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# Active Ageing and Supportive Working Time Measures

Agne Kalson \*

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**Abstract.** This paper considers some of the most important working time arrangements (e.g. part-time work, job-sharing, working time accounts) which promote active ageing and encourage the elderly to remain in the labour market. An overview of Estonia's labour law and its limitations hindering the successful implementation of these working schemes will be provided. This will be done by relying upon comparative and analytical research, taking UK and German legislation as examples of best practice, in order to point out those aspects that can be replicated in Estonia in order to overcome the obstacles hampering the effective implementation of these working schemes.

**Keywords.** *Working Time, Working Time Accounts, Estonia, Labour Law, Working Time Arrangements.*

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## 1. Introduction

The ageing of the population is a global phenomenon and represents one of the major social and economic challenges of the 21<sup>st</sup> century for European societies. By 2025, more than 20% of Europeans will be 65 and over, and a particularly rapid increase will be witnessed in the number of those aged 80 and above. By the same year, the working age population in the European Union (EU) is expected to decline by 14.2%<sup>1</sup>, producing gaps in the labour market. Consequently, more workers will be needed in the coming years to maintain the current levels of economic capacity. Thus, to tackle the decrease in the number of those in employment, efforts ought to be made to increase the employment rate across all age groups, including elderly people.

Concerning this last point, it would be appropriate to safeguard people's ability to work and help them to stay on in employment until reaching retirement age<sup>2</sup>. Taking the side effects of ageing into consideration, the creation of a suitable work environment is decisive to support older age groups and prevent their early exit from the labour market. In the survey, *Elderly People in the Labour Market*<sup>3</sup> carried out in Estonia in 2012 by the Centre for Applied Social Sciences (RAKE), it was shown that giving older people the opportunity to choose the most suitable working time and working pace would help increase their employability<sup>4</sup>.

Working time can be organised flexibly in a number of ways. However, some working time options, such as part-time work, job-sharing and working time accounts are known to be particularly widespread among older workers, as they enable a reduction of their working hours in line with their age-related needs. These working schemes can promote older people's employment rates only if they are facilitated by less stringent legislation regulating their implementation. This would give the parties to the employment relationship more options to promote older people's access to the labour market and help them stay at work.

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<sup>1</sup> European Commission. Ageing Policy, [http://ec.europa.eu/health/ageing/policy/index\\_en.htm](http://ec.europa.eu/health/ageing/policy/index_en.htm) (accessed April 13, 2015).

<sup>2</sup> While in most EU Member States certain health conditions are linked to retirement, Estonian workers report long-lasting health problems prior to it. See: Ü. Marksoo, L. Malk, E. Põldis. Vanemaealised Eesti tööturul [Elderly People in Estonian Labour Market]. Teemaleht [Theme sheet], 2001, n. 4, 18.

<sup>3</sup> K. Espenberg, M. Sammul, S. Vahaste, R. Haljasmäe. Vanemaealised tööturul [Elderly People on the Labour Market, RAKE, Raport, 2012.

<sup>4</sup> K. Espenberg, M. Sammul, S. Vahaste, R. Haljasmäe, *op. cit.*, 32.

In view of the above, this paper considers some of the most important working time arrangements (e.g. part-time work, job-sharing, working time accounts) which promote active ageing and encourage the elderly to remain in the labour market. An overview of Estonia's labour law and its limitations hindering the successful implementation of these working schemes will be provided. This will be done by relying upon comparative and analytical research, taking UK and German legislation as examples of best practice, in order to point out those aspects that can be replicated in Estonia in order to overcome the obstacles hampering the effective implementation of these working schemes.

## 2. Active Ageing

The challenges posed by demographic changes have dominated the debate on the future of the EU. Specifically, the ageing population and the shrinking labour force raise concerns about economic growth. In this sense, "Europe 2020", the strategy for a smart, sustainable and inclusive growth, emphasises the need to promote active-ageing policies<sup>5</sup>. The expression "active ageing" was originally used in the early 1960s in the United States. At first, the keys to what was described as "successful ageing" were "activity and financial success, with a carrying over into old age of activity patterns and values typically associated with middle-age"<sup>6</sup>. By the 1990s, a new notion of "active ageing" began to emerge, heavily influenced by the work and activities of the World Health Organization (WHO)<sup>7</sup>, which adopted this expression to describe the process for achieving this vision. According to the WHO, active ageing is "the process of optimizing opportunities for health, participation and security in order to enhance quality of life as people age"<sup>8</sup>. The definition includes the notion of extending the work activity to older people, both within the labour force, through delaying their retirement, and within society,

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<sup>5</sup> European Commission, Population Ageing in Europe, Facts, implications and policies, 2014, 8, [http://www.net4society.eu/media/Population\\_Ageing\\_in\\_Europe.pdf](http://www.net4society.eu/media/Population_Ageing_in_Europe.pdf) (accessed August 24, 2015).

<sup>6</sup> F. Hendrickx (ed.) *Active Ageing and Labour Law*, Contributions in honour of professor Roger Blanpain in Social Europe Series 31, Antwerpen, Intersentia, 2012, 40.

