Implementation Report
Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC

EU Member States: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia

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1. Introduction

This report concerns the implementation, in the ten 2004 Member States, of the Framework Agreement on part-time work concluded by the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and the European Trade Union Confederation (ETUC) on 6 June 1997 which was implemented by Directive 1997/81/EC. It is written in the context of Contract reference VC/2005/0038, concerning Studies on the Implementation of Labour Law Directives in the enlarged European Union. This report is based upon the national reports submitted to the Commission and additional information provided by national experts[1].

The purpose of the Framework Agreement is, firstly, to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work; and, secondly, to facilitate the development of part-time work on a voluntary basis and to contribute to the organisation of working time in a manner which takes into account the needs of employers and workers. It is perhaps too soon to come to conclusions about the success of the measure in achieving these ends in the ten Member States.

In 2004 the average figure for those in part-time employment in the EU25 was 17.7%. There is clearly a gender dimension to part-time employment with almost one third of women workers in the EU working part-time compared to just 7% of men. There is a significant difference between Member States. The Netherlands has 46% of its workforce on part-time contracts, with three quarters of its female work force working part time. Belgium (21.4%), Denmark (22.2%), Germany (22.3%), Luxembourg (17.8%), Netherlands (45.5%), Austria (20.2%), Sweden (23.6%) and the UK (25.8%) all exceed the EU average.

This contrasts with the proportion working part-time in some of the new Member States at less than 5%, such as the Czech Republic, Hungary and Slovakia. Seven of the newest Member States were in a range from 8% to 10.8%.

Part-time work, taking into account the working population as a whole, is on the increase in the majority of Member States, but there was an actual decline in proportionate terms in the Czech Republic, Estonia, Latvia and Lithuania. The lowest proportion overall is in Slovakia with just 2.7%, compared to the highest of 10.8% in Poland. Female participation in the workforce, however, declined in six of the Member States between 2000 and 2004 (Czech Republic, Estonia, Cyprus, Lithuania, Malta and Slovakia).

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Part-time work in the 10 Member States[2]

(figures in brackets represent the proportion of female workers)

Member State	2000	2004
Czech Republic	5.3 (9.3)	4.9 (8.3)
Estonia	8.1 (10.9)	8.0 (10.6)
Cyprus	8.4 (13.9)	8.5 (13.4)
Latvia	11.3 (12.8)	10.4 (13.2)
Lithuania	10.2 (11.1)	8.4 (10.5)
Hungary	3.5 (5.2)	4.7 (6.3)
Malta	6.8 (5.8)	8.7 (4.0)
Poland	10.5 (13.4)	10.8 (14.0)
Slovenia	6.5 (7.8)	9.3 (11.0)
Slovakia	2.1 (3.1)	2.7 (2.2)

[2] Taken from *Employment in Europe 2005* European Commission

2. Overview

The Directive has been transposed in all the Member States concerned in this report, although there are issues connected to adequate implementation.

In many Member States the implementing legislation is recent. As a result there is a lack of formal studies into its effectiveness and there have only been a limited number of judicial cases in the national courts.

Czech Republic

The Framework Agreement was transposed by the Labour Code Europeanisation Amendment Act (No155/2000), effective from 1 January 2000, amending Sec.86 of The Labour Code (No65/1965.). Parliament passed the new labour code (Act No. 262/2006 Coll) on 21 April 2006; on 7 June it became valid, with its effect deferred until 1 January 2007.

Estonia

The Framework Agreement is implemented by the Employment Contracts Act, (Eesti Vabariigi töölepingu seadus), Articles 13[1], 7, 28(2). It entered into force on 1 July 1992. Also of relevance is the Working and Rest Time Act, Articles 4 and 6.

Cyprus

The Employees with part time work (prohibition of disadvantageous treatment) Law No.76(I) of 2002 transposes the Framework Agreement (the Cypriot Law). Also of relevance is the Termination of Employment Law 1967-1994.

Latvia

Articles 3, 6, 7, 28, 29, 39, 131 and 134 of the Labour Law of Latvia (Darba likums – LL), which came into effect on 1 June 2002, transposed the Framework Agreement into Latvian Law.

Lithuania

Under Para 1 Article 48 of the Constitution of the Republic of Lithuania every person has the right to have adequate, safe and healthy conditions at work, to receive fair remuneration for work and be provided social security in the event of unemployment. The Labour Code of the Republic of Lithuania No IX-926, of June 4, 2002, Official Gazette No.64 (the Labour Code), which came into effect on January 1 2003, contains the provisions which implement the Framework Agreement.

It is not possible to have an employment relationship without having an employment contract.

Hungary

The Framework Agreement is transposed primarily by Act XXII of 2003 which amends the Labour Code, and the Equal Treatment Act. Clauses 1a, 3.2, 4.1, 4.2 and 4.4 of the Directive fall under the Equal Treatment Act. Other provisions on part-time work are contained in the Labour Code.

Malta

The Directive is primarily transposed by the Employment and Industrial Relations Act, 2002 (Act XXII of 2002, Cap 452 of the Laws of Malta) ['EIRA'] which amended the Conditions of Employment (Regulation) Act of 1952 (Cap 135 of the Laws of Malta) and the Industrial Relations Act, 1967 (Cap 266 of the Laws of Malta).

The EIRA is supplemented by Regulations brought into force by Legal Notice 427 of 2002 [LN 427/02] entitled Part Time Employees Regulations, 2002.

Poland

The Directive has been transposed by provisions contained in Articles 2, 11, 18, 29, 94, 151, 154 and 186 of the Labour Code.

Slovenia

The Directive has been transposed through Articles 23, 64-66 , 144, 154, 159. of the Employment Relationship Act (Zakon o delovnih razmerjih, Ur.l. RS, št. 42/02), which came into effect on January 1 2003, as well as the provisions of the Workers' Participation in Management Act.

Slovakia

The Directive is transposed by Article 49 of the Labour Code of 2001 (Act No. 311/2001 Coll. *Zakonnik prace* as amended).

3. Analysis of transposition measures

Clause 1: Purpose

The purpose of this Framework Agreement is:

a. to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work;
b. to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organization of working time in a manner which takes into account the needs of employers and workers.

