

# Employment Contracts Act: is flexicurity doing its job?

DECENT WORK FOR ALL:  
A KEY FOR EFFECTIVE INDUSTRIAL RELATIONS  
**BRIEFING ON THE SITUATION IN ESTONIA**



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## Acronyms and Estonian terms

ALMP: active labour market policies  
ECA: Employment Contracts Act  
EAKL (Eesti Ametiühingute Keskliit): Estonian Trade Union Confederation  
GDP: Gross Domestic Product  
Riigikogu: Estonian Parliament  
SDP: Social Democrat Party  
TALO: Estonian Employees Unions' Confederation

## Glossary

**Flexicurity** is an integrated strategy to enhance both flexibility and security on the labour market. This working definition by the European Commission reflects a political approach aimed at combining and simultaneously improving the flexibility of labour markets, work organisation and labour relations, and security (employment security and social security).

### Its main components are

- Flexible and reliable contractual arrangements
- Effective Active Labour Market Policies
- Comprehensive life-long learning (LLL)
- Modern Social Security Systems

In December 2008 the European Council of Ministers agreed on eight principles of flexicurity<sup>1</sup>.

The term “flexicurity” and the related policy strategies of recent years has sparked numerous controversies and fuelled many debates at European level and within member states<sup>2</sup>, between employers' associations and trade unions, and between them and governments. Policy proposals and decisions aimed at a revision of labour law and/or labour market policies under the label of flexicurity face the challenge of defining the respective weight of these components and how they should be combined and coordinated<sup>3</sup>.

Flexicurity has become central to the implementation of the so-called Lisbon Strategy. However flexicurity should not be understood as an objective in itself, but rather as a methodology.

## Overview

The revised Employment Contracts Act (ECA) adopted by the Government of Estonia in 2009 officially aimed to introduce the notion of flexicurity into the employment relationship. A tripartite agreement was reached on the contents of the draft legislation in 2008. The employment situation then changed significantly, however, as a result of the economic crisis. The government subsequently introduced changes unilaterally to the text, and ignored attempts by workers and employers to negotiate their own proposals for changes. It also ignored proposals by the opposition Social Democratic Party (SDE) to redraft the bill, calling on the government to reach new tripartite agreements on the grounds that the government's version damaged employees' rights<sup>4</sup>.

On 18 June 2009 the reformed act was adopted with the unilateral changes. In the meantime unemployment was steadily rising to record levels, reaching 12.3% of the workforce by the end of October 2009. The situation is expected to further deteriorate in 2010 with the Ministry of Finance forecasting an overall unemployment rate of 16.8%. Young people are particularly hard hit, as can be seen from the sharp increase in unemployment rates, reaching about 30% at the end of 2009.

<sup>1</sup> <http://register.consilium.europa.eu/pdf/en/07/st15/st15497.en07.pdf>

<sup>2</sup> For a reference to the Danish model of flexicurity see the “Good practice” section in this report and the SOLIDAR report.

<sup>3</sup> For further reading: SOLIDAR report on flexicurity and labour market inclusion services <http://cms.horus.be/files/99931/MediaArchive/FIC-SOLIDAR-Seminar-Flexicurity-Report.pdf>.

<sup>4</sup> See e.g. <http://www.riigikogu.ee/rito/index.php?id=12491>, Employment and law, by Eiki Nestor, Member of the Riigikogu, Estonian Social Democratic Party

## Theory

### The legislation

The new Employment Contracts Act (ECA) came into force on 1 July 2009<sup>5</sup>. Several existing laws were replaced by a single legal act, "giving the employer and employee a clearer understanding of their rights and responsibilities". One of the principal goals of the new Act was to change and liberalise the employment relationship concept, and the concept of Decent Work in Estonia.

**The explanatory memorandum accompanying the ECA explains the concept of flexicurity as follows:**

"Labour market flexibility that ensures the economy's ability to react quickly and also guarantees an adequate sense of security to the employee by the joint influence of four measures:

- flexible labour law
- modern social security systems
- an effective active labour policy
- an effective lifelong learning system<sup>6</sup>

**The ECA presents the following objectives to ensure flexicurity:**

- a) to coordinate labour law with civil law and clarify the judicial area;
- b) to free labour law from formal provisions and reduce the administrative burden;
- c) to increase employment relationship flexibility;
- d) to increase tangible protection to people in a more vulnerable position on the labour market<sup>7</sup>.