<sup>7</sup> F. Hendrickx (ed.), *op.cit.*, 41.

<sup>8</sup> *World Health Organization, Active Ageing, A Policy Framework, 2012, 12* [http://apps.who.int/iris/bitstream/10665/67215/1/WHO\\_NMH\\_NPH\\_02.8.pdf](http://apps.who.int/iris/bitstream/10665/67215/1/WHO_NMH_NPH_02.8.pdf) (accessed August 24, 2015).

through participation in a range of social, economic, civil or cultural activities<sup>9</sup>.

For the EU, active ageing means “growing old in good health and as a full member of society, feeling more fulfilled in our jobs, more independent in our daily lives and more involved as citizens”. In relation to labour law, it covers a wide variety of issues, such as [...] work-life balance, involving working time regulations and adjustments made for older people in order to allow them to stay on the labour market<sup>10</sup>.

The EU designated 2012 as the European year of active ageing and solidarity between the generations, bringing the topic back into the focus of the international community. In line with this initiative, Estonia laid out a “Development Plan for Active Ageing for 2013-2020”<sup>11</sup>. The goal of the plan was to create an age-friendly environment for older citizens, by increasing their quality of life, and guaranteeing the same opportunities as other age groups. A more specific goal was set, namely that of making elderly people more active in the labour market, and making them feel satisfied with their working lives<sup>12</sup>. To reach this objective, a number of flexible work options were provided to them<sup>13</sup>.

### 3. Working Time Organisational Measures

In 2014, the survey “Attitudes of the over 50s to Fuller Working Lives”<sup>14</sup> was conducted in the UK. When participants were asked about flexibility, just over half of them (51%) claimed that their employer allows people to work flexibly as they get older; 9% of them reported that their employer

<sup>9</sup> Eurostat, Active ageing and solidarity between generations, A statistical portrait of the European Union, 2012, 8, <http://ec.europa.eu/eurostat/documents/3217494/5740649/KS-EP-11-001-EN.PDF/1f0b25f8-3c86-4f40-9376-c737b54c5fcf> (accessed July 5, 2015).

<sup>10</sup> F. Hendrickx (ed.), Active Ageing and Labour Law, cit., 6, p.v.

<sup>11</sup> Sotsiaalministeerium [Ministry of Social Affairs], Aktiivse vananemise arengukava 2013-2020 [Active Ageing Development Plan 2013-2020], Tallinn, 2013, [http://www.sm.ee/sites/default/files/content-editors/eesmargid\\_ja\\_tegevused/Sotsiaalhoolekanne/Eakatele/aktiivsena\\_vananemise\\_arengukava\\_2013-2020.pdf](http://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Sotsiaalhoolekanne/Eakatele/aktiivsena_vananemise_arengukava_2013-2020.pdf) (accessed July 25, 2015).

<sup>12</sup> Sotsiaalministeerium [Ministry of Social Affairs], *op.cit.*, 4.

<sup>13</sup> Sotsiaalministeerium [Ministry of Social Affairs], *op.cit.*, 48.

<sup>14</sup> Department for Work & Pension, Attitudes of the over 50s to Fuller Working Lives, London, 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/394642/attitudes-over-50s-fuller-working-lives.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/394642/attitudes-over-50s-fuller-working-lives.pdf) (accessed August 25, 2015).

does not allow it, while 40 % said they did not know if their employer allows flexible working. Tellingly, the share of respondents who did not know if their employer offers flexible working decreases considerably with age, suggesting that, as employees get older, they are more likely to seek out information about flexible working<sup>15</sup>.

Workers from older age groups often prefer to work part-time instead of full time, as a way of preparing for the transition from work to retirement. A European Company Survey<sup>16</sup> was conducted in 2009 by EUROFOUND, where part-time work was found to be the most common working scheme, particularly among younger and older workers. Older people in particular preferred to work part-time because of their health problems or to make use of (financially) attractive gradual retirement schemes<sup>17</sup>. Cuesta and Guilló also refer to part-time employment as a policy tool to “increase the labour force participation of older workers who can smooth over the transition from full-time work to retirement, especially among men”<sup>18</sup>.

Part-time work in the form of job-sharing is also implemented in many EU Member States as a way to provide working time flexibility. According to Wheatley, job-sharing enables one to solve a number of labour market issues, particularly in a situation such as that of the EU, characterised by the high unemployment levels of young people and the ageing of the labour force. The author also points out that job-sharing can be used as an option for the elderly people to “slowly exit” the labour market<sup>19</sup>. In Czech Republic, Hungary, Ireland and Slovenia job-sharing has been said to have the potential to increase the employment rates of those in disadvantaged groups in the labour market, notably [...] older, disabled or sick people who are not able to work full-time<sup>20</sup>.

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<sup>15</sup> Department for Work & Pension, *op.cit.*, 19.

<sup>16</sup> E. Sandor, Part-time work in Europe, European Company Survey 2009, European Foundation for the Improvement of Living and Working Conditions, 2011, 2, [http://www.eurofound.europa.eu/sites/default/files/ef\\_files/pubdocs/2010/86/en/3/EF1086EN.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_files/pubdocs/2010/86/en/3/EF1086EN.pdf) (accessed August 25, 2015).