The purposes of the Framework Agreement are not explicitly referred to in national legislation in the Member States, with the exceptions of Cyprus (Article 3.1 of the Cypriot Law) and Malta (Regulation 1(2) of Legal Notice 427/2002).

Clause 2: Scope

1. This Agreement applies to part-time workers who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State.
2. Member States, after consultation with the social partners in accordance with national law, collective agreements or practice, and/or the social partners at the appropriate level in conformity with national industrial relations practice may, for objective reasons, exclude wholly or partly from the terms of this Agreement part-time workers who work on a casual basis. Such exclusions should be reviewed periodically to establish if the objective reasons for making them remain valid.

Czech Republic

Czech legislation does not differentiate between full time and part time workers nor does it offer definitions of workers or employees, except insofar as they have an employment relationship as construed by national law. There are three categories of workers which are included in the term employment relationship. These are those with a labour contract, those with an agreement for the performance of a work assignment and those with an agreement on working activity. The Labour Code applies to all who have an employment relationship, with some special provisions for certain public officials who are considered civil servants. These are: soldiers, policemen, fire fighters, warders, and customs officers. In practice these groups are not treated as employees. Other state public officials will be regulated by the Act No. 218/2002 Coll., on Civil Service; (this is, however, still not in force). Regional and municipal clerks are regulated first by the Labour Code and then by the Act No. 312/2002 Coll., on Regional Autonomies Officials.

Clause 2.2 of the Framework Agreement is not taken advantage of. There is no definition of casual work, but agreements for work performed outside the employment contract may be considered as such, especially an agreement for the provision of a work assignment. (Sec.236 of the Labour Code and Sec. 75 and 77 of the New Labour Code).

Estonia

The concept of employment relationship is not defined in law. The Act and case law (see Tallinna Ringkonnakohus nr 2-2/239/2005 3 March 2005.), however, suggest that it is a legal relationship between an employee and employer arising from the moment an employee commences work (Article 28 (2) of the ECA). Under Article 1 of the Act the existence of the employment relationship, whether full-time or part-time, does not depend on the existence of a formal written contract. Thus, the commencement of the work by an employee with an agreement from an employer, according to Article 28 (2) of the ECA, is equivalent to entering into an employment contract.

It is possible to do work under other forms of contracts including: a contract for services, regulated by Article 636 of the Law of Obligations (Võlaõigusseadus) or an authorisation agreement defined by Article 619 of the Law of Obligations. If parties choose to regulate the fulfilment of a particular task by contract other than an employment contract – then the relationship between the parties is outside the protection provided by the ECA.

Article 7 of The Employment Contracts Act also excludes 13 groups of employees from its provisions. These are

1. service as a member of the Riigikogu, the President of the Republic or an official appointed to office by the President of the Republic or the Riigikogu;
2. state officials and local government officials whose service relationships are regulated by the Public Service Act;
3. active service in the armed forces;
4. work as a member of a farming family for a family enterprise, in a family farm enterprise;
5. household work by parents, spouses or children for one another and care by such persons for one another;
6. work by family members in a shared household and care for family members;
7. work on the basis of a contract of service (such contracts are regulated by a specific Act);
8. work in a religious organisation as a person conducting religious services if the fundamental tenets of such organisation does not require entry into an employment contract with such person;
9. performance of a transaction on the basis of an authorisation if the person performing such transaction receives income from the transaction and bears proprietary risk for the success of the transaction;
10. relationships of directors of bodies of legal persons or Estonian branches of foreign companies, and members of administrative boards of state enterprises with legal persons, Estonian branches of foreign companies or state enterprises;
11. activities based on contracts for services or other civil law contracts;
12. work performed during imprisonment (the Employment Contracts Act extends to persons who do community work in lieu of imprisonment, subject to the exceptions prescribed by other Acts);
13. other activities directly prescribed by law and persons directly referred to by law."

The employment conditions of those categories of workers and officials are regulated by specific legislative acts, such as in the case of service as a member of the Riigikogu, which is regulated by the Constitution of the Republic of Estonia, Riigikogu Rules of Procedure Act, Riigikogu Internal Rules Act and Members of the Riigikogu Official Wages, Pension and Other Social Guarantees Act; service of state officials and local government officials is regulated by

the Constitution of the Republic of Estonia and the Public Service Act; and active service in the armed forces is regulated by Defence Forces Service Act.

Some employees in the public service and state and local government officials are therefore excluded from the ECA. Framework regulation for the employment of these public servants is provided through the Public Service Act (PSA -Avaliku teenistuse seadus) adopted on 25 January 1995. According to the PSA public servants are divided into three categories: officials, support staff and non-staff public servants. An official is 'employed in service by appointment to an office' (Article 19 PSA). Thus instead of a contract of employment their working relationship is regulated by a directive or order. Support staff are clerical staff employed under contracts of employment and Article 13(2) PSA provides that the ECA will extend to support staff insofar as the PSA or laws specifically regulating the public service do not provide otherwise. Non-staff public servants are persons employed for a specific time on the basis of an appointment or an employment contract to perform the functions of an official or as a member of the support staff. The terms and conditions of support staff are generally regulated in accordance with the provisions of the ECA.

The Employment Contract Act does not provide for casual work exceptions listed in Clause 2.2 of the Framework Agreement.

Cyprus

The Termination of Employment Law 1967-1994 defines an 'employee' as any person who works under a contract of employment, although the courts may consider a person to be an employee without a contract if they believe that a relationship of employer and employee exists, taking into account the particular circumstances of the case. The Termination of Employment Law also defines the term 'employer' as any person with whom the employee has entered into a contract or who is deemed by the Court to have the status of an employer, including the Government. Workers in both the private and the public sector are therefore included.

There is no definition of casual work. Casual work may be performed in circumstances where an employment relationship may be inferred or under circumstances where it is clear that it is contracted work and not done in an employment relationship. Part-time employees working on a casual basis are excluded from the scope of the law but this was to be determined by Regulations, Article 4(2)(a) of the Cypriot Law. However, no such Regulations have been issued.

In addition, full-time workers affected by partial unemployment owing to collective or temporary reduction of normal working hours due to economic, technical or structural reasons are also excluded, Article 4(2)(a) of the Cypriot Law. There is no reference to objective justification and it is open to interpretation by the Courts. Both these exceptions are to be reviewed 'periodically' establishing their continuing validity; the term 'periodically' is not defined, nor is there any criteria upon which the review of the decision will be based.

