



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper – Estonia

Undeclared work in Estonia: Does it exist?

**Peer Review on “Control and prevention of undeclared
work in complex chains of economic activity”**

Slovakia, 4-5 May 2021

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1 Introduction

This paper has been prepared for the Peer Review on "Control and prevention of undeclared work in complex chains of economic activity" 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. For information on the host country policy example, please refer to the Host Country Discussion Paper.

2 Situation in the peer country

2.1 Background information

In 2020 out of 656,600¹ economically active in Estonia, over 586,300 people were classified wage earners², which usually implies those who are employed with an employment contract.

There is no concrete data on how many persons are employed as undeclared workers in Estonia. Based on the administrative data in 2017 the Estonian Tax and Customs Board estimated that the share of undeclared work was under 4.59% of workers. As the legal status of platform workers remains unclear, they can be considered as a potential group of undeclared workers. In the 2019 Eurobarometer on undeclared work, 13% of surveyed stated that they have paid for any goods and services, where there is an assumption that undeclared work was used. Most often indicated services included: hairdressing and beauty services, buying foods (e.g. farm goods), and home repairs or renovations. A small share of 4% of dependent employees stated in the Eurobarometer survey that their employer paid them with undeclared cash payment. According to the Estonian Chamber of Commerce 2017 poll, the sectors where such 'envelope wages' are most prevalent are construction, transport, HORECA, retailing, and industry. Also, most of the incidences are reported in small enterprises with up to 19 employees.

The employment of third-country nationals is steadily increasing. In 2019 the fixed-term permits for third-country nationals to work in Estonia were issued for 2,218 persons. The short-time permits were issued 32,245 times in 2019, usually to employees coming from Ukraine. Short-time employment means the right to work in Estonia for 365 days within 455 calendar days. The contract must be registered in the employment register and by the Police and Border Guard Board. Whereas Labour Inspectorate checks the employment conditions of those on short-time work permits.

Legal regulation of temporary work agencies is modest. There are no strict rules, who can establish an agency and what are the conditions of a temporary agency work agreement. In the case of posted workers within the European Union, the EU rules are applicable. The majority of workers are posted from Latvia and Lithuania.

2.2 Legal background

There is no legal definition of undeclared work in Estonia and no draft legislation or policy measure that foresees the possibility of introducing such legal notion. When there is a public debate about undeclared work, it usually concentrates on employers or employees that are not interested in applying labour legislation, avoiding any restrictions or obligations arising from employment relations.

The Labour Inspectorate has the authority to classify work relations as employment relationship based on an employment contract³. Also, the Taxation and Customs Board

¹ Estonian Statistics, Labour market, available at: <https://tooturg.stat.ee/>, accessed on: 31.03.2021.

² Estonian Statistics, Data available at: https://andmed.stat.ee/et/stat/sotsiaalelu__tooturg__heivatud__aastastatistika/TT0200/table/tableViewLayout1, accessed on: 31.03.2021.

³ § 9 6¹), Tööinspektsiooni põhimäärus (Statutes of the Labour Inspectorate), Minister of Social Affairs, regulation, available in Estonian at: <https://www.riigiteataja.ee/akt/117122020002>, accessed on 26.03.2021.

officers determine employment relationship to establish the obligation to pay different taxes (social tax and unemployment insurance contributions)⁴.

The Employment Contracts Act⁵ sets out the main characteristics of an employment relationship. § 1 of the Act determines the notion of an employment contract: based on an employment contract a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer. The employer pays the employee remuneration for such work.

When one speaks about undeclared work, it is meant that there is no employment contract and there is no dependant work. Any other activity based on the civil law contract (service agreement, agency agreement) is not viewed as undeclared work.

3 National policies and measures

To combat undeclared work, the obligation to register the activities in the employment register⁶ was introduced in 2014. The register is managed by the Taxation and Customs Board. It is similar to the Slovak requirement to register within the social security register, but the functions are broader, not just about social security. There is no special register for employers in Estonia, who have violated the labour legislation or rules for hiring employees.⁷ The employment register data are used by:

- The Estonian Health Insurance Fund for granting the health insurance benefits;
- The Estonian Unemployment Insurance Fund for registration of persons as unemployed, termination of the persons' registration as unemployed, for granting unemployment allowances and other unemployment insurance benefits prescribed by the Unemployment Insurance Act;
- The Social Insurance Board for verification of the employment status;
- The Police and Border Guard Board for exercising supervisory control over the working conditions of foreigners;
- The Estonian Tax and Customs Board for monitoring the performance of the tax liabilities of taxable persons.

All natural and legal persons providing work are required to register their employment. Employers can be a legal person, a resident or non-resident in Estonia, Estonian state or local government authorities, or a natural person or a self-employed person who concludes an agreement that forms the basis for working. The civil servants who will be appointed by the public institutions must also be registered in the employment register.

