a rest day (days) in the manner prescribed by the employment contract, collective agreement or internal rules, or they shall be paid the amount equal to the amount paid for overtime work³⁷. It means, that time off can be agreed either by employment contract, collective agreement or internal rules.

Comparing Estonian, Latvian and Lithuanian overtime compensation mechanisms, we can notice that Estonian labour law regulation is more flexible enabling in addition to monetary compensation compensate overtime also by giving time off. Latvian and Lithuanian overtime regulations do not stipulate directly the opportunity to apply time off in lieu as an overtime compensation mechanism, but it does not mean that time off in lieu cannot be agreed upon individually or by collective agreements.

Although the overtime compensation mechanisms in Estonia established by law are more versatile, derogates the regulation of ECA § 44 (6) directly the interests of employees'. While overtime monetary compensation rate is 1,5, the overtime compensation for time off is only 1. The author finds that even when the existing regulation of Estonia is flexible for employers the overtime compensation rates for both compensation mechanisms should be equalized. In a situation where overtime is paid by money with the rate of 1,5, the overtime compensation by giving free time should also be compensated with the same rate. The author's suggested equalized overtime compensation mechanisms are being used for example in Canada, where according to Employment Standards Act³⁸ art 22 (7) employees get their overtime compensation by time off in lieu at the same rate (1,5 time rate) than the monetary overtime compensation. In Austria the principle is also that overtime compensation for time off in lieu must be equal to the monetary overtime compensation rate³⁹. Corresponding interpretation is also being used in US legal acts⁴⁰.

The author finds that the above mentioned approach eliminates the inequality of compensation mechanisms and puts employees in a disadvantageous situation when overtime is being compensated by time off instead of monetary compensation.

Although the multiplicity of overtime compensation measures indicate to regulations' flexibility, The author has an opinion that giving free time as an overtime compensation measure is not very practical. The author finds that giving free time as an overtime compensation is disadvantageous to the employee as well as employer. In case of employee being given free time as overtime compensation the employee's income will decrease by the amount of hours worked overtime, because ECA § 44 (6) does not foresee two compensation mechanisms to be used at the same time. In addition to deduction of employee's income the company's organisation of work is disturbed also when employee has been given free time. When time off is being given during the working time then employer has to make additional effort to reorganise the work.

Comparing Estonian, Latvian and Lithuanian overtime compensation rates it is noticeable that overtime work payments in Latvia are the smallest enabling employers to employ employees with minimal costs (employer flexibility). Despite the fact that parties have a right to agree upon higher overtime compensation rates, the author finds Latvian overtime compensation rate not in accordance with ILO Hours of Work Convention (No. 1) and (No. 30)⁴¹, which establish that the rate of pay for overtime shall be not less than one-and-one-quarter times the regular rate.

According to the author's opinion, the overtime work compensation options can be diversified by applying different schemes of working time accounts. This gives to all Baltic States an opportunity to organise overtime work much more flexibly. The basic idea behind working time accounts is that over a specified period of time, an employee is allowed to work longer or shorter hours than (collectively) agreed and thereby collect working time credits or debits in an individual working time account, which are later compensated for by additional free time or work⁴². From the employers' point of view, this concept has at least two major advantages. First, it allows the companies to have more flexible production, which is more closely related to the demands of the market. Second, since most of the working time credits are not counted as overtime, the employer does not have to pay regular overtime bonuses and can thus reduce labour costs. From an employees' viewpoint, the use of working time accounts might be an instrument for more "time sovereignty" which could help them organise working time more in line with their individual needs and interests⁴³.

According to the authors' opinion, despite the fact, that the "time banking" schemes are more commonly used in Finland, Italy, Netherlands, Portugal, Spain and the United Kingdom⁴⁴, can the "time banking" schemes application and promotion in Baltic States help to make the work relations and options to compensate overtime work even more flexible.

4. Summary

The extent of flexibility of overtime work regulation is reflected by the fact, how easy it is to apply it and what kind of (and how many) formal restrictions have to be taken into consideration while applying it. The author finds, that the less the state sets the restrictions, the more flexible the overtime work regulation is. The author finds that the Baltic States can consider to borrow from each other the best overtime work flexibility practice, as it helps enterprises to react more rapidly to unexpected market demands and do it with smaller costs.

Comparing the principles of defining overtime work in Estonia, Latvia and Lithuania, it appears that Estonia and Lithuania share the same standpoints, according to which the overtime is calculated over a longer period than one day. The author finds Estonian and Lithuanian regulation more flexible, as the employers can avoid paying daily overtime supplements, when at the end of the calculation period the total agreed working time is not exceeded.