Latvia

The LL does not distinguish between part-time workers and others. In Article 3 it defines a worker as a natural person who, on the basis of an employment contract for an agreed work remuneration, performs specific work under the guidance of an employer. Article 28(1) of the LL establishes that employment relationships are established by an employment contract.

Article 39 of the LL supplements this with the recognition that a contract exists from the moment that the agreement is made. Article 40 provides for a written contract of employment, although Article 41 establishes the validity of an oral contract.

The option in Clause 2.2 is not taken advantage of.

Lithuania

An employee, as defined in Article 15 of the Labour Code, is a natural person possessing legal capacity in labour relations employed under an employment contract for remuneration. All employees are included in the definition, including those in the public and the private sector and there are no workers or groups of workers who are excluded.

An employment contract is an agreement between the employer and employee. The employer undertakes to provide the work specified in the contract, pay the agreed remuneration and ensure that all working conditions are those established by labour law, other regulatory acts or collective agreements as well as any agreement between the parties. The parties cannot agree to terms which are less favourable than those provided in the labour code, other regulatory acts or collective agreements. The employee agrees to undertake the work specified in accordance with the work regulations established at the workplace.

The exception provided in Clause 2.2 has been not been taken advantage of. There is no specific definition of casual work, although casual work can be performed under a temporary employment contract which is defined by the Labour Code as an employment contract concluded for a period not exceeding two months. Grounds for the conclusion of a temporary employment contract as well as the working and rest time of temporary workers is established by the Government Resolution No.1043 of August 19, 2003 and Article 113 of the Labour Code.

Hungary

An employee is one who works under a contract of employment as defined by Section 71 of the Labour Code. Employment relationship is not explicitly defined, but it may be inferred from the Code that it is a relationship which is established by an employment contract between an employer and an employee.

Public service employment relationships are not regulated by the Labour Code but by Act XXIII. of 1992 on the legal status of civil servants (Ktv.) and Act XXXIII. of 1992 on the legal status of public employees (Kjt.). These Acts have provisions on part time work that are in line with the Labour Code. These workers are not employees, but public employees and civil servants who have a different legal status.

Framework Agreement Clause 2.2 is taken advantage of.

Act LXXIV of 1997 on Casual work with Casual Employee Card establishes the casual status of workers, resulting in such workers being excluded from the protection offered to part-time workers. With regard to the rules on work on a casual basis the casual employee may work for 120 days for one employer or 200 days for two or more employers within a one year period. The Act provides that the casual employee has a different legal relationship which ensures that they can not be treated as part-time workers.

The employment relationship of casual workers is primarily governed by Act LXXIV. of 1997 on Employment with Casual Employee Card. This Act contains the altering rules from the Labour Code and also lists those provisions of the Labour Code (article 11), which shall not apply to casual workers. The appropriately filled casual employee's book is the employment contract and the legal relationship is a special from of employment. The casual employee does not have working time, but works the freely agreed period of time (days) for one or many employers and pays social contribution, which is registered in the casual employee's book. As a consequence of these special conditions of this legal relationship, the casual employee can never work part-time. Therefore, this casual work relationship does not fall under the scope of the Directive.

Malta

Article 2 of the EIRA defines employee as any person who has a contract of service, or any person who has undertaken personally to execute work or service under the immediate direction and control of another person, including an outworker. Regulation 2 of LN 427/02 provides that the Regulations shall apply to all part-time employees as defined under the EIRA, but exclusions are provided for elected office holders, apprentices, public and judicial appointees.

The Regulations do not make any reference to casual work and so Clause 2.2 is not taken advantage of.

The EIRA and the legal notices issued under it only apply to employees in the private sector. Public sector employment is regulated by the Public Service Management Code. Article 48(1) of the EIRA empowers the Prime Minister to prescribe the applicability of the provisions of the Act to public sector employees. At the time of the original writing this report no such regulations had been prescribed. Subsequently, LN 46/07 of 2007 entitled Extension of Applicability to Service with Government (Part-Time Employees) Regulations was published on March 9 2007.

Poland

An employee in Article 2 of the Polish Labour Code is defined as a person employed on an employment contract, appointment, election, nomination or co-operative employment contract. Those working on other grounds are not employees. The Code does not differentiate between full time and part time employees and extends the same protection to both.

Article 29 provides the features of a contract of employment. These are payment for non forced work, work personally performed by the employee who is subordinate to the employer and is obliged to perform work continuously, with the employer carrying the risks of effects of work performed. This definition of the employment contract may be used both for private and some types of employment in public sector. Under Polish legislation persons employed based on other grounds, such as nomination for public services, mandatory contracts and others are not considered as employees, so the definition of civil servants covers persons who are employed based on the nomination (officials) or based on the employment contract (employees). The military are excluded.

Clause 2.2 is not taken advantage of in respect of those working under a contract of employment. Casual work is not recognised in the Labour Code but Article 29[2] does not exclude any employee employed on a casual basis. Casual work is often performed on the basis of a civil contract, and is therefore not given the same level of protection as an employment contract.

Slovenia

The employment relationship is defined in Article 4 of the Employment Relationship Act as a relationship between the worker and the employer, in which the worker, in return for remuneration, continuously carries out work in person according to the instructions and under the control of the employer.

Article 5 defines a worker as any natural person who has entered into an employment relationship on the basis of an employment contract; whilst the employer is a legal and natural person or another legal entity, such as state body, local community or a subsidiary of a foreign company, employing the worker on an employment contract. Workers in the public sector are defined in the Civil Servants Act, according to Article 1 of which, a public employee is a natural person, who has entered into an employment relationship in the public sector. The Civil Servants Act does not have any specific provisions on part-time work. The Employment Relationship Act, in this respect, also applies to civil servants.

Office holders, such as those in positions as a result of a political decision, are specifically excluded from the definition of public employees.

The Health and Safety at Work Act, Article 3, sets out a broader definition of the terms employer and worker, although this broader definition leads to difficulties in practice in defining when somebody is an employer or an employee. An employee in this Act also includes persons employed on any other legal basis, or performing work independently or as a self-employed person. The definition of employee under the Health and Safety at Work Act applies to the consideration of health and safety matters.

