



# **Mutual Learning Programme**

DG Employment, Social Affairs and Inclusion

**Peer Country Comments Paper - Estonia**

## **How to make the forms of employment more diverse without increasing precariousness?**

**Peer Review on "The rise of precarious work (including  
some forms of solo self-employment) - causes,  
challenges and policy options"**

**The Netherlands, 19-20 April 2018**



**EUROPEAN COMMISSION**

Directorate-General for Employment, Social Affairs and Inclusion

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## 1 Introduction

This paper has been prepared for the Peer Review on "The rise of precarious work (including some forms of solo self-employment) - causes, challenges and policy options" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country and the situation in Estonia.

## 2 Labour market situation in the peer country

In general, the current situation in the Estonian labour market could be described with high employment rate, low unemployment rate but low productivity, labour shortage and pressure to increase wages. Labour market indicators improved throughout the most of 2017 (Eesti Statistikaamet 2018). Although in Estonia, the total number of working-age persons (15–74-year-olds) is falling, the number of persons active in the labour market (the sum of employed and unemployed persons) increased by 7,000 persons, and was estimated at 699,000. The number of inactive persons continued to decline. According to Statistics Estonia, in 2017, the unemployment rate was 5.8%, the employment rate 67.5% and the labour force participation rate 71.6%. According to Statistics Estonia (2018), in 2017, the average monthly gross wages and salaries were 1,221 euros; compared to 2016, the average monthly gross wages and salaries increased 6.5%

According to available statistics from the European statistical system, the share of atypical forms of employment, including atypical contracts, is smaller in Estonia than in several EU countries, including The Netherlands. Also, as discussed in the host country paper some forms of non-standard employment have increased recently in The Netherlands, the same could not be estimated in case of Estonia. In the tables below, the estimations of the number and share of workers occupied in atypical contracts and atypical forms of employment are presented.

Table 1. Employment by status (age group 15-64), percent

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Employed persons	100	100	100	100	100	100	100	100	100	100
Employees	90.9	92.2	91.6	91.7	91.5	91.2	90.9	91.0	90.6	90.4
Employed persons except employees	9.1	7.8	8.4	8.3	8.5	8.8	9.1	9.1	9.4	9.6
Self-employed persons	8.9	7.7	8.2	8.2	8.3	8.5	8.8	8.8	9.3	9.5
Self-employed persons with employees (employers)	3.4	3.4	3.9	3.6	4.1	3.8	3.8	3.4	3.7	4.0
Self-employed persons without employees (own-account workers)	5.5	4.3	4.3	4.6	4.2	4.7	5.1	5.4	5.6	5.5
Contributing family workers	0.2				0.2	0.3	0.3	0.2		

Source: Eurostat, table code: *lfsa\_egaps* (author's calculations)

The estimates based on Estonian Labour Force survey (authors calculations) indicate that over the years the employees' contractual status have been about the same – around 95% of employees have employment contract, 3% of employees' terms of employment and working conditions are regulated by civil service act, and about 1% of employees are working under law of obligation act, i.e. providing services in their own name.

One particular type of potentially precarious work discussed in the Netherlands paper is fixed term employment. Compared to the Netherlands, fixed term employment is rare in Estonia. Fixed-term work, temporary employment has varied around 3% of total employment in Estonia during the last decade (Eurostat, table code: lfsa\_etgaed). Temporary employees accounted 3.7% in Estonia in 2016. Also, while temporary agency work in The Netherlands is substantial, the same could not be said about Estonia. The valid estimates of temporary agency work based on the survey are missing due to low prevalence and small sample size, however, according to the research by Espenberg et al. (2014), there were 5200–5900 temporary agency workers in Estonia.

Flexibility in employment is increased via flexible working hours in The Netherlands. Working time flexibility characterises employment also in Estonia. According to cross sectional survey (Employment Contract Act Survey 2012) of employees with employment contract, 22-26% (i.e. confidence intervals) of employees have agreed with their employer that the employee shall be available to the employer for performance of duties outside of working time (on-call time) (Masso et al 2013).