Employment of all natural persons which creates a tax liability, irrespective of the form of a contract, must be recorded in the employment register. Data of the persons working

⁴ § 84, Maksukorralduse seadus (Taxation Act), available in English: <https://www.riigiteataja.ee/en/eli/529032021002/consolide>, accessed on: 26.03.2021.

⁵ Töölepingu seadus (Employment Contracts Act), available in English at: <https://www.riigiteataja.ee/en/eli/529122020003/consolide>, accessed on: 26.03.2021.

⁶ § 25¹, Maksukorralduse seadus (Taxation Act), available in English: <https://www.riigiteataja.ee/en/eli/529032021002/consolide>, accessed on: 26.03.2021; see also: Registration of employment, access to employment register, available at: <https://www.emta.ee/eng/business-client/registration-business/registration-employment>, accessed on: 30.03.2021

⁷ In Estonia there is a special criminal records database. In this database all the administrative and also criminal fines will be recorded. According to the Criminal Record Database Act e.g. the administrative fine will be recorded for ten (10) years. The criminal record is also kept for legal persons. From those records can also be seen, whether there have been violations concerning the labour legislation and immigration legislation. See Karistusregistri seadus (Criminal Records Database Act), English translation available: <https://www.riigiteataja.ee/en/eli/524112020002/consolide>, accessed on 26.03.2021.

voluntarily in a company or as a self-employed person, i.e. the persons receiving no remuneration for their work, must also be recorded in the employment register. Registration of employment within the framework of practical training is not required unless an employment contract or a contract under the law of obligations is concluded with a trainee for performing the work.

The Tax and Customs Board and the labour inspectorate monitor the requirement to register employees. The Estonian Tax and Customs Board mainly encourages the employers to recognise the possible violations by themselves and to give the employers' advice not to use the undeclared work. This is done through various media campaigns e.g. [Tax paradise](#), [Paying taxes – keeping Estonia together](#), [Paying taxes to keep the life](#).

Addressing undeclared work is the focus of two main institutions in Estonia: the Estonian Labour Inspectorate, and the Estonian Tax and Customs Board. The former focuses on making employment rights effective, including tackling undeclared work; the latter is responsible for collecting tax revenues. Additionally, administrators of social and unemployment insurance could have a role in identifying and tackling undeclared work. The eligibility criteria of these benefits are related to factual declared employment and payment of taxes, thus during the application cases of undeclared work could emerge and information could be used by the Labour Inspectorate or the Tax and Customs Board to enforce the legislation.

In Estonia, there are not many rules about **temporary agency work** (hereinafter TAW). The Employment Contracts Act § 6 states that in a case the TAW will be used it must be agreed in written form in the employment contract. The Employment Contracts Act does not specify further the obligations of employee, employer and user undertaking. Those rights and obligations have to be agreed in a written agreement. Especially important are rights and obligations concerning the employees (payment of wages; responsibility in case of work accidents and occupational diseases). There are no concrete legal requirements e.g. in which sectors the TAW can be used or is prohibited.

As of 20 January 2019, an amendment to the Labour Market Services and Benefits Act gave the labour inspectorate the right to supervise the requirements for the fulfilment of temporary agency work. This involves the possibility, to control whether the activity as an intermediary of temporary agency work has been officially registered.⁸ In 2019, the Labour Inspectorate notified those companies that did not fulfil the legal obligation to register the provision of labour mediation or rental services. Based on the comparison of the field of activity of the Commercial Register and the data of Economic Activity Register on business notifications, Labour Inspectorate sent reminders to 69 companies. Most of the companies then submitted the required notifications in the Register of Economic Activities (MTR) or changed the field of activity in the Commercial Register. As a result of the monitoring planned based on the risk assessment, violations of Labour Market Services and Benefits Act (*Töörurteenuste ja toetuste seadus*) in 20 cases were discovered, companies have been given a deadline to eliminate the deficiencies. No complaints about illegal employment services were submitted to the Labour Inspectorate in 2019.⁹

Temporary agency work is not licenced in Estonia. In case a company would like to start with temporary agency services it has to give the notice economic activity register (MTR).

⁸ § 42⁴, Tööturuteenuste ja toetuste seadus (Labour Market Services and Benefits Act), available in English at: <https://www.riigiteataja.ee/en/eli/522122020001/consolide>, accessed on 31.03.2021.

⁹ Töökeskkond 2019 (Working environment 2019), Labour Inspectorate, 2019.