No advantage has been taken of the option in Clause 2.2 of the Framework Directive.

Casual work is only legally possible for secondary school and university students and for voluntary trainees. Temporary or occasional work my be undertaken by those aged over 15 for up to 90 days a year, but such work is carried out under the Code of Obligation and not under an employment contract. They are therefore not categorised as employees or workers according to the legislation.

Slovakia

The Labour Code 311/2001 Coll. applies to employees generally in both private and public employment. Public and civil servants are not outside the scope of application, despite the fact that their employment relations are governed by special laws.

The definition of an employee is provided in Article 11 of the Labour Code and states that an employee is 'an individual who in labour law relations and, if specified by special regulation also in similar labour relations, performs dependent work for the employer pursuant to instructions, for a wage or for remuneration. The Labour Code does not distinguish between part-time and full-time employees as concerns their rights and obligations under the Labour

Code. Provisions of the Labour Code refer to them collectively as employees, except for some special cases where it is explicitly stipulated that certain rights or obligations do not relate to part-time employees (especially in Article 49 of Labour Code). Part-time employment relationships are established as soon as an employee has entered into a part-time employment contract (Article 49 Sec.1 of the Labour Code). This means that the part-time employment can only be established if an employment contract with a part-time clause is signed by the parties. The same applies in case of changing the contract from an existing full-time contract to a part-time contract. However, if the amendment on changes from the full-time contact to a part-time work is not made in a written form, such formal failure shall not cause invalidity of the part-time contract itself.

Public and civil servants are not outside the scope of application of the Directive despite the fact that their employment relations are governed by special laws. The full implementation of the Directive in these sectors has been ensured via a delegated force (applicability) of the Labour Code. The relationship between the Labour Code and Act No. 312/2001 Coll. on Performance of Duties in Civil Services is based on the principle of delegation. In practise this means that the Labour Code shall only apply to legal situation if it is explicitly stated in Act No. 312/2001 Coll. on Performance of Duties in Civil Services.

The option to terminate a contract for less than 20 hours on 15 days notice (Article 49 Sec. 6) call into question the adequacy of the transposition.

According to the Slovak Labour Code part-time workers are considered to be casual workers. The only difference, if compared to full-time workers, is that they do not work 40 working hours per week, but less than 20 hours per week. This special category of workers and employment, introduced in 2003 as a single replacement for agreements on work activities, face to the existence of numerous exceptions from equal treatment and legal option to terminate a part-time employment relationship where working hours do not exceed 20 hours per week within 15 days notice period. When explaining the suppression of two different notice periods, it is necessary to mention that before 2003 employers were allowed to sign the so-called agreements on work activities with employees, where working hours were less than 20 hours per week, whereas the agreement could have been terminated with 15 days notice and social protection of these workers were lessened (e.g. income from the work carried out following the agreements were free from any social contributions). After 2003, the agreements were "replaced" by a regular employment relationship - a part-time employment with working hours that do not exceed 20 hours per week. As a result of the previous era, a 15 days notice period remained legally possible to accommodate employers´ requirements for flexible employment relations. Officially, there are no legal reasons or objective grounds to excuse shortening of a notice period to 15 days as compared to 2 or 3 months notice that is guaranteed to full-time workers or workers whose weekly working time exceeds 20 hours per week but does not get to 40 hours per week.

Clause 2.2 of the Framework Agreement has not been taken advantage of.

Clause 3: Definitions

For the purpose of this agreement:

1. The term 'part-time worker` refers to an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker.
2. The term 'comparable full-time worker` means a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority and qualification/skills.
3. Where there is no comparable full-time worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement or, where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.

Czech Republic

Sec.83 para 3 of The Labour Code (Sec 83a para 2, 3, 4 of the new labour Code) provides that part-time workers are those who voluntarily agree to work shorter hours than usual (usual as defined by collective agreements and by-laws), and part time as anything less than hours recognised by the employer as standard. The standard reference time for work is one week and full time working time may not exceed 40 hours per week (Sec. 83a para of the Labour Code and Sec. 79 para 1 of the new Labour Code), since there are some jobs and sectors where standard working time is lower than 40 hours. If the contract provides for fewer hours as standard then the individual is considered to be a part-timer. There are some categories of workers who are also in 'shorter full-time work'; this is termed as 'shortened statutory working time'. There are specific hours set for miners, 3 shift workers and those employed in continuous services (Sec 83a para 2(b) of the Labour Code and Sec 79 para 2(a)(b) of the new Labour Code); for 2 shift workers (Sec 83a para 2(c) of the Labour Code and Sec 79 para 2(c) of the new Labour Code). These shorter hours may be set unilaterally by an employer or in a collective agreement (Sec83a para 4 of the Labour Code and Sec. 79 para 3 of the new Labour Code).

There are no zero hours contracts and job sharing with mutual responsibility is not permitted (although this may change with the adoption of the new Labour Code), although an employer is permitted to employ two part-timers to carry out the work. There are specific types of part time workers mentioned in the Labour Code. These are those in two parallel part-time employment relationships, those employed in a secondary employment relationship or activity and those who are employed in an agreement on a working activity.

There is no definition of comparable full time worker. If there is no comparable worker in the same establishment then no comparison can be made. The whole notion is secured by equal treatment. It is prohibited to treat equal employees unequally. However, since there is no definition of a comparable worker, every discrimination shall be decided ad hoc. In the Czech law there is no provision that the reference shall be made to the relevant collective agreement. It is possible, but so far there are no practise examples. Whether the case is discrimination will be decided by the authority: the Labour Inspection or the court. An employee will claim he or she was discriminated comparing with other similar employees of the employer. If there are none, the comparison shall probable be made based on ideal

similar worker, but it is unclear. But there is not much experience with this, there is no judgment of the Supreme Court of the Czech Republic so far.

Estonia

The ECA does not provide a definition of part-time worker. However, Articles 4(1) of the Working and Rest Time Act (the WRT) provide that the general national standard for the working time of employees is eight hours per day or forty hours per week.