**Provisions in the new Act include:**

- a reduction of the notice period for redundancy from 1 month to 15 days
- a reduction in the employer's financial burden relating to redundancy (by cutting compensation levels in some cases and transferring the cost to unemployment insurance in others)
- preferential rights to parents with children under three years of age in the event of redundancy. Previously such parents could not be laid off.

These provisions clearly show that the focus is on objectives b) and c) above. Furthermore, objective c) is difficult to reconcile with, if not contradictory, to objective d).

The government argued that its reforms to the old ECA were necessary, as the old version was based on Soviet-style industrial relations and too rigidly protected jobs from graduation to retirement. Eiki Nestor, a member of the Riigikogu, the Estonian Parliament, points out that the concept of a job and working time have changed with the arrival of new forms of employment. A representative from the Ministry of Social Affairs added that a rigid ECA was harmful to the country as it imposed limitations on economic development.



"At present, as far as employees are concerned, flexibility stands for smaller salaries and less benefits, of course, the economic recession has its role to play as well."

VILVE POHLA  
TEACHER AT THE TARTU VOCATIONAL  
EDUCATION CENTRE.

<sup>5</sup> The full English text can be found here: <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>

<sup>6</sup> [http://www.riigikogu.ee/?page=en\\_vaade&op=ems&eid=353198](http://www.riigikogu.ee/?page=en_vaade&op=ems&eid=353198)

<sup>7</sup> [http://www.riigikogu.ee/?page=en\\_vaade&op=ems&eid=353198](http://www.riigikogu.ee/?page=en_vaade&op=ems&eid=353198)

“The new Act has introduced the flexibility side of flexicurity, but the security for workers is lacking.”

KADRI LÜHISTE  
HEAD OF THE ANALYSIS DEPARTMENT  
AT THE ESTONIAN UNEMPLOYMENT  
INSURANCE FUND.

## Practice An evaluation

This section highlights some of the effects of labour law reform and the design of the unemployment protection system on specific groups of the population and the labour market.

“The new Act has introduced the flexibility side of flexicurity, but the security for workers is lacking”, says Kadri Lühiste, head of the Analysis Department at the Estonian Unemployment Insurance Fund. “Letting people go is relatively inexpensive, while unemployment insurance benefit is narrowly more generous than the international regulations require. We spend ten times less than the EU average of our GDP on employment services. In services to the unemployed we occupy the last place, without competition. In Denmark expenditure from GDP on employment services is 30 times that of ours.”

He also confirmed the extremely restricted role of active employment measures (including training) offered by the Unemployment Insurance Fund. On a monthly average, 93% of registered unemployed persons did not receive any other service besides employment mediation. Training was assigned to a monthly average of only 2.4% of the unemployed in 2008, both numbers indicating the underfunding of this public service at a time of economic crisis.

Several groups have been identified as being particularly at risk under the new legislation, a problem made more acute by the economic crisis. Young people are particularly vulnerable, as those with a short employment history are the cheapest (as they have no or insufficient entitlements, i.e. periods covered by the unemployment insurance) and easiest (as they have the lowest level of protection by labour law) to lay off. The economic downturn has left many of them out of work, with the result that unemployment among young people (in the 15-24 year age group) doubled within two years (2007-2009)<sup>8</sup>. According to Eurostat the youth unemployment rate grew from 7.6% in the first quarter of 2008 to 24.1% (29.9% for male and 17% for female) in the first quarter of 2009<sup>9</sup>. It reached 29.2% in November 2009<sup>10</sup>.

Young families with children and single mothers are also vulnerable, as dismissal would have severe consequences for them. Under the new ECA, it is easy for the employer to win their consent to change the nature of their employment contract.

Employees close to retirement age are also more inclined to accept changes to their contract of employment to keep their job, because if they lose it, nobody is interested in spending money on their retraining and their options for re-employment are limited. There is little interest in investing in people close to retirement age and employers fear that older employees will be less adept at dealing with new methods and new technologies.

Finally, the new ECA fails to provide for compensatory measures (reduced working time, the right to early retirement) for people involved in hazardous work, creating an increased sense of insecurity. Similarly, amendments to the night work regulation and the regulation concerning the daily rest period have made these standards more disadvantageous for the employee.