<sup>17</sup> In some European countries, there exist regulations (often laid down in collective agreements concluded at sectoral level) for older workers aimed to reduce their working hours, which often come with a high price. See: E. Sandor, *op.cit.*, 7.

<sup>18</sup> European Commission, Population Ageing in Europe, *cit.*, 5, 37.

<sup>19</sup> D. Wheatley, ‘It’s good to share: Job share as a solution to youth unemployment and ageing working populations’, Conference presentation at the 15th Association for Heterodox Economics Conference, London, 2013.

<sup>20</sup> I. Mandl, M. Curtarelli, S. Riso, O. Vargas, E. Gerogiannis, New forms of Employment, European Foundation for the Improvement of Living and Working Conditions, 2015, 38-39.

The use of working time accounts also encourages the smooth transition from working full time to working shorter hours. From a life course perspective, long-term working time accounts are of particular interest, as this option allows people to save time or money to finance any kind of leave at a later stage. In theory, this is the most dynamic and flexible working time option<sup>21</sup> one can rely on. Working time accounts are actively used in a number of Member States, including Germany, Finland, The Netherlands, Spain and Portugal. One might note that these “age-supportive” working time measures cannot always be applied successfully, for obstacles may arise at a supranational, national, sectoral, company and individual level. This aspect is important, as it can lead the parties to the employment contract to access different opportunities<sup>22</sup> concerning the reduction of working time.

Yet, to date, the author of this paper has not identified any limitations concerning the working arrangements covered here. Working Time Directive 2003/88/EC<sup>23</sup> only stipulates the maximum amount of working time, which cannot be exceeded (to preserve employees’ health). Within statutory limits, Member States and the contractual parties are free to organise working time autonomously. Therefore, the restrictions concerning the application of part-time work, job-sharing and working time accounts can arise from all the other levels of regulation, except the supranational one.

In the report “A New Vision for Older Workers: Retain, Retrain, Recruit”<sup>24</sup>, Altmann puts forward a number of proposals for employees, employers and the UK Government to improve the working lives of people over 50. As he has stated “Whilst it is for employers to adopt age

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[https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1461en\\_4.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1461en_4.pdf) (accessed August 23, 2015).

<sup>21</sup> U. Klammer, S. Keuzenkamp, Working time options over the life course: Changing social security structures, European Foundation for the Improvement of Living and Working Conditions, 2005, 37-39. [http://www.eurofound.europa.eu/sites/default/files/ef\\_files/pubdocs/2005/101/en/1/ef05101en.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_files/pubdocs/2005/101/en/1/ef05101en.pdf) (accessed August 23, 2015).

<sup>22</sup> U. Klammer, S. Keuzenkamp, *op. cit.*, 21-22.

<sup>23</sup> 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, <http://eur-lex.europa.eu/legal-content/ET/TXT/?uri=celex:32003L0088> (accessed August 26, 2015).

<sup>24</sup> R. Altmann, A New Vision for Older Workers: Retain, Retrain, Recruit, Report to Government by Dr Ros Altmann CBE Business Champion for Older Workers, 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/411420/a-new-vision-for-older-workers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/411420/a-new-vision-for-older-workers.pdf) (accessed August 20, 2015).

and family friendly policies including flexible working, job-sharing, family leave and phased retirement, I would like to see Government do more to promote these policies positively, both to employers by way of good practice and to employees so they are aware of options open to them. Flexible working and its benefits for young families are well known, but I feel there is more we can do to promote its utility for people in the later stages of their careers”<sup>25</sup>.

At a national level, much can be done to promote the use of age-supportive working time measures, such as part-time work, job sharing and working time accounts. In addition to rising people’s awareness of these working arrangements, the obstacles hindering their application also need to be identified and dealt with. To this end, the following paragraphs will outline the issues hindering the implementation of the initiatives mentioned before, providing solutions to overcome them.

### *3.1. Part-time Work*

In the survey “Attitudes of the over 50s to Fuller Working Lives” carried out in the UK, participants were asked what their advice would be to someone who was thinking about stopping work altogether and retiring. 36% of them recommended to consider switching to flexible or part-time work before stopping altogether<sup>26</sup>.

In Estonia, the importance of part-time work among elderly people was acknowledged in the strategic document “Bases of Estonian Elderly Policy”<sup>27</sup>. The document emphasises the need to create options for older employees to be flexibly transferred from working life to retirement, by implementing, among others, part-time work. The latter is considered to be one of the most common working arrangements in contemporary labour relations. Regardless of its promotion, the parties who wish to enter part-time work often face issues that make the use of part-time work unfavourable or even impossible.

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<sup>25</sup> R. Altmann, *op. cit.*, 35-36.

<sup>26</sup> 2,235 people aged 50+, including people not currently retired (1,003 in employment and 220 unemployed/not working) and people who had retired (1,022), were polled between 28 November and 3 December 2014 to explore their experiences and attitudes on late-life work and retirement. See Department for Work & Pension, Attitudes of the over 50s to Fuller Working Lives, cit. 14, 27.