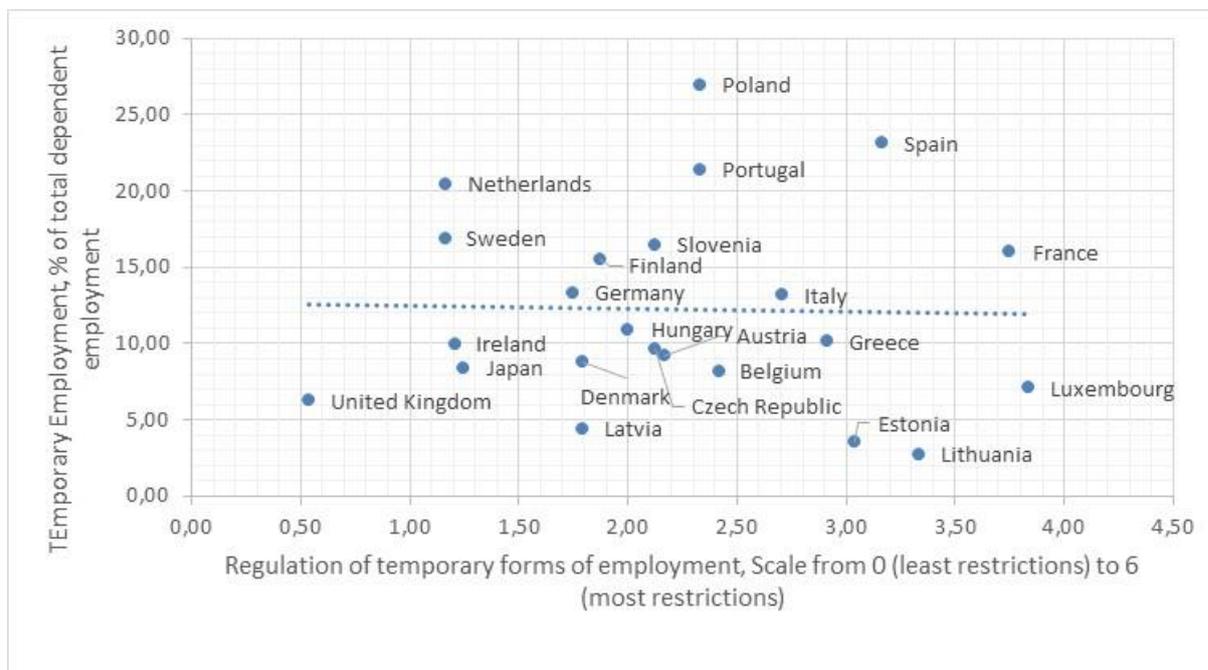
Flexible employment in the Netherlands is challenged by poorer job quality/working conditions. In Estonian case, the information on differences of working conditions across types of employment is lacking. However, it has been found that about 5% of employees are usually working more than 48 hours per week, while 10-17% of self-employed without employees and 18-28% of self-employed with employees are working more than 48 +hours per week (Estonian Labour Force Survey 2013, authors calculations). This points to poorer working time conditions, and associated work-life balance and health risks. Similarly to The Netherlands, income adequacy is more likely at risk for non-standard workers. Statistics Estonia has estimated poverty and deprivation indicators based on the national Estonian Social Survey (part of EU-SILC). According to the estimates (Statistics Estonia, table code: HHS02), in 2016 the self-employed people are more likely at risk of poverty, both relative (23.5% of self-employed and 7.8 wage employees) and absolute poverty (11.1% of self-employed and 1.0% wage employees), however, less likely in material deprivation (2.6% of self-employed and 8% wage employees).

### **3 Assessment of the policy measure**

#### **3.1 Terms of employment**

As discussed in the host country paper, the Netherland's legislator strengthened several conditions in the employers' use of fixed-term employment contracts in 2015. As discussed above, the share of temporary employment contracts that could be linked to precarious work is smaller in Estonia than in a number of EU countries, including the Netherlands. In case of Estonia, it could be argued that some forms of contractual arrangements are (too) strictly regulated. For instance, the [OECD indicators of employment](#) protection indicate that the use of temporary contracts is rather strictly regulated compared to other OECD countries, including European countries (Source: OECD, Dataset: LFS - Strictness of EPL – temporary employment) (see also Annex 2 where Estonian regulation is outlined).

Figure 1. Temporary Employment and Protection of Temporary Employment in 2013



Source: OECD (2018), *Temporary employment (indicator)*. doi: 10.1787/75589b8a-en (Accessed on 25 April 2018); OECD/IAB *Employment Protection Database, 2013 update*

On the one hand, it could prevent fraudulent or illicit practices that could lead to precarious temporary employment. On the other hand, this could also introduce incentives to conclude service contracts (i.e. bogus- self-employment) instead of employment contracts where the stipulations of employment law do not apply and precariousness could increase. However, as discussed above, the statistics does not indicate that we have seen changes in different forms of employment, and also OECD statistics does not indicate that there has been change in average tenure.