The TAW is also sometimes used in a situation where the employees are posted abroad or foreigners are posted to Estonia. In case an employee is posted to Estonia the following requirements have to be met:

- Pursuant to section 5¹ of the Working Conditions of Employees Posted to Estonia Act,¹⁰ employees posted to Estonia must be registered with the Labour Inspectorate. The employer of a posted worker must register the employees being posted to Estonia prior to the employee actually starting work.
- To register, an employer must fill in the registration form and send it to the Labour Inspectorate by e-mail. In the event of a change in the information, a corresponding notice must be submitted to the Labour Inspectorate at the same e-mail address before the change enters into force.
- Detailed information about posted worker and company must be submitted to the Labour Inspectorate.

In the event of failure to comply with the requirement to register employees that have been posted to Estonia, the Labour Inspectorate has the right to assign a penalty of up to 300 fine units (one fine unit is equal to EUR 4) to a natural person and up to EUR 32,000 for legal persons pursuant to section 9³ of the Working Conditions of Employees Posted to Estonia Act.

Pursuant to section 5¹ subsection 6 of the Working Conditions of Employees Posted to Estonia Act, the Labour Inspectorate has the right to disclose personal data submitted to the Labour Inspectorate to ensure the performance of tasks assigned to the Tax and Customs Board by tax laws. At the request of the Labour Inspectorate, the employer of a posted worker is required to immediately submit to the Labour Inspectorate the documents necessary for the performance of state or administrative supervision. The documents in question may be:

- an employment contract,
- A certificate (so-called A1 certificate) issued on the basis of Regulation of the European Parliament and of the Council laying down the procedure for implementing the coordination of social security systems
- working schedule,
- extract regarding the payment of wages, or
- any other document that can be used to prove compliance with the terms and conditions of employment applicable to the posted worker.

The Labour Inspectorate has the right to request documents for a period of three years after the end of the employee's posting period (section 5¹ subsection 5 of the Working Conditions of Employees Posted to Estonia Act). The employer of a posted worker is required to submit to the Labour Inspectorate, at the request of the Labour Inspectorate, the documents necessary for the performance of state or administrative supervision. If the employer fails to submit the required information or documents concerning the employees posted to Estonia, the Labour Inspectorate has the right to issue a precept and, in the event of non-compliance, to impose a penalty payment on the employer.

In Estonia there is no special regulation concerning letterbox companies or "chain companies". A company must be registered in the commercial register to carry out the activity in Estonia. Also, branches of foreign companies must be registered in the

¹⁰ Eestisse lähetatud töötajate töötingimuste seadus (Working Conditions of Employees Posted to Estonia Act), English translation available at: <https://www.riigiteataja.ee/en/eli/512082020012/consolide>, accessed on 27.03.2021.

commercial register. Registering in it means that there is an official address where the company operates or will get the official correspondence.

If a company wants to employ someone, it must provide information to the employment register. The short time employment has to be registered by the Police and Border Guard Board.

The system of complaints

If the Labour Inspectorate will issue a recommendation about the possible violation, it always gives the possibility to correct the potential violations. When the company did not address the violations during the period set by the Labour Inspectorate, it is also possible to issue a fine. When the employer disagrees with the decision of the Labour Inspectorate, it is possible to raise a lawsuit in the administrative court.

The same applies when the Tax and Customs Board or Police and Border Guard Board will issue the decision about non-paying the social security contribution or other taxes or violation of rules hiring third-country nationals.

Employing third-country nationals

In co-operation with the Police and Border Guard Board and the Tax and Customs Board, undeclared and illegally employed persons are inspected. The third-country nationals must be registered with the Police and Border Guard Board, posted as an employee in the labour inspectorate or in the register of employment of an Estonian company.

The share of migrant labour in Estonia has increased significantly in recent years, and third-country workers are met at almost every other construction site. Migrant labour is increasingly reaching other areas of economic activity as well. The problems occur mainly with those who came to work in Estonia from Ukraine, Belarus, Uzbekistan, Georgia and Moldova. Businesses are increasingly devising schemes to bring in migrant workers to the EU Member States and circumvent the conditions required by law. For example, employees have been employed in a Polish company and posted to Estonia, but in reality employees have not repeatedly worked and healed Polish companies when they operate under the company name. It is a scheme that brings cheap labour to Estonia because a person who has been appropriately sent has to pay only the minimum rate developed by the Republic's Government. In addition, it can be played in a way that allows for maximum circumvention tactics, with the desire to "play" between the laws of two countries.

This is a priority for joint control supervisors, which also addresses issues such as labour exploitation and possible trafficking in human beings. It is the undeclared and/or illegal worker who is at a significantly higher risk of being the victim of labour exploitation or human trafficking. Illegal employment is also accompanied by various tax violations, unequal competition between companies, the possibility of exploiting employees, i.e. these people are essentially not guaranteed the social guarantees that all employees working in the European Union must have while working in Estonia.