<sup>27</sup> 28.09.1999 the Estonian Government approved the „Bases of Estonian Elderly Policy“. See more: [https://www.eesti.ee/est/vanuripoliitika\\_eeistis](https://www.eesti.ee/est/vanuripoliitika_eeistis) and <http://www.videvik.ee/447/alused.html> (accessed August 5, 2015).

It has been seen that the regulatory and the institutional framework varies considerably across the EU countries and may play a major role in the international implementation of this form of employment. Many regulations exist that may have a direct or indirect effect on the use of part-time work. For instance, labour laws may give the employer the right to deny an employee's request to work part-time under certain circumstances. On the contrary, other types of regulations may facilitate the voluntary conversion of full-time to part-time employment in order to reconcile personal and professional lives<sup>28</sup>.

A number of surveys conducted in the EU have indicated that the recourse to part-time employment over time and the variation in its use across countries are significantly affected by institutional and policy changes. In particular, policy measures aimed at encouraging part-time work are found to be positively related to certain initiatives. These measures include both the legal framework affecting part-time work and the creation of financial incentives (subsidies and increased social protection) to take up a part-time job. Moreover, other labour market institutions, including benefit systems, are found to significantly (albeit indirectly) affect the growth of part-time work<sup>29</sup>.

The author of this paper finds that financial incentives are particularly effective, especially after removing the constraints/restrictions hampering the use of this form of employment. Specifically, by reducing normative restrictions, there will be a more widespread use of part-time work, and the promotion of financial incentives to encourage the use of this working scheme will no longer be needed.

As far as Estonia is concerned, a number of legal constraints limiting the implementation of part-time work have been identified by the author. One of the main obstacles to the application of part-time work in Estonia is connected with employees' right to move from full time work to part-time work. In some Member States, the right to increase (or decrease) one's working time is stipulated by law, while in others it would be more complicated to amend one's working hours, as workers are only granted the right to ask for such a change. The legal right to move from full time work to part-time work can be exerted in Sweden, Germany and The Netherlands. In France, Spain and the UK, employees can only request to be transferred from full time work to part-time work. After receiving the

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<sup>28</sup> H. Buddelmeyer, G. Mourre, M. Ward. Recent Developments in Part-Time Work in EU-15 Countries: Trends and Policy, IZA DP No. 1415, 2004, 10.

<sup>29</sup> H. Buddelmeyer, G. Mourre, M. Ward, *op. cit.*, 16-17.

request, employers have an obligation to consider the possibilities of approving it<sup>30</sup>.

In the UK, section 80 F of the Employment Rights Act 1996<sup>31</sup> allows individuals to request reductions in working hours, changes to scheduling and place of work. However, legislation only applies to parents of young or disabled children, and, from April 2007, to some employees caring for adults, standing in stark contrast to the provisions in force in Germany applying to all employees (except to those in small firms with less than 15 workers). In the UK, employers can reject a request if implementing it would entail disproportionate costs or organisational problems<sup>32</sup>.

The normative limitations to part-time work related to specific social groups or enterprises of a certain size hamper the contractual parties' freedom to agree on shorter working time. The specific limitations may exclude elderly people from the labour market, as they may fall within the group that cannot enter into part-time employment contracts. Therefore, an analysis should be carried out at the national level to assess whether the limitations to part-time employment are justified and reasonable, especially considering their effects on older workers' employment rates.

According to the Estonian Employment Contracts Act<sup>33</sup> (EVTLS), which is no longer in force, working hours could be changed at the request of the employee. § 63<sup>1</sup> (1 and 2) of the EVTLS stipulated the employer's obligation to consider, whereas possible, the employee's willingness to transfer from full-time work to part-time work and vice versa or to increase working hours. This regulation is not provided in the Employment Contracts Act<sup>34</sup> (ILS), the provision that currently governs enforceable employment contracts. In this sense, in taking account of the employee's working activity for amending their working time, then the ILS prevails over the EVTLS, compelling the employer to provide the information needed. The employer's obligation to provide this information includes their duty to apprise a full-time employee of the

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<sup>30</sup> U. Klammer, S. Keuzenkamp, Working time options over the life course: Changing social security structures, European Foundation for the Improvement of Living and Working Conditions, cit., 21, 31.

<sup>31</sup> Employment Rights Act 1996, 22nd May 1996, <http://www.legislation.gov.uk/ukpga/1996/18/section/80F> (accessed August 12, 2015).

<sup>32</sup> C. Fagan, Out of Time, Why Britain needs a new approach to working-time flexibility, 2006, 9, <https://www.tuc.org.uk/sites/default/files/extras/outoftime.pdf> (accessed August 15, 2015).

<sup>33</sup> Employment Contracts Act, RT 1992,15/16,241. Void – RT I 2009,5,35/RT I 2009,11,67 – in force. 01.07.2009.