Vilve Pohla, teacher at the Tartu Vocational Education Centre says that “At present, as far as employees are concerned, flexibility stands for smaller salaries and less benefits, of course, the economic recession has its role to play as well.”



<sup>8</sup> <http://www.e24.ee/?id=190530>

<sup>9</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=STAT/09/109>

<sup>10</sup> <http://www.e24.ee/?id=190530>

## The trade union view

The Estonian Trade Union Confederation (Eesti Ametiühingute Keskliit, hereinafter EAKL) was of the opinion that the new ECA draft legislation was unjust, overly complicated and leaves the employee completely at the mercy of the employer.

### The EAKL pointed out<sup>11</sup> that the new ECA undermines workers' rights by:

- Lowering the redundancy compensation to one month's salary and shortening considerably the advance notice period for redundancies. This cannot be compensated by a promise to slightly increase the unemployment insurance benefit that we basically pay to ourselves.
- Depriving the employee of sick pay, if the illness is contracted during holidays.
- Aiming to establish a weekly working time of 52 hours, at the same time annulling the additional holidays currently established by law.
- Offering the employer the possibility to collect from the employee different contractual penalties, which is "counterbalanced" by the employees' right to request the shortening of working days by three hours before Christmas, New Year's Eve, Independence Day and Victory Day.

## Social dialogue

### In the adoption of the new Employment Contracts Act

The reformed ECA was drafted on the basis of tripartite negotiations. From January to April 2008 representatives of the Ministry of Social Affairs, the Ministry of Justice, the trade unions and employers discussed and came to an agreement, on 23 April, on the contents of the bill. The parties declared that only amendments of a technical, "redactional" or linguistic nature would be made in further proceedings.

During the first reading of the bill in the Riigikogu, however, the government made several substantial changes to the draft. The EAKL and Estonian Employees Unions' Confederation (TALO) national trade union confederations wrote to the Prime Minister on 27 March 2009 to express their willingness to enter into negotiations. The Prime Minister failed to respond to their letter. At a meeting of the Unemployment Insurance Fund's Supervisory Board, the Minister of Social Affairs asserted that the government did not want a proper dialogue with the social partners, stating that "the complete opening of the ECA is not a mark of quality".

In response to the government's action in breaking the tripartite agreement and its refusal to accept the trade unions' compromise proposals for implementing the new ECA, the EAKL organised several strikes on 16 June 2009 in different locations and enterprises. The strikes did not mobilise sufficient support however, and failed to persuade the government to enter into tripartite negotiations. Instead the action weakened the trade unions' position as a social partner.

On 18 June 2009 the Riigikogu adopted the "Act to amend the Employment Contracts Act and the related Acts". The government had unilaterally annulled the rise in unemployment insurance benefit, and amended sections 50 and 51 of the ECA establishing restrictions on night work and daily rest periods for employees.

"The Estonian Trade Union Confederation was of the opinion that the new ECA draft legislation was unjust, overly complicated and leaves the employee completely at the mercy of the employer."



<sup>11</sup> In an EAKL press release on 16 January 2008

“The attitude towards trade unions as partners of social dialogue could be better. But trade unions must fight to be recognised as equal partners. The strike staged during the ECA proceedings was a strategically wrong decision; we lacked the necessary force to conduct it effectively and it harmed the trade unions’ position in society. The key word is organisation”.

MARILIIS PROOS  
LEGAL SECRETARY AT THE TRANSPORT  
AND ROAD WORKERS.

“Estonia has reached a situation where state leaders have backed out from consulting with other partners of a democratic society, both employees and employers. The most disgraceful example of such behaviour is the enforcement of the new ECA by unilaterally changing the tripartite agreement”, TALO.

Arno Arukask, Head of EAKL’s Tartu Division, comments that “Social dialogue works to some extent but depends on the company. The government did not act too well in enforcing the Act and employers are following suit. Several state agencies have no social dialogue at all, the formation of trade unions is being hindered, even by using threats.”