This leads also to importance of combating bogus self-employment, that has also been in focus in the Netherlands. Though the very same issues are discussed in Estonian industrial relations system, no legislative change has been implemented yet.

In general, in Estonia formally employed persons could fall into one of the four categories:

1. Employees – including fixed-term employees, whose terms of employment are regulated respectively with Employment Contracts Act<sup>1</sup> and Civil Service Act<sup>23</sup>.
2. People employed on non-standard contracts – self-employed natural person who offers goods or services for charge in his or her own name whose terms

<sup>1</sup> [Employment Contracts Act](#) Passed 17.12.2008 RT I 2009, 5, 35 Entry into force 01.07.2009.

<sup>2</sup> [Civil Service Act](#) Passed 13.06.2012 RT I, 06.07.2012, 1 Entry into force 01.04.2013, §§ 108-110 and 136 entered into force 16.07.2012

<sup>3</sup> This Act applies to the officials of state and local government authorities and in the cases provided for by this Act to the employees of a state and local government authority.

of employment and service status are regulated with Civil Code<sup>4</sup> and Law of Obligations Act<sup>5</sup> (i.e. service contract).

3. Sole proprietors – self-employed natural persons who offer goods or services for charge in his or her own name and whose status is regulated by the Commercial Code<sup>6</sup>. Terms of service contract are regulated with Law of Obligations Act.
4. Members of a management board – oftentimes self-employed person, in this case entrepreneurs<sup>7</sup> who offer goods or services via company<sup>8</sup>. The status of the company and management board is regulated with Commercial Code. Terms of service contract are regulated with Law of Obligations Act (i.e. authorisation contract).

In the system, there are considerable differences in taxation on active and passive income, i.e. taxation of labour and self-employment corporate income. The incentives in the system motivate to provide services for another company as a legal person through the person's own private limited company instead of arranging an employment contract. Since one company provides services to another company, employment taxes need not be paid, and the entire remuneration is paid directly to the private limited company. The owner of the private limited company can then decide how much they would pay for themselves as salary and how much they would take out as dividends. In sum, this motivates to arrange work in (bogus) self-employment.

In principle, there is no clear-cut stipulation that distinguishes bogus self-employment from legal and declared self-employment. However, the Estonian Supreme Court (RK) made three decisions<sup>9</sup> which supported the Estonian Tax and Customs Board (EMTA) position that in some cases, the service agreements between companies can be considered as fraudulent forms of self-employment with the purpose of avoiding employment taxes. The court cases dealt with the situations where management board a member of one company provides management, consultation and other services for the company as juridical person through the person's own private limited company instead of concluding employment contract or authorisation agreement for providing the service as a natural person. The court decisions stipulated that service agreements between companies are considered employment relationships in case one establishment does work for another company in subordination to the management and control of the company (EMTA, 15.10.15) (for an English summary, see Kadarik and Masso 2016). Subordination is a strong indication of employment relationship, since according to [Employment Contracts Act](#) 'a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer and the employer pays to the employee remuneration for such work'. The court decision gives EMTA the right to requalify the service agreement to employment contract in case an actual employment relationship between the parties has been identified. Labour taxes from the remunerations must then be declared and paid.

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<sup>4</sup> [General Part of the Civil Code Act](#) Passed 27.03.2002 RT 2002, 35, 216 Entry into force 01.07.2002

<sup>5</sup> [Law of Obligations Act](#) Passed 26.09.2001 RT I 2001, 81, 487 Entry into force 01.07.2002

<sup>6</sup> [Commercial Code](#) Passed 15.02.1995 RT I 1995, 26, 355 Entry into force 01.09.1995

<sup>7</sup> The Commercial Code defines entrepreneur/undertaker a natural person who offers goods or services for charge in his or her own name and for whom the sale of goods or provision of services is permanent activity, or a company.

<sup>8</sup> A company is a general partnership, limited partnership, private limited company, public limited company or commercial association

<sup>9</sup> (No. 3-3-1-12-15, <http://www.riigikohus.ee/?id=11&tekst=222578138>; No. 3-3-1-25-15; and No. 3-2-1-82-14),

### **3.2 Social Protection**

Similarly to the Netherlands, self-employed persons are more likely at risk of poverty due to precarious market income, and then also due to social protection coverage.