<sup>34</sup> Employment Contracts Act, RT I, 13.12.2014,55; RT I, 13.12.2014, 1.

possibility to move to part-time work, and the same should be done when full-time positions are available to part-timers, in consideration of their skills and expertise. The obligation arises from Directive 97/81/EÜ<sup>35</sup>, which aims to ensure that workers are adequately informed, so they can choose the most appropriate form of work. Pursuant to § 28 s 2 ss 10 of the TLS, the employer has an obligation to make information regarding any opportunities that might arise to move to part-time or full-time employment available to staff. The employer fulfils this obligation properly if specific information is made publicly available, for example on the employer's homepage, information board or in other channels used by the employees<sup>36</sup>. Changes to working time can take place by mutual agreement, otherwise it is impossible to amend one's working time. Working time flexibility depends on the responsiveness of the employer to create a modern working environment and to provide employees with the opportunities to work part-time. In the survey "Elderly People in the Labour Market" carried out in Estonia by RAKE in 2012, Estonia's rigidity concerning working time became evident, as 63% of those in employment who were surveyed pointed out the impossibility to amend their working time. In addition, 76% of the unemployed questioned for the survey also highlighted their impossibility to change working hours in their previous jobs<sup>37</sup>. Others also referred to Estonian employers' reluctance to implement part-time work.

Pursuant to § 8 s 7 of Germany's Act on Part-Time and Fixed-Term Contracts (TzBfG)<sup>38</sup>, the reduction of working time is possible if the employer has more than 15 employees, not counting trainees. If an employee, whether or not employed part-time, wants to change the

<sup>35</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex: Framework agreement on part-time work, OJ L 14, 20.1.1998, p. 9-14, <http://eur-lex.europa.eu/legal-content/ET/TXT/PDF/?uri=CELEX:31997L0081&from=ET> (accessed August 23, 2015).

<sup>36</sup> E. Käärats, T. Treier, S. Suder, M. Pihl, M. Proos, Töölepingu seadus [Employment Contracts Act], Selgitused töölepingu seaduse juurde [Explanations to the Employment Contracts Act], Sotsiaalministeerium [Ministry of Social Affairs], 2013, 68. [https://www.sm.ee/sites/default/files/content-editors/eesmargid\\_ja\\_tegevused/Too/Toolepingu\\_seadus\\_selgitused\\_toolepingu\\_seaduse\\_juurde.pdf](https://www.sm.ee/sites/default/files/content-editors/eesmargid_ja_tegevused/Too/Toolepingu_seadus_selgitused_toolepingu_seaduse_juurde.pdf) (accessed August 23, 2015).

<sup>37</sup> The elderly were defined in the survey as people aged 50 to 74 years. See more: K. Espenberg, M. Sammul, S. Vahaste, R. Haljasmäe, Vanemaealised tööturul [Elderly People on the Labour Market], cit. 3, 32.

<sup>38</sup> Act on Part-Time and Fixed-Term Contracts [Teilzeit- und Befristungsgesetz], BGBl. I S. 1996; BGBl. I S. 2854

duration or the distribution of the agreed working time, the employer is compelled to inform the employee of any equivalent position available at the company<sup>39</sup>. According to § 8 s 5 of the TzBfG, the decision concerning the reduction or the distribution of working time shall be notified to the employee in writing within one month of the changes taking place. If no agreement is reached, the employer may reject the employee's request for "business reasons", which is valid if part-time work considerably complicates the workflow of the enterprise, endangers the safety of the company, or if it entails significant costs<sup>40</sup>.

In Estonia, the employer's obligation to inform a full-time employee about the possibility of entering part-time work and a part-time employee about the possibility of accessing full time work does not compel the employer to offer workers the position<sup>41</sup>, nor does it include the employer's duty to meet the employees' request to be transferred from full-time to part-time work. Unlike German law, the TLS does not stipulate the conditions regulating the cases in which the refusal of working time reduction is justified, and the employer is not obligated to justify the rejection. The existing rules increase employers' powers and make the employment relationship more rigid. In the author's opinion, working time flexibility can be improved by establishing a legal obligation for employers to motivate their refusal, or by determining the criteria when the employer's refusal is justified. Factors hindering the application of part-time work can also be found in Tax Law. In Germany, for example, the differences in the amount of working time, and certain social security thresholds, significantly influence the use of part-time work<sup>42</sup>. The author's opinion is that marginal part-time workers should not be treated

<sup>39</sup> M. Weiss. M. Schmidt, *Labour Law and Industrial Relations in Germany*, Third revised edition, Kluwer Law International, 2000, 54.

<sup>40</sup> H. Lovells, *Part-time work in Germany*, Lexology, 2012, <http://www.lexology.com/library/detail.aspx?g=cef321f3-4dcc-4c45-9e97-03356c5a51e2> (accessed August 25, 2015).

<sup>41</sup> E. Käärats, T. Treier, S. Suder, M. Pihl. M. Proos, *Töölepingu seadus [Employment Contracts Act]*, *Selgitused töölepingu seaduse juurde [Explanations to the Employment Contracts Act]*, cit. 36, 68.