Reflecting on their own performance when they called for collective strike action, the trade unions felt they needed to make changes too, and build on their role to become stronger social partners. In the words of Mariliis Proos, legal secretary at the Transport and Road Workers’ Trade Union ETTA: “The attitude towards trade unions as partners of social dialogue could be better. But trade unions must fight to be recognised as equal partners. The strike staged during the ECA proceedings was a strategically wrong decision; we lacked the necessary force to conduct it effectively and it harmed the trade unions’ position in society. The key word is organisation”.

## Good practice

### The Danish “Flexicurity” model - Life-long learning and strong social dialogue

The Danish model is held up as the benchmark for “flexicurity” and in theory the Estonian legislation is based on this. Essentially the model is a mix of rights and obligations that gives the employer the freedom to cancel the employee’s contract without an extended period of notice, but at the same time guarantees a recently unemployed person an income of up to 90% of previous salary (for low-income workers) for a period of up to four years. The employee, in turn, is offered services such as training to help them find new employment. The reforms introduced in Denmark transformed it by 2001 from a country with high unemployment (13%) to one with the lowest unemployment rate in Europe (4%).

Katrin Saks, one of the leaders of the Estonian Social Democratic Party, points out the differences between Estonia and Denmark: “A considerable difference between Denmark and us is the fact that the Danish Unemployment Insurance Fund also offers support to those who resign of their own free will (from the sixth week of resignation). The other key issue is the matter of investment in the workforce through education and life-long learning, of which Denmark has the highest level in Europe, offering the employees free study courses to raise their qualifications. 70% of adult employees participate in this scheme in one way or another during their career. On the other hand, the Estonian statistics show that only 6-7% take part in adult continuing education, which is one of the lowest figures in the European Union<sup>12</sup>.”



<sup>12</sup> <http://www.ekspress.ee/2008/01/28/arvamus/812-muinasjutt-euroopalikust-eehnoust>

The cornerstone of the Danish system is strong social dialogue. 80% of employees are trade union members and social partners were consulted in each step of this reform. All EU documents, including the Charter of Fundamental Rights, signed in December 2007, which contains a specific chapter on solidarity, stress the need for social dialogue in the creation of work-related acts.

Due to strong social cooperation in Denmark, the reduction in unemployment did not entail a drop in wages, as an agreement was reached during wage negotiations to restrict the yearly growth of real wages to no more than 2%, thus preventing inflation. The biggest advantages of the Danish system are the feeling of security for the employee and the economy's competitiveness. But, as Katrin Saks points out, the precondition for both of these is social dialogue.

Vilve Pohla, teacher at the Tartu Vocational Education Centre of Tartu, adds: "For me, the basis of ensuring the conditions for decent work is actually valuing each single employee. The development and expansion (making information available to a larger number of personnel) of employee organisations (e.g. trade unions) is also vital, as well as negotiations between different parties (dialogue)".

## Summary

"The European principle of flexicurity must be taken into account, evenly balancing the rights and obligations of employees, employers and the Government", say the Social Democrat Party of Estonia.

Workers and trade unions clearly feel that the new ECA does not provide them with the security they need, either in terms of compensation or training, and therefore does not provide the conditions for decent work. The Act appears heavily biased in the employers' favour. Social dialogue was ultimately missing from the process, even though all three parties willingly and successfully entered into negotiations in the earlier stages. The situation changed radically as a result of the economic crisis, leading to a very different approach from the government. In the words of Kadri Lühiste "updated calculations showed that under the economic recession, the new Act would be highly expensive. Thus the main issue was how much we are willing to pay for this flexicurity. Eventually, the government/parliament decided that we are not prepared to pay the necessary amount and the rest is history." After the government announced its unilateral changes, the trade unions' calls for protest strikes failed to mobilise sufficient support among the workers, allowing legislation that had bypassed social dialogue and harmed the workers' interests to be adopted.

In the opinion of the authors of this report, the rights and obligations of the employees, employers and the state, i.e. the parties of the labour market, are out of balance. While the new ECA reduced contract termination benefits, the state has failed to offer the necessary measures to accompany termination, such as continuing education or retraining. In addition, there is insufficient provision of work search training. The social guarantees (e.g. redundancy payments) related to the termination of employment contracts have to a large extent been assigned to the Unemployment Insurance Fund, but in the present economic situation the Fund is unable to meet demand. In amending the ECA, social dialogue (i.e. the tripartite negotiations on state level) was ignored. Nevertheless, all of the above issues should be resolved through tripartite negotiations.