Furthermore, Article 6 states that 'part-time working time is working time determined by an employer which is shorter than the established standard for working time and which is applied by agreement between an employee and the employer.' There are a number of categories of worker for whom a shorter working week is permitted. These include young workers, those employed in underground work and school teachers. Thus the concept of part-time worker is defined by the reference to a standard working time for a comparable full-time worker in general or in a specific group additionally regulated by the WRT.

The definition of the term comparable full-time worker, contained in Article 13[1] ECA, is that of an employee working for the same employer, who is engaged on the same or similar work, with due regard being given to such considerations as the qualifications and skills of the employee. There is no limitation to the same establishment, nor is there any reference to the need for comparability of employment contracts. Where there is no comparable employee working for the same employer, then reference can be made to the relevant collective agreement. If there is no such agreement then there can be reference to a worker engaged in the same or similar work in the same region.

The law does not recognise zero hours contracts and job sharing.

Cyprus

Article 2 of the Cypriot law has a definition of an employee with part-time employment. This is: 'an employee who, due to an employment contract or an employment relationship, or under such circumstances from which an employment relationship can be inferred, whose hours of work, when calculated on a weekly basis or on average per year, are less than the normal hours from a comparator employee working in full-time employment'. It follows that when an employee works uneven hours from week to week, then the total hours of work in a year must be taken into consideration in order to categorise him as either part-time or full-time.

The term comparable full-time worker is defined as the employee who works in the same establishment as the part-time worker; having the same type of employment contract or relationship as the part-time worker; is engaged in the same or a similar work/occupation as the part-time worker', due regard being given to other considerations which may include seniority and qualification/skills and specialisation'.

There is also a provision as regards the situation where there is no comparable full-time worker in the same establishment in Article 5 of the Cyprus law, where 'the comparison shall be made by reference to the applicable collective agreement or, where there is no applicable collective agreement, in accordance with national law, collective agreements or practice',

There is no explicit reference to work to include any other types of employment contracts or relationships, such as zero hour contracts or job sharing, but there is nothing preventing such an inference.

Latvia

The LL does not contain a distinction between a part-time and a full-time worker. Although Article 134(1) of the LL stipulates that an employer and an employee may agree on an employment contract on part-time work that is shorter than the regular daily or weekly working time. The regular or normal working week is 40 hours in a five day working week. According to the Article 131 (1) of the LL, the regular daily working time of an employee may not exceed eight hours, and regular weekly working time 40 hours (2080 hours per year), although the Supreme Court has held that this provision is to be interpreted as meaning that actual normal working time is 40 hours per week. Daily working time is working time within a 24-hour period. There are exceptions, e.g. for work subject to special risks, for which a shorter week can be regarded as full-time (Article 131(3)).This can be extended or reduced within one week (131.2 and 131.3). A part-time worker is someone who has agreed on working time which is shorter than these norms (Articles 3(1) and 134(1) of the LL). This is the only definition of part-time work available.

There is a general definition of an employee which states that an employee is a natural person who, on the basis of an employment contract for an agreed work remuneration, performs specific work under the guidance of an employer. Part-time work is defined by reference to daily or regular working time rather than to a comparable full time worker. The starting point for a reference period may be a day or a week, but also another period (e.g. one month or a three month period) could be chosen.

The only definitions available are general definitions of a part-time worker (Articles 3(1) and 134(1)) and a comparable full time worker who is a natural person who, on the basis of an employment contract for an agreed work remuneration, performs specific work under the guidance of an employer 40 hours per week; Articles 3(2) and 131(1). There appears to be nothing more specific than this.

Lithuania

The Labour Code has no definition of part-time worker or full time worker. Under Article 142 of the Labour Code, working time means any period during which the employee must work carrying out his or her activity or duties. This may not exceed 40 hours per week or, normally, 8 hours per day. Article 145 of the Labour Code sets a shorter working time for some particular workers.

Article 146(1) of the Labour Code sets out the conditions under which part time working may be set, but neither the Labour Code nor other legislation establishes who has the responsibility (the employee or the employer) for taking the initiative on part time working. Article 146(2) provides that part-time work may be by agreement established by decreasing the number of working days per week or shortening a working day (shift), or doing both. Part-time work during a working day may be divided into parts. Other conditions related to the procedure of establishing part-time work and duration thereof are set by the Government.

National legislation is silent on whether part-time work includes any other types of employment contracts or relationships, such as zero hour contracts or job sharing.

National law does not provide for a definition of comparable full-time worker, so there is nothing which determines how a comparison should be made in situations where there is not a comparable worker in the same establishment.

Hungary

Section 78/A of the Labour Code provides that, in the absence of an agreement to the contrary, employment relations are concluded for full-time employment of eight hours per day or 40 hours per week. Employment is recognised as part time if work is carried out under a contract with provision for working fewer hours, Section 117/B. Part time work may include other types of employment relationships such as zero hours contracts or job sharing, but there is no practice in these respects. Section 117/B states

1. The working time of full-time employment shall be eight hours a day, or forty hours per week.
2. Provisions pertaining to labour relations or an agreement between the parties may stipulate less working time for full-time employment than that specified in Subsection (1).
3. Based on an agreement between the parties, the working time of full-time employment may be increased to not more than twelve hours daily or to sixty hours weekly for employees

    a. working on-call duty;
    b. who are close relatives of the employer or the owner [Subsection (2) of Section 139].

4. For the purposes of Subsection (3) 'owner' shall mean any member of the business association holding more than twenty-five per cent of the votes in the company's decision-making body.
5. In order to prevent any health hazard or danger, the maximum time allowed for conducting any particular activity may be stipulated by law or by collective agreement, where additional restrictions may be prescribed as well.

It is also possible on Health and Safety grounds to hold contracts of employment for full time working which is less than eight hours a day or forty hours a week.

According to Act 23 of 1992 on Public Servants (Ktv.), the weekly working hours is 40, from 8 am to 4.30 pm from Monday to Thursday and from 8 am to 2 pm on Fridays. Although it is not mentioned as such, but the very regulation providing for part-time work allows working hours to be less than 40 per week. In accordance with the general rules of labour law, the usual allowances shall be reduced proportionately (Section 39)."