In general, the social protection policy rules of non-standard employment, including self-employment are the same as for traditional workers in Estonia (Masso and Kadarik 2017). The exception, a sole proprietor is not required to pay unemployment insurance premiums for himself/herself and thus is not covered with unemployment insurance (but eligible for other unemployment protection measures). Actual social protection coverage depends on factual activity and income from the employment, and the tax compliance. Bogus self-employment might be precarious form of employment (due to transitions between 'tasks' and 'jobs', related income, and issues of taxation and tax -compliance) that could influence eligibility and calculation of the benefit (e.g. unemployment insurance, health insurance). Also, considerable differences in taxation of labour and capital in Estonia create perverse incentive to self-employment, and self-employed persons could opt-out from the social protection for not declaring salary and social protection contribution. Thus, the factual coverage of social protection in precarious employment might be smaller.

There are two recent crucial policy reforms to improve the coverage. First, simplified [Business Income Taxation Act](#) is introduced since 2018 that simplifies part time self-employment via on-request services like transportation, accommodation, food delivery. The regulation launches a system of business accounts – natural persons can sell services and goods to other natural persons and sell goods to legal persons for up to €25,000 annually (In order to avoid abuse, no services can be sold to legal persons). Income earned through such a business account will be taxed with a lower 20 percent tax rate (compared to regular tax rate that reaches around 50 percent), which includes both income and social taxes as well as tax for mandatory funded pensions. Currently, no accounts have been opened yet as investments must also be made by commercial banks.

Second, as of 1st January 2018 management board members who do not receive remuneration for their role as board member and who have been employed and paid unemployment insurance tax for 180 days during the past 12 months, have the right to register as unemployed and receive unemployment insurance benefit, abolishing the discriminatory policy rules that determined the coverage of social protection for self-employed persons. This example points out that policy rules of social protection system could create perverse incentives to manage business risks via solidary social protection system and at the same time discriminative policy rules could result in unjustified unequal treatment regarding social protection coverage.

## **4 Assessment of future policy development**

The most recent changes in the regulatory framework of employment relations took place in 2009 with the labour law reform (introduction of new Employment Contracts Act). This, for instance, included some changes in definition and conditions of on-call work and introduced definition of temporary agency work) (see also Masso et al 2013). In the end of 2015, the debate has emerged whether the reformed employment law is adequate in terms of new forms of work. It is discussed that some forms of work would benefit from more regulation. For instance, although the temporary agency work is regulated in the act, the responsibilities of the employer and user firm should be clarified. Some forms of work would need deregulation. For instance, the current work time regulation excludes zero hour contracts ([Äripäev, 29.10.15](#); [Äripäev, 2.11.15](#)). The debate has focused more on the flexibility it might bring to the employment relations, and not the issue of precariousness that could arise.

In Estonia the discussion is not opened whether the legislation limited the use of temporary employment too much in the name of preventing precariousness in the

labour market. The question is also crucial for The Netherlands, who reports regulating fixed term employment more rigidly. Currently both the EU directive on temporary work and national employment law restricts concluding temporary contracts as irresponsible use of the employment form redistributes too much economic risks from employer to employee that results in precarious working conditions. Arguably, alternative approach instead of restricting temporary employment would be introducing policy measures that prevent precarious temporary employment by improving working conditions. For instance, temporary employment could result in less workplace level training, though directive and national legislation require equal treatment. Providing economic incentives and resource pooling like training found for temporary agency workers could improve working conditions in this regard. The alternative policy approach could be considered also in the Netherlands.

Also, the regulation of fixed term employment in Estonia is considered relatively rigid even compared to the directive and in addition to preventing fraudulent fixed term employment also prevents concluding decent fixed term employment contract, and could theoretically also motivate concluding bogus service contract instead or transition to self-employment. The Estonian business law creates open regulatory environment for self-employment. This includes introducing new form of self-employment – business accounts this year. As discussed in the Netherlands, although self-employment could have good effect on employment and labour market flexibility, bogus forms of employment introduced precariousness also. Arguably, the fraudulent self-employment with sham service contract could have consequences in terms of working and employment conditions, including social protection coverage, and, in particular fraudulent self-employment/company subcontracting consequences for business competitions. The fine tuning of the legislation and making the employment rights effective, especially via awareness rising is considered the most crucial. In Estonia, the burden of employment costs due to differences in taxation of labour and capital might be allegedly the reason that motivates to hide the factual employment behind formal sham/bogus company subcontracting. Thus it is crucial to make the employment rights and business regulation effective and classify different forms of employment accordingly. In Estonia, arguably, the demarcation line between employment relationship and self-employment is largely based on in subordination to the management and control of the employer. In the world of work, where principles of workplace democracy have been increasing, other principles shall be factored in, including workplace level agreements on work arrangements, working time arrangements, safety management. The broader interpretation of employment could make clearer the coverage of both working conditions regulation and social protection coverage.