<sup>42</sup> In Germany, however, a number of thresholds have traditionally been in force excluding the so-called *geringfügig Beschäftigte* (part-time workers not complying with "the requirement of a minimum working time (15 hours) per week and whose income does not exceed one-seventh of the monthly wage or, where pay is higher, one-sixth of the total income") from social security areas such as that of unemployment insurance, health insurance and statutory pension schemes. N. Countouris, *The Changing Law of the Employment Relationship, Comparative Analyses in the European Context*, Ashgate, 2007, 93.

unequally compared to other part-time workers whose working time exceeds the minimum statutory threshold, especially in relation to the allocation of public unemployment benefits, health and pension insurances.

In Estonia, the granting of the pension and the health insurance is dependent upon the payment of social contributions deducted from one's wage and other forms of remuneration. In 2016, full-time workers (40 hours per week) have the right to a minimum wage of 430 euros per month<sup>43</sup>. § 43 s 1 of the TLS defines part-time work as working time shorter than full time work. Therefore, part-time work occurs when one performs work up to a maximum of 40 hours per week. This might result in wages less than the minimum one and inferior to the minimum rate of tax required monthly. According to Estonian Social Tax Act<sup>44</sup> (SMS) § 21, the monthly rate providing the basis for the payment of social tax shall be established in the state's annual budget, which for 2016 is equal to 390 euros. The minimum tax amount is therefore 128,70 euros per month (33% of 390, save for exceptions provided by law)<sup>45</sup>. By fulfilling minimum tax obligations, employees comply with the qualifying period to draw the pension and access the health insurance.

However, the author of this paper thinks that the minimum social tax obligation does not encourage the implementation of marginal part-time work, as it may give rise to disproportionate tax obligations if compared to the payable wage. For this reason, the author argues in favour of employees' equal treatment, regardless of their wages and hours worked. Any form of part-time work can be promoted by stipulating rules pursuant to which the amount of taxes to be paid is arrived at irrespective of one's salary and other forms of remuneration. This mechanism would enable all workers to be treated equally and eliminate the disproportion of taxation affecting marginal part-time workers.

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<sup>43</sup> Determination of the Minimum Wage, Estonian Government Regulation, n. 139. RT I, 22.12.2015,51.

<sup>44</sup> Social Tax Act, RT I, 19.03.2015, 62;RT I, 19.03.2015, 2.

<sup>45</sup> Tax rates in 2015, Estonian Tax- and Customs Board, <http://www.emta.ee/index.php?id=35954&tpl=1026> (accessed July 23, 2015).

### 3.2. Job Sharing

In the context of the EUROFOUND project “New Forms of Employment”<sup>46</sup> carried out in 2013, ten new forms of work were identified in the EU, one of which was job-sharing. This working scheme has been known in Europe for some time, though it might represent a novelty in a number of Member States. The concept of job-sharing was introduced in Europe in recessionary times. In the 1980s and the early 1990s, OECD countries faced a tremendous increase in the unemployment rate (10%), so work-sharing was proposed as a remedy for high unemployment. There are two types of work-sharing that have been used until recently: “job-sharing” (e.g. a position is filled by more than one person) and “trading hours for jobs” (e.g. reducing the working time of workers under contract to create jobs)<sup>47</sup>.

Job-sharing differs from work-sharing in that the latter is a more generic term that applies to any steps taken to redistribute work in order to reduce unemployment.<sup>48</sup> Many countries facilitate work-sharing as a labour market policy tool aimed to preserve existing jobs or to create new ones. Unlike work-sharing, today job-sharing is not usually used as a measure to avoid layoffs or increase employment<sup>49</sup>. Job-sharing is seen as one of the flexible work paradigms that could provide relief from work overload for employees’ with disabilities, young children, health problems, or eldercare responsibilities, as well as for those who seek early retirement.

Job-sharing as a working time organisational measure is not used consistently by all Member States. Therefore, the definition of job-sharing may also differ among countries. For example, in the UK, job-sharing is defined as a “form of flexible working which enables two employees to voluntarily share the responsibilities and duties of one full time job. Pay, benefits and leave entitlement for job sharing are allocated on a *pro rata*

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<sup>46</sup> M. Curtarelli, New forms of employment and work. First results from a Eurofound EU-28 (+Norway) research project, <http://webcache.googleusercontent.com/> (accessed March 23, 2015).

<sup>47</sup> T. Miyakoshi, The efficacy of job-sharing policy, *Applied Economics Letters*, 2001/ 8, 437-439.

<sup>48</sup> J. G. Pesek, C. McGee, An Analysis of Job Sharin, Full-Time and Part-Time Work Arrangements: One Hospital’s Experience, *American Business Review*, 1989, vol. 7, issue 2, 35.

<sup>49</sup> International Labour Office, Work-sharing and job-sharing, Information Sheet No. WT-17, 2004, 1, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/--travail/documents/publication/wcms\\_169673.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--travail/documents/publication/wcms_169673.pdf) (accessed March 19, 2015)

basis (divided approximately by hours worked)”<sup>50</sup>. In Germany, part-time working schemes in the form of job-sharing are explicitly permitted by the TzBfG<sup>51</sup>. §13 s1 ss1 TzBfG stipulates the following “the employer and the employees may agree that some of the latter share working time at work (job-sharing).”