According to the Labour Code the same rights and allowances apply to part-time workers as in the case of full-time employees. The only exception to this rule is the case of the principle of proportionately with time. Section 78/A subsection 2 of the Labour Code contains *'pro rata temporis'*: in case of part-time employment at least the principle of proportionality with time shall be applied with respect to the pecuniary and non-pecuniary allowances granted either directly or indirectly, in case the right to such allowances is related to the duration of working hours. The *pro rata temporis* should, however, only be applied to those pecuniary or non-

pecuniary employer allowances granted either directly or indirectly where the right to such allowances is related to the duration of working hours. The application of the principle of proportionality with time is obligatory only as a lower limit of benefits, or minimal standard, since a more advantageous allowance for the employer may be specified. The principle of proportionality with time shall be applied for instance when defining the personal basic wage, supplementary wages or the duration of wearing work-clothes. It cannot be applied, however, to allowances not in relation to the duration of work e.g. when defining the duration of ordinary holidays or travelling expenses. There is no provision for periodic review.

Working time is explicitly mentioned as one of the possible grounds of forbidden discrimination by Article 8 of the Equal Treatment Act 2003. A comparable full time worker is not explicitly defined although Article 8 suggests that to prevent direct discrimination comparisons must be made with comparable workers in comparable situations. There is no definition of the meaning of a comparable situation. If there is not a worker in a comparable situation in the same establishment then discrimination cannot be proven.

Malta

The EIRA, Article 2, provides that a part-time employee is an employee whose normal hours of work, calculated on a weekly basis, or on an average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time employee and who is not a full-time employee with reduced hours. This is defined as "…a whole-time employee who in agreement with the employer works for less than the number of hours of work applicable in terms of the recognized conditions of employment to a whole-time employee, in respect of which social security contributions are payable".

There is no reference to zero hours contracts and job sharing.

Comparable whole-time employee means a whole-time employee in the same establishment who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualification and skills. Where there is no comparable whole-time employee in the same establishment, the comparison shall be made by reference to collective agreements covering similar comparable whole-time employees in other establishments. Also, where there is no applicable collective agreement, reference shall be made to law or in default, to the prevailing practice as may be established by the Employment Relations Board.

Poland

The definition of an employee in Article 2 includes part-time employees. The Labour Code has only one definition of employee; the term 'employment on part-time basis' is used (Article 29(2)), rather than the term part-time employee. In the provisions there is a restriction that the conclusion of the part-time contract may not be a reason for less favourable settlement of work or remuneration conditions. The Polish Labour Code is essentially concerned with work on a full-time basis with Article 29(2) providing that the settlement of rights and obligations in the case work on a part-time basis may not be less favourable than in the case of full-time work.

There is no definition of comparable full-time worker, but there are references to a 'comparable situation' and 'comparable qualifications' and to work 'on full-time basis'. Although a comparable full time worker is not explicitly defined there is a general application of the anti-discrimination provisions (Article 11^{2}, Articles 18^{3a} to 18^{3e} of the Polish Labour Code) which apply. Article 18(3a) was extended to include employment on a part-time basis.

There are no references to the situation as to what should happen if there is no comparable full-time worker.

There is no job-sharing system and zero hours contracts are unknown.

Slovenia

The Employment Relationship Act does not include any explicit definitions of the terms included in the Directive. Definitions can be inferred from the provisions on part-time employment contracts and working hours, and the definitions of employment contracts. According to Article 64 of the ERA an employment contract may be concluded for working time that is shorter than full working hours. Part-time shall be deemed to be working time that is shorter than the full working hours with the employer. Article 142 para 1 states that full working hours shall not exceed 40 hours per week and shall not be less than 36 hours per week. It is possible to provide for full working hours of less than 36 hours per week only where there is a risk of injury or damage to health. Part-time hours are defined in relation to the number of hours regarded as full-time by an employer.

There are provisions for supplementary part time work under which a full time worker may, with the employers consent, take part time employment with another employer for up to eight hours a week. Supplementary employment is only permitted in shortage occupations or in education, art, culture or research work. Article 146(1) states: 'A worker, who works full-time, may in exceptional circumstances conclude a part-time employment contract with another employer, however, for not more than eight hours per week, with the prior consent from the employers by whom the worker is employed full-time, provided that this involves carrying out work in occupations that according to the data of the Employment Service suffer from the deficiency of workers or carrying out of educational, cultural, artistic and research works'.

There is no definition of a comparable full-time worker, except Article 64(3) states 'the worker who concluded a part-time employment contract shall have the same contractual and other rights and obligations arising from the employment relationship as the worker who works full-time, and shall exercise these rights and obligations proportionately to the time for which the employment relationship was concluded, with the exception of those for which it is otherwise stipulated by law'

Article 66 provides that a part-time worker will have the same rights and obligations arising from an employment relationship as a full-time worker. Article 66 defines pension, sickness, health insurance and parental leave rights and obligations of part time workers as being the same as those of a full time worker, with the remuneration being based on the actual time worked. According to Article 65 of the ERA, the worker may conclude a part-time employment contract with several employers and thus achieve the full working hours stipulated by law.

Certain types of employment contracts such as zero hours or job sharing, do not exist in the national law and in practice.

Slovakia

The term part-time worker refers to 'an employee who has entered into an employment contract with less working hours as compared to normal weekly working hours' Article 49 Sec. 1 labour Code). Full time worker refers to an 'employee who has entered into an employment contract on a scheduled 40 hour working week.' Working hours can be scheduled on a regular or irregular basis. Regular hours are calculated over a period of 4 weeks, within which the average weekly working hours can not exceed the scheduled weekly hours. The scheduling of irregular working hours is based on a 4 month reference period within which the average weekly working hours can not exceed the scheduled weekly hours. Under Article 87 of the Labour Code the reference period related to irregular scheduling can be prolonged to 12 months by agreement.

The Labour Code does not provide a minimum limit on the number of working hours of a part-time worker and there is no provision for job sharing or zero hours contracts .

There is no explicit definition of a 'comparable full-time worker' in the Labour Code. Article 49 Sec. 5 of the Labour Code states that 'a part-time employee shall not be treated more or less favourably than compared to a full-time employee'. This means that other considerations such as seniority and qualifications/skills are not taken into account. There are no provisions to deal with the situation when there is no comparable worker in the same establishment.

The Labour Code is silent on what should be done if there is not a comparable worker in the same establishment.