## The employers' view

Mart Einasto, Member of Management Board of Tartu University Hospital and an employer, sees the new Act in a positive light:

"The basis of flexicurity lies in the fact that when creating and vacating jobs is easy, then society in general is more straightforward as well. The old ECA had many complexities from the employer's point of view, like redundancies, where the "everything must go" principle was followed. There were fewer redundancies but they were larger in scale. Now this process is simpler and can be performed bit by bit and stage by stage. New options have been created – like we can reduce the workload and lower the employees' salaries. Pattern-setting models have been established "en masse" due to the recession: the employees can agree to the reduction of their basic wages or holidays without pay, including for example cases where the employees agree among themselves to take turns in taking Fridays off. This was not possible in the context of the previous ECA, and it did not even occur to anyone – there was no such tradition.

The birth of such a culture was made possible by the fact that the new ECA coincided with the recession, and for me as an employer this is only positive. During the economic downturn of 1997, people were not yet bound by long-term obligations, but now it is important for them to keep at least some form of a regular salary, even a small one. This has enabled the employers to lower salaries in a flexible manner or give holidays without pay. But it is difficult to determine whether the ECA is solely to thank for this."

## About the project

“Decent Work for All: A Key for Effective Industrial Relations” is a one-year project which aims to produce recommendations on how to improve working conditions around Europe in sectors with higher incidences of precarious working conditions (ie construction, health and long-term care) and more vulnerable groups (ie youth, undocumented migrants) through coordinated efforts by governments, employers and trade unions in the framework of social dialogue. It also looks into the role of social partners in fighting precarious labour and promoting decent work and quality jobs.

This briefing, coordinated by SOLIDAR, was produced by SOLIDAR member Johannes Mihkelsoni Keskus in Estonia. [www.jmk.ee](http://www.jmk.ee)

All “Decent Work for All: A Key for Effective Industrial Relations” briefings are available on [www.solidar.org](http://www.solidar.org)

SOLIDAR is a European network of 53 NGOs active in over 90 countries working to advance social justice in Europe and worldwide. SOLIDAR lobbies the EU and international institutions in three primary areas: social affairs (more social Europe), international cooperation (development cooperation) and education (lifelong learning for all).

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## Recommendations

- In view of the **contents of the Employment Contracts Act**, the employment contract should be unequivocally and clearly in writing. This will also help avoid misunderstandings. Further, employees' right to seek reinstatement should be restored in the ECA. The procedure for employer warnings and the termination of employment contracts on the basis of these should be legally regulated and notices of terminations should be given in writing. Finally the termination of an employment contract with employees with a parent of a child below the age of three years should be considered only for economic reasons, i.e. in case of redundancy.
- With regard to **collective bargaining concerning labour law reform**, in particular revisions of the Employment Contracts Act, negotiations should continue on the minimum wage and other issues of importance for the social partners and the government.
- With regard to the **interaction and coherence of regulations in different institutions**, the fringe benefit tax should be abolished, and the state should provide support for employers in retraining their employees. The re-establishment of social guarantees for those involved in hazardous work should be considered.
- The **key role of social dialogue and social partnership** must be recognised as necessary preconditions to provide workers with security and enable the flexicurity model to work. Issues related to labour law and employment policy reforms should be resolved through tripartite negotiations.
- To ensure **effective social dialogue**, trade unions must be properly recognised as social partners by government and employers. However they must strengthen their own position too, through information gathering, discussion, preparing joint trade union positions, information to members, and training members in how to fight for their rights.
- ILO Conventions 87 and 98 on **the right to organise and collective bargaining**, both ratified by Estonia, should be fully respected, including the right to strike. Collective agreements between employers and trade unions should play a bigger role in industrial relations.
- In addition to the social partners, there needs to be a **multi-stakeholder approach** throughout the process of developing flexicurity that also involves social NGOs that represent the most vulnerable sectors of society. They can bring in the perspective of policy development to promote the full inclusion and participation in society of people on the fringes of or outside the labour market.
- A **strong social security system** needs to be developed, for example along the lines of the Danish model of flexicurity. Social security provides workers with safety nets, while investment in education (vocational training, life-long learning, and informal education) and active labour market policies (ALMP) support the readiness of workers for job mobility by creating confidence in their employability.