## **5 Questions**

- The Dutch 'polder model' in the Netherlands stresses the importance of industrial democracy as a framework guiding social and economic policy-making. What is the role of social dialogue, collective bargaining in tackling the issues related to precarious work, especially fraudulent or bogus forms of self-employment in the Netherlands?
- The (Dutch) Tax and Customs Administration can determine whether an applicant is in bogus self-employment. How is it monitored and evaluated in fact? What are the implementation challenges?
- There are occupational/employer schemes or employer related policy rules (e.g. employers' contributions/employers own responsibility) in some social protection schemes in the Netherlands, e.g. occupational pension. Is there any debate on making the social protection more universal, increasing coverage for self-employed or precarious employed persons in general by abolishing the schemes?
- In the context of "future of work" discourse, a lot has been discussed the possibility to introduce universal decent work standards, i.e. unifying regulation of terms of employment, including social protection policy rules across different types of employment. What are the opportunities and threats in the context of the Netherlands labour market and economy?

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## **Annex 1 Summary table**

The main points covered by the paper are summarised below.

### **Labour market situation in the peer country**

- Although in Estonia, the total number of working-age persons (15–74-year-olds) is falling, the number of persons active in the labour market has mostly been stable.
- The share of atypical forms of employment, including atypical contracts is smaller in Estonia than in a number of EU countries, including in the Netherlands.
- Self-employed persons are more likely in the risk of poverty and more likely to work long hours.

### **Assessment of the policy measure**

- Some forms of contractual arrangements, especially fixed-term employment contracts are (too) strictly regulated, preventing bogus and fraudulent forms of work that could lead to precarious work.
- There are considerable differences in taxation on active and passive income, i.e. taxation of labour and self-employment corporate income. The incentives in the system motivate to provide services for another company as a juridical person through the person's own private limited company instead of arranging an employment contract.
- There is no clear cut stipulation that distinguishes bogus self-employment from legal and declared self-employment, but the recent court decisions have increased the legal clarity and legal certainty.
- Though the social protection policy rules are inclusive for non-standard employment, the factual coverage of social protection in precarious employment might be smaller, including bogus self-employment.

### **Assessment of future policy development**

- The recent debates have stressed the importance that contractual diversity/flexibility could be increased but social rights and protection shall be taken into account, like social protection coverage
- The burden of employment costs due to taxation of labour and capital might be allegedly the reason that motivates to hide the factual employment behind formal sham/bogus company subcontracting. The fine tuning of the legislation and making the employment rights effective, especially via awareness rising is considered the most crucial.

### **Questions**

- The Dutch 'polder model' in the Netherlands stresses the importance of industrial democracy as a framework guiding social and economic policy-making. What is the role of social dialogue, collective bargaining in tackling the issues related to precarious work in the Netherlands?

- The (Dutch) Tax and Customs Administration can determine whether an applicant is in bogus self-employment. How is it monitored and evaluated in fact? What are the implementation challenges?
- There are occupational/employer schemes or employer related policy rules (e.g. employers' contributions/employers own responsibility) in some social protection schemes in the Netherlands, e.g. occupational pension. Is there any debate on making the social protection more universal, increasing coverage for self-employed or precarious employed persons in general by abolishing the schemes?
- In the context of "future of work" discourse, a lot has been discussed the possibility to introduce universal decent work standards, i.e. unifying regulation of terms of employment, including social protection policy rules across different types of employment. What are the opportunities and threats in the context of the Netherlands labour market and economy?