Clause 4: The principle of non-discrimination

1. In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds.
2. Where appropriate, the principle of pro rata temporis shall apply.
3. The arrangements for the application of this clause shall be defined by the Member States and/or social partners, having regard to European legislation, national law, collective agreements and practice.
4. Where justified by objective reasons, Member States after consultation of the social partners in accordance with national law, collective agreements or practice and/or social partners may, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualification. Qualifications relating to access by part-time workers to particular conditions of employment should be reviewed periodically having regard to the principle of non-discrimination as expressed in Clause 4.1.

Czech Republic

Sec. 1 Para 3 of the Labour Code (Sec. 16 para 1 of the new Labour Code) provides an obligation on employers concerning the provision of equal treatment for all their employees. This not only means discrimination with regard to employment conditions is not permitted, but also applies the principle of *pro rata temporis* , taking into account any differences of treatment based on seniority, qualifications and skills. The non-discrimination clauses in the Labour Code were adopted after widespread consultation with the social partners.

There is no legal definition of employment conditions. Czech Labour law uses the term "working conditions" in the sense of legal or other preconditions for performance of work in line with rights and obligations of the parties to the contract of employment. The doctrine sometimes distinguishes between employment conditions and remuneration conditions. Employment conditions include i.e. annual leave and hours.

The general practice is not to distinguish between full timers and part timers, although this is not expressly stated. Part-time is no valid basis for different treatment other than that part-timers simply work shorter than full-time workers. Labour contracts usually do not have non-discrimination clauses since discrimination is already prohibited by the Labour Code.

Those who are employed in an employment relationship based on an agreement on working activity (Sec. 237 ff. of the Labour Code) have only 15-day notice periods for termination of employment relationship and may even be dismissed without the need to provide a reason (Sec. 70b Para 1 of the Labour Code and Sec. 238 Para 2 of the Labour Code). These contracts are based upon an employment relationship and the employees concerned may only work half the normal hours. These employees are thus discriminated against when compared to other employees. This results, therefore, in discrimination against part-time employees compared to those workers not employed on an agreement on working activity. The New Labour Code does not distinguish between normal employees and employees who are employed in "secondary" employment relationships, but discrimination of employees who are employed in employment relationships based on an agreement on working activity remains (Sec 76 Para 6). Employees who are employed in employment relationships based on an agreement on working activity may not increase to longer working hours equivalent to more than half of standard working time without concluding a labour contract, instead of the agreement on working activity, thus ensuring that such part-timers are treated less favourably.

If a part–timer has no other job, he or she is not regarded as having a secondary employment relationship. If he or she does have, his or her part–time job is regarded as a secondary employment relationship, but only in the situation where his or her job is not based on an agreement on work performed outside an employment contract.

Employment relationships shorter than 60 days have a special formula for the calculation of annual leave and are not considered as casual work.

The principle of *pro rata temporis* is not expressly defined in the Labour Code, but in practice there appears to be a proportional approach to part-timers.

Justification on objective grounds is not legally defined, although permission for different treatment is regulated by Sec. 1 Para 3 and 5 of the Labour Code. Objective grounds are determined by the nature of work and when different treatment is necessary. Discrimination

must be a result of a substantial and decisive requirement for work, provided that the objective is legitimate and the requirement is proportionate.

Estonia

Article 13[1](1) of the Employment Contracts Act (ECA) states that: 'part-time workers shall not be treated in a less favourable manner in an employment relationship than comparable full-time workers, unless different treatment is justified on objective grounds arising from the law or collective agreement'.

The non-discrimination provision is broadly worded and it is not clear how 'employment conditions' are defined or what the 'objective grounds' that may justify unequal treatment between part-time and full-time employees are. Article 10[1] of the ECA does, however, provide a number of instances which are not to be deemed as discrimination. These are: preferential treatment on the grounds of pregnancy, confinement, giving care to minors or adult children incapacitated for work and parents who are incapacitated for work; preferential treatment on the grounds of membership in associations representing the interests of employees or representing the interests of employees; preferential treatment for disabled workers, including the creation of a working environment which takes into account of the special needs of disabled workers; taking account of the sex, level of language proficiency, age or disability upon employment of a person, or upon giving instructions or enabling access to retraining or in-service training, if this is an essential and determining professional requirement arising from the nature of the professional activity or related conditions; allowing a suitable working and rest time regime which satisfies the religious requirements of an employee."

The legislation does not refer to the principle of *pro rata temporis* or specific arrangements for application of non-discrimination principle.

There are no collective agreements existing on the issue of application of the principle of non-discrimination in relation to part-time employees.

So far on a level of the Member States' option provided in the clause 4.4 of the Directive has not been utilized.

Cyprus

Clause 4.1 is transposed verbatim in Article 6(1) of the Cypriot law but there is no definition of the meaning of employment conditions.

The principle of non-discrimination is implied by law into contracts of employment and is presumed to have universal application although its interpretation has yet to be tested in case law. Any justification on 'objective grounds', as in Framework Agreement Clause 4.1 and 4.4, is not defined.

Clause 4.2 is transposed verbatim into national law in Article 6(2). The principle of *pro rata temporis* is defined in Article 2 and ensures that the part-time employee receives pay and other benefits on a pro rata basis in comparison to the full-time comparator.

Although Clause 4.3 of the Directive provides that the arrangement for the application of Clause 4 shall be defined by the Member State and/or social partners, there is no relevant provision in the Cypriot law

Framework Agreement Clause 4.4 is replicated in Articles 6.3(a) and 6.3(b) allowing, where justified by objective reasons, access to particular conditions of employment subject to a period of service, time worked or an earnings qualification. However, in practice this has not been taken advantage of.

There are no rules for periodic reviews, nor are there any criteria upon which the review decision will be based. The term 'periodic' is not defined. No reviews have taken place, nor have any planned reviews been announced.

Latvia

Article 7 of the LL states that everyone has an equal right to work and to fair, safe and healthy working conditions, and to fair remuneration. Article 134(3) of the LL states that 'the same provisions which apply to an employee who is employed for regular working time shall apply to an employee who is employed part-time'. It is suggested that the term 'provisions' used here may be interpreted as meaning 'rules' and that this may give it a wider definition than the term 'conditions' used in the Framework Agreement. There is no further definition of employment conditions, although it has been further proposed that working conditions, in a Latvian context, means the working environment, equipment and facilities at work, as well as legal and economic guarantees. Combined with Article 7 this appears to provide the guarantees required by Clause 4.1 of the Framework Directive.