As a result of joint inspections, the exchange of information and co-operation between supervisory authorities has also increased, which makes supervision more effective in terms of migrant labour. Cross-border cooperation has intensified significantly (2019). The number of inquiries to forward administrative procedure documents to Estonian companies has increased. The need to forward documents arises if the Labour Inspectorate of another country has not contacted a representative of an Estonian company after several attempts. In such a case, the Estonian Labour Inspectorate forwards the documents to the labour inspectorate in another country about the companies by registered letter and, if necessary, also carries out supervision. Unfortunately, there are also situations where the documents cannot be sent by registered mail and the employer cannot be contacted in any other way because the company's information in the commercial register is incorrect.

The most common violations are cases where an Estonian company employs an alien legally staying in Estonia but does not register employment with the Police and Border Guard Board and does not pay the required Estonian average salary and labour tax.

According to various estimates, there are 1,000-5,000 foreigners who violate the conditions of working in Estonia. It is possible to talk about the number of violations: in 2017, 382 misdemeanour penalties were applied, in 2018 182 and in 2019 122 foreigners for violating working in Estonia. In 2013, this number was 68.

Violations by employers have also been increasingly detected. While in 2013 39 employers received a misdemeanour penalty in connection with the illegal employment of an alien, in 2019 there were already 129 such cases.

As of 15 July 2018, the obligation to exclude from the public procurement procedure is prescribed in the case of a company that has been punished for allowing a violation of the conditions of employment of an alien in Estonia. In the case of work contracts, if the subcontractor has not complied with the rules for the employment of a foreigner, the subcontractor must be replaced or another way of carrying out the work must be found. It provides an opportunity to ban the economic activities of companies that consistently employ foreigners in defiance of the law.

As of 15 August 2018, in the case of employees posted to Estonia, the employer became obliged to submit data on the posting to the Labour Inspectorate before the employee started working. This must now be done on the first working day. From the same date, the obligation to register short-term employment is prescribed if an alien works in Estonia based on a visa or residence permit issued by another Schengen Member State and works for a company established in another Member State. Until now, such an alien from Estonia did not have to register with the Police and Border Guard Board.

4 Considerations for future policies and initiatives

At the moment, there are no further discussions about the measures or policies to combat undeclared work or to create the rules in order to avoid chain employment relations that hide the real employment relationships. Still there are questions that must be clarified in the future:

- Position of Labour Inspectorate must be clarified and strengthened. It is necessary to clarify how far does the authority of labour inspectorate go to determine the nature of the labour relationship. Should there be a special legal act clarifying the employment relationship?
- The legal status of platform workers needs to be clarified as they potentially engage in undeclared work. Currently there are no legal notion of the platform work and data about the scale of the issue is not available.
- Conditions of TAW must be clarified (obligations of an employee, employer and user-undertaking). Estonian legislation does not say much about the TAW. It is unclear, who takes the main responsibility – employer or user undertaking. Also it is not clear whether the "chain" TAW can be used. A special law on conditions of TAW could be helpful or a special chapter in labour legislation.

5 Questions

- Is there a higher risk of undeclared work among platform workers and temporary agency workers?
- Do new rules on posted workers help to prevent chain-posting?

6 List of references

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Annex 1 Summary table

The main points covered by the paper are summarised below.

Situation in the peer country

- There is no legal definition of undeclared work in Estonia and no draft legislation or policy measure that foresees the possibility of introducing such legal notion.
- Legal regulation of temporary work agencies is modest about obligations of an employee, employer and user-undertaking.
- Main characteristics of employment relations are set in the Employment Contracts Act.
- Labour Inspectorate and Tax and Customs Board have the authority to determine the employment relationship.

National policies and measures

- To combat undeclared work the employment register was created. All natural and legal persons providing work are required to register in it their employment.
- Employees posted to Estonia must be registered with the Labour Inspectorate. The employer of a posted worker must register the employees being posted to Estonia prior to the employee starting work.
- Tax and Customs Board plays a positive role by helping and motivating employers to pay taxes and to apply the legal employment.

Considerations for future policies and initiatives

- Position of Labour Inspectorate must be clarified and strengthened especially in the context of determining the nature of employment relationship.
- The legal status of platform workers needs to be clarified as they potentially engage in undeclared work.
- Conditions of TAW must be clarified (obligations of an employee, employer and user-undertaking)

Questions

- Is there a higher risk of undeclared work among platform workers and temporary agency workers?
- Do new rules on posted workers help to prevent chain-posting?

Annex 2 Example of relevant practice

Name of the practice:	2014 introducing employment register
Year of implementation:	2014
Coordinating authority:	Taxation and Customs Board
Objectives:	To combat undeclared work
Main activities:	All employment activities must be registered in the register.
Results so far:	The register is used correctly. There have also been the amendments to register where the employer has to add more details about employment (e.g. the concrete name of the position; also the concrete place of employment).