At a supranational level, job-sharing has been defined by the International Labour Organisation (ILO) as “a voluntary arrangement whereby two persons take joint responsibility for one full-time job and divide the time they spend on it according to specific arrangements made with the employer.”<sup>52</sup> EUROFOUND defines job-sharing as an “employment relationship in which one employer hires several workers, but normally just two, to jointly fill a single full-time position”<sup>53</sup>.

Most Member States (including Germany, Hungary) provide special regulations for job-sharing, even though the lack of specific rules does not prevent the use of this working scheme. During the 7<sup>th</sup> annual seminar “New Forms of Employment and EU Law” organised by the European Labour Law Network, participants found that some of the new working arrangements in the EU are covered by existing norms applying at the national level (e.g. job sharing is regulated by rules governing part-time work)<sup>54</sup>.

Job-sharing arrangements are seen in Germany as forms of part-time employment, while in the UK, job-sharing is considered to be flexible working<sup>55</sup>. The concept of job-sharing is unknown in Estonian labour law, though the author sees no obstacles to apply job-sharing in the framework of part-time work regulation. To define job-sharers as part-time workers, they have to be guaranteed the same rights as full-time workers. The obligation to guarantee job-sharers the same rights as full-time workers makes the application of the rules governing part-time work too costly for Estonian employers.

<sup>50</sup> Civil Service Employee Policy, Guide to Job Sharing, JobShareGuide260115FFVnoDNs, 2, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/406045/JobShareGuide260115FVnoDNs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406045/JobShareGuide260115FVnoDNs.pdf) (accessed August 23, 2015).

<sup>51</sup> Weiss, M, Labour Law and Industrial Relations in Germany, KLI, 2008, 63.

<sup>52</sup> International Labour Office, Work-sharing and job-sharing, cit. 49, 1

<sup>53</sup> Eurofound, New forms of employment, 2015, 31, [http://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1461en\\_3.pdf](http://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1461en_3.pdf) (accessed August 26, 2015).

<sup>54</sup> New Forms of Employment and EU Law, 7th Annual Legal Seminar, European Labour Law Network. Seminar Report, 2014, 31.

<sup>55</sup> Civil Service Employee Policy, Guide to Job Sharing, cit. 50, 2.

For instance, § 55 of the TLL establishes that an employee's annual holiday consists of 28 calendar days, which have to be granted to all employees, regardless of the working arrangement entered into. Accordingly, this also applies to part-time employees sharing work. In the author's opinion, Estonia's regulations on part-time work fail to promote the use of job-sharing schemes, since they produce additional costs for the employer. Therefore, ad-hoc regulation should be foreseen to encourage the recourse to this form of employment and simplify its implementation, making provisions for the right to calculate holidays, and the resulting pay amount, on a *pro rata* basis.

### 3.3. Working Time Accounts

The system of working time accounts was introduced in Europe as early as 1967, and is actively used in a number of Member States. Germany has led the way in the implementation of this tool, which is used to provide a more dynamic approach to working time during the life course. Working time accounts have been introduced in an estimated 67% of German companies<sup>56</sup>, while their use is a possibility that remains under-explored in the UK<sup>57</sup>. Working time accounts enable employers to react rapidly to market fluctuations, and employees to organise their working time according to individual needs and interests<sup>58</sup>. Short-time and long-time working time accounts also help to combine work and family life better<sup>59</sup>. The principle of working time accounts establishes that, in a reference period, employees can work more or less hours than agreed in the employment contract or in collective agreements, and are entitled to collect credit or debit hours in their working time accounts. Accumulation of credit hours will give employees the right to gain time off from work as a form of compensation. As for debit hours, they express the time employees have to work beyond normal working time to pay off his/her

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<sup>56</sup> C. Fagan, Out of Time, Why Britain needs a new approach to working-time flexibility, cit. 32, 55.

<sup>57</sup> C. Fagan, *op. cit.*, 9.

<sup>58</sup> T. Schulten, Provisions on working time accounts in collective agreements, European industrial relations observatory on-line, Germany, 1998, 2.

<sup>59</sup> P. Berg, Working Time Flexibility in the German Employment Relations System: Implications for Germany and Lessons for the United States, Industrielle Beziehungen, 2008, 138.

“working time debt”<sup>60</sup>. Consequently, it is possible for elder employees who have saved working time in such accounts to work less if they get older without losing any wage<sup>61</sup>. Although the principle for implementing working time accounts is rather similar in Member States, the system put in place might differ depending on the economic sector and the type of business<sup>62</sup>.

Working time accounts can differ in the way they are used, in the application of time-elements, and in the distribution of working hours. Other categorisations of working time accounts are based on the length of compensation periods and make a distinction between short-time<sup>63</sup>, long-time and lifetime accounts<sup>64</sup>.

The differences between working time accounts are due to the fact that the main conditions of this work arrangement are generally agreed at the collective or at individual level and not laid down by statute. For example in Germany, the Working Time Act (ArbZG)<sup>65</sup> only stipulates the mandatory terms and certain exceptions which need to be complied with once working time has been agreed upon. Therefore, the minimum requirements established by law set the framework for collective agreements, while the duration and variability of working time are often negotiated at a collective level. Sectoral collective agreements generally leave enough leeway to negotiate working time conditions at the company level<sup>66</sup>. Decentralisation of working time from national, regional or sectoral level to company level substantially simplifies the application of working time accounts<sup>67</sup>.