## Annex 2 Example of relevant practice

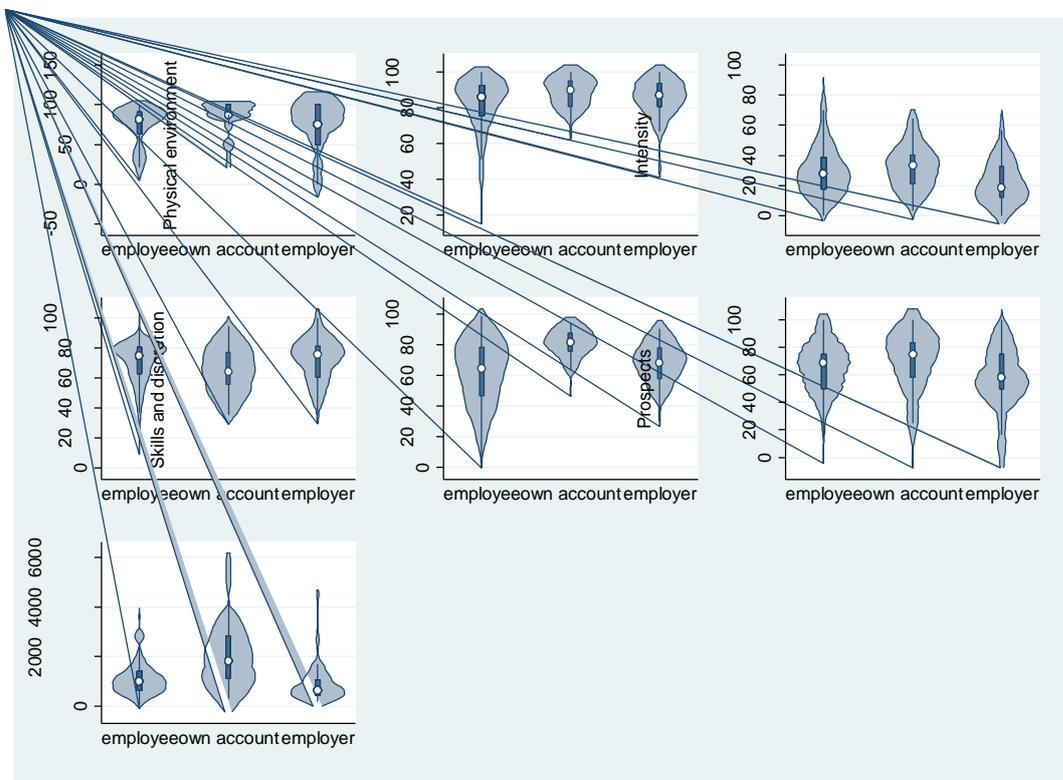
Name of the practice:	Regulation of fixed-term employment
Year of implementation:	2004, 2009
Coordinating authority:	Ministry of Social Affairs, The Labour Inspectorate
Objectives:	Prevention of bogus form of fixed-term employment
Main activities:	<p>The intervention logic of the government measures is based on legal obligations, financial incentives and enforcement of legal obligations. Before the implementation of the Directive 1999/70/EC, there were no measures to prevent abuse of successive fixed term employment contracts. Amendments that implemented three measures went into force 01.05.2004. All in all the same measures are also present in the Labour Contract Act:</p> <ul style="list-style-type: none"><li>• list of objective reasons justifying the renewal of such contracts or relationships;</li><li>• the maximum total duration of successive fixed-term employment contracts or relationships;</li><li>• the number of renewals of such contracts or relationships.</li></ul> <p>Additionally, employers could cancel the fixed-term contract but up on cancelling a fixed-term employment contract for economic reasons<sup>10</sup> an employer shall pay an employee compensation to an extent that corresponds to the wages that the employee would have been entitled to until the expiry of the contract term (§ 100 (3)).</p> <p>The Equal Treatment Act (§ 11<sup>1</sup>) stipulates that fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds (§ 13<sup>1</sup>).</p>
Results so far:	<p>It follows, that the higher level of protection relative to the directive is given regarding measures to prevent abuse of (successive) fixed term employment contracts. In Estonia, there has not been carried out a regulatory impact assessment or any other estimation of costs and benefits in advance or after the transposition and implementation of the legislation. The statistics indicates that the share of fixed term employment increased after the implementation of more rigid employment law. The plausible explanation for the trend is that on average the implementation of the legislation has not introduced incentives to increase or decrease adoption of fixed- time work or the incentive has been cancelled out by other causes, for instance changes in economic environment, work-time management practices etc.</p>

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<sup>10</sup> Except upon declaration of the bankruptcy or termination of the bankruptcy proceedings of an employer without declaring bankruptcy, due to abatement of the bankruptcy proceedings.

### Annex 3 Job Quality of Self-Employed Persons

Figure 1. Job Quality of Self-Employed Persons



Source: European Working Conditions Survey 2015, Author's calculations.

Notes: The small EE sample size (n=1015) does not allow reliable estimates across employees, own account workers and self-employed persons with employees.