According to economical aspect the overtime regulation in Latvia, concerning part-time work is considered more flexible, as it helps employers to apply overtime work with fewer expenses.

Latvian overtime regulation concerning the limits of overtime work allowed is compared to other Baltic States the most flexible, allowing parties to apply overtime work to the maximum extent prescribed in ILO Hours of Work Convention (No. 1).

Taken into consideration the person-based restrictions of overtime work, it is noticeable that the most extensive restrictions are established by Lithuania and therefore the overtime regulation there is least flexible. Unlike in Estonia and Latvia, while applying overtime work, Lithuania has taken under special protection the people, who raise disabled persons. According to Estonian and Latvian overtime regulation, there is no restrictions which prohibit beforementioned people to do overtime work whatsoever, making Estonian and Latvian overtime regulation therefore more flexible.

Comparing Estonian, Latvian and Lithuanian overtime compensation mechanisms, we can notice that Estonian labour law regulation is more flexible enabling in addition to monetary compensation to compensate overtime also by giving time off. Comparing the compensation rates it is noticeable that overtime work payments in Latvia are the smallest enabling employers to employ employees with minimal costs (employer flexibility). Despite the fact that parties have a right to agree upon higher overtime compensation rates, the author finds Latvian overtime compensation rate not in accordance with ILO Hours of Work Convention (No. 1) and (No. 30), which establish that the rate of pay for overtime shall be not less than one-and-one-quarter times the regular rate.

According to the authors' opinion, the "time banking" schemes can make the work relations and options to compensate overtime work in Baltic States more flexible.

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Normative legal acts

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14. According to ECA § 43 (1) it is presumed that an employee works 40 hours over a period of seven days (full-time work), unless the employer and the employee have agreed on a shorter working time (part-time work).
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22. Värk, A. Tööaja paindlikkus. Eesti Statistikaameti teemaleht [Working time flexibility. Estonian Statistical Office's themesheet] nr I/2007, p. 3-4.
23. ECA § 44 (4) prescribes that in line with the principle of good faith, an employer may demand that an employee work overtime due to unforeseen circumstances pertaining to the enterprise or activity of the employer, in particular for prevention of damage. The regulation requires the calculation of both parties interests, because the overtime work can be demanded only when employer's interests outweigh the interests of employee. According to LL art 136 (3) an employer has the right to employ an employee on overtime without his or her written consent: 1) if this is required by the most urgent public need; 2) to prevent the consequences caused by *force majeure*, an unexpected event or other exceptional circumstances which adversely affect or may affect the normal course of work activities in the undertaking, and 3) for the completion of urgent, unexpected work within a specified period of time. According to LC art 150 and art 151 the overtime works are permitted only in very exceptional cases. The list of previously mentioned exceptional cases is too specific, including only such situations when deviation from usual labour organisations is due to certain external factors. The author finds that allowing employer and employee to apply overtime in general cases may increase the flexibility of work relations, prevent hidden application of overtime work and lower the rate of unpaid overtime work in Lithuania.
24. *Gruzevskis, B. Blaziene, I.* Amendments of the Lithuanian labour code designed to increase labour market flexibility and to foster social dialogue. EEO Ad hoc request, 2009, p. 2.
25. Hours of Work [Industry] Convention, 1919 [No. 1]. Adoption: Washington, 1st ILC session [28.11.1919].
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27. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. *OJ L* 299, 18.11.2003, p. 9–19.
28. *Treier, T. Suder, S. Käärats, E.* Selgitused töölepingu seaduse juurde [Explanations to Employment Contracts Act]. Estonian Ministry of Social Affairs, 2011, p. 48.
29. The longer overtime work can be unreasonably detrimental, when the danger to employee's health arises from it, also when longer overtime work causes negative consequences to employee because of the undone off-work duties. The longer overtime can be more costly for employee than the compensation paid for it.
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31. *Gruzevskis, B. Blaziene, I.* Amendments of the Lithuanian labour code designed to increase labour market flexibility and to foster social dialogue. EEO Ad hoc request, 2009, p. 4.
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33. Minor is a person who is less than 18 years old.
34. The list of previously mentioned exceptional cases is very specific and includes only such situations when deviation from usual labour organisations is due to certain external factors. *Gruzevskis, B. Blaziene, I.* Amendments of the Lithuanian labour code designed to increase labour market flexibility and to foster social dialogue. EEO Ad hoc request, 2009, p. 3. European Company Survey 2009. Overview. European Foundation for the Improvement of Living and Working Conditions, 2010, p. 3.
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