In Member States, collective agreements are the most common tools to agree on working time account systems. In Estonia, collective relations are

<sup>60</sup> F. Kramarz, Working Time Developments in Germany. T. Boeri, M. Burda, F. Kramarz (eds.), *Working Hours and Job Sharing in the EU and USA: Are Europeans Lazy? Or Americans Crazy?* 2008, 156.

<sup>61</sup> F. Hendrickx (ed.), *Active Ageing and Labour Law*, cit., 6, 225-226.

<sup>62</sup> T. Schulten, Provisions on working time accounts in collective agreements, cit. 58, 2.

<sup>63</sup> Short-time accounts are defined as having a compensation period of up to one year. See more: H. Seifert, *Flexibility through working time accounts: reconciling economic efficiency and individual time requirements*, cit. 71, 3-4.

<sup>64</sup> H. Seifert, *Flexibility through working time accounts: reconciling economic efficiency and individual time requirements*, WSI Discussion Paper No. 130, 2004, 2.

<sup>65</sup> Working Time Act - BGBl. I S. 1170, 1171; GBl. I S. 868.

<sup>66</sup> R. Bispinck, Germany: working time and its negotiations. M. Keune, B. Galgoczi (eds.), *Collective bargaining on working time, Recent European Experiences*, ETUI, Brussels, 2006, 112.

<sup>67</sup> International Labour Office, *Flexitime and „time banking“ schemes*, Information Sheet No. WT-14, 2004, 2.

not well developed, and the role of collective agreements to organise labour relations is marginal<sup>68</sup>. Therefore, agreements concerning the application of working time accounts are mostly decentralised to the company level, enabling each enterprise to decide individually whether, and under which conditions, the system of working time accounts can be implemented. Within the company, a number of working time accounts can be set up concurrently, although, in the presence of transition criteria, it would be possible to transfer the collected debit or credit hours from one working time account to another<sup>69</sup>.

The possibility to transfer the time-elements helps to move unused credit hours from short-time to long-time or lifetime working time accounts, also enabling to collect the time elements in larger amounts and to use them at a later stage of life in a number of ways. Short-time, long-time and lifetime working time accounts differ primarily in the ways they are used and the different time-elements that can be entered into them as well as in their method of organisation<sup>70</sup>. Short-time working time accounts usually consist of time-elements accumulated as a result of fluctuations in daily working time. Long-time and lifetime accounts may additionally contain other time-elements, such as overtime work, unused holiday days, and so forth.

Based on the duration of the working time account, various options exist allowing one to use the time-elements collected. For example, the credit hours collected in short-time working time accounts can be used mainly to make working days or weeks more flexible, while those accumulated in long-time or lifetime working time accounts can be used for longer holidays, for educational purposes or to work shorter hours.

Lifetime working time accounts enable workers to use the credit hours collected in the account in their later stage of life to reduce their working time. In addition, they favour access to pension schemes at the company level<sup>71</sup>.

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<sup>68</sup> For example, in 2009 the working conditions were collective negotiated only in 5,8% of the Estonian companies. See more: M. Masso, the Survey on Estonian Working Life 2009. Ministry of Social Affairs 2011, n. 3, 70.

<sup>69</sup> P. Wotschack, E. Hildebrandt, Working-life Time Accounts in German Companies: New Opportunities for Structuring Working Hours and Careers? P. Ester, R. Muffels, J. Schippers, T. Wilthagen (eds.), *Innovating European Labour Markets. Dynamics and Perspectives*, 2008, 4.

<sup>70</sup> H. Seifert, Flexibility through working time accounts: reconciling economic efficiency and individual time requirements, cit. 64, 2.

<sup>71</sup> P. Wotschack, E. Hildebrandt, Working-life Time Accounts in German Companies: New Opportunities for Structuring Working Hours and Careers? cit. 69, 2.

In Estonia, the main concern is the expiration of the credit hours collected in the account. In this sense, pursuant to §146 s1 of the General Part of the Civil Code Act<sup>72</sup> (TSÜS), a three-year limitation period should be set for a claim arising from a transaction. Therefore, the employee's claim concerning the time and the monetary elements collected in the working time account expires at the end of the third year, hampering the possibility to apply for those working time accounts which last longer (e.g. long-time and lifetime working time accounts).

In the author's opinion, this state of things can be prevented by enforcing §158 s1 of the TSÜS, pursuant to which the limitation period is interrupted and resumed upon recognition of the claim by the applicant.

The fact that, every three years, the employer acknowledges the credit hours collected by the employee in working time accounts enables the latter to last longer<sup>73</sup>.

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<sup>72</sup> General Part of the Civil Code Act - RT I 2002,35,216; RT I, 06.12.2010,12.

<sup>73</sup> A. Kalson, Tööajakontod ja nende rakendamine Eesti tööõiguses [Working Time Accounts and their Application in Estonian Labour Law], *Juridica*, 2014, n. 2, 112-119.



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