The LL appears to meet the requirements of the principle of *pro rata temporis* as it makes distinctions based on workload, e.g. in regard to the minimum wage, the *pro rata temporis* principle is generally applied even though it has no statutory support. Article 134(3) does state that the same provisions which apply to an employee who is employed for regular working time shall apply to an employee who is employed part-time.

According to the Supreme Court of Latvia overtime begins to run only over and above the normal working time, which it has interpreted to be 40 hours a week. Therefore the overtime rate of pay is not applicable when a part-time employee works longer hours than specified in the contract but less than 40 hours a week.

There is no application of Clauses 4.3 or 4.4 of the Framework Agreement.

Lithuania

The principle of non-discrimination of part time workers is not expressly defined in labour legislation. The Labour Code has a general prohibition of discrimination in employment relationships. Article 2 defines equality as one of the governing principles of legal regulation of labour relations. The Law on Safety and Health at Work defines the principle of non-discrimination in more detail by stating that safe and healthy working conditions are to be ensured for every worker regardless of the nature of business of an undertaking, the type of employment contract, number of workers, profitability of the undertaking, workstation, working environment, work type, the duration of the working day (shift), the worker's citizenship, race, nationality, sex, sexual orientation, age, social background, political views or

religious beliefs. The guarantees of safety and health at work are explicitly applied to public servants of state and municipal institutions and agencies.

The principle of non-discrimination is not explicitly included in contracts of employment. However, the refusal to employ, and the termination of employment on discriminatory grounds are expressly prohibited and carry compensation equal to the minimum wage for the period from the refusal to the court judgement. Part-time workers are covered by this provision.

Differentiation of wages depending on the type of employment contract or employment relationship would contradict Para 3 of Article 186 of the Labour Code which sets wage determination principles and establishes the right of part time workers to pro rata payments.

Para 3 Article 146 of the Labour Code which states that employees are to receive payments in proportion to the time worked applies the principle of *pro rata temporis*. There are similar provisions in Para 1 Article 10 of the Law on Wage Payment.

As stipulated in para 6 Article 147 of the Labour Code, working time actually worked by employees is recorded in model time logs approved by the Government. The employees who, according to the working functions performed, manage their working time at their own discretion, are to have the rules for accounting their working time established by the employer upon agreement thereof with the employee representatives. The list of such positions is to be laid down in the collective agreements, work regulations.

There is a definition of the conditions of an employment contract in Para 1 Article 95 of the Labour Code. The Labour Code does not stipulate that period of service qualifications should be the same for part time workers as for full-time workers, except where justified on objective grounds. There is nothing said in the law about objective grounds justifying different treatment

The exception defined in the Clause 4.4 is not taken advantage of.

Hungary

The Equal Treatment Act covers all employment relationships including the legal relationships of civil servants and public employees. The general scope means that equal treatment provisions of separate Acts – for example the Labour Code – must be applied in conformity with the Act. The Equal Treatment Act provides a general exemption for objective justification in Section 7 sub section 2.

Direct, indirect discrimination harassment, segregation and victimisation against part-time workers is specifically prohibited, especially regarding access to employment, establishing and terminating the employment relationship, training, determining and providing working conditions, benefits including wages, participation in employees' organisations and promotion.

Article 8 also provides a list of the grounds of discrimination and is open ended in that it includes the term 'other status or characteristic'. The rule on the comparator can be found in Article 8 on direct discrimination. The treatment of a part-time worker or a group of part-time workers must be compared to another person or group in a comparable situation. This is a vague rule but it does, however, give scope for wider comparisons. Hungarian law (article 8

of ETAct) does not exclude the comparison between employees of different employers or any kind of comparison. It talks about comparison between persons in a comparable situation. Therefore, it could mean anything and interpretation is up to the court and the Euqal Treatment Authority. There has not been a decision on this particular issue.

According to the Labour Code the same rights and allowances apply to part-time workers to full-time employees. The only exception to this rule is the case of the principle of proportionately with time. Section 78/A subsection 2 of the Labour Code contains '*pro rata temporis*': in case of part-time employment at least the principle of proportionality with time shall be applied with respect to the pecuniary and non-pecuniary allowances granted either directly or indirectly, when the right to such allowances is related to the duration of working hours.

There is no provision for periodic review.

There are no measures with regard to Clause 4.3.

There is the possibility of objective justification in the Equal Treatment Act. There are special rules with regard to the employment relationship. As for objective justification, the Equal Treatment Act contains a general exemption Clause (Section 7 Subsection 2. Employment relationships are covered by a special exemption clause for employment (Section 7 Subsection 22). Accordingly, the principle of equal treatment is not violated in employment relationships, if the distinction is proportional, justified by the characteristic or nature of the work and is based on relevant and legitimate terms and conditions (article 22.a). There have not been any cases interpreting this Clause. This exemption Clause complies with the text of the Directive.

Malta

Article 25 of the EIRA provides that part-time employees shall not be treated in a less favourable manner than comparable whole-time employees solely because they work part-time unless different treatment is justified on objective grounds. Regulation 4(1) also provides that it is the duty of the employer to ensure that a part-time employee is not treated less favourably than a comparable full-time worker, with regards to the terms of the employee's contract of employment and by being subjected to any other detriment by an act, or deliberate failure to act, of the employer, solely because of the employee's part-time work

Different treatment may be justified on objective grounds. An example of this may be in Regulation 4(2) where payment to part-timers of a lower rate for overtime than full-time employees is permitted where the total number of hours worked by the part-time employee is less than the number of hours worked by the full-time equivalent.

Clause 4(2) dealing with the application of the *pro rata temporis* rule is implemented by Regulation 6. Part-time employees, whose part-time employment is their principal employment and who are not employed in such part-time employment for less than twenty hours a week, are entitled, *pro rata,* to the minimum entitlement of all public holidays and annual vacation leave, sick leave, birth leave, bereavement leave, marriage leave and injury leave, applicable in terms of the recognised conditions of employment, and to such other leave established by virtue of the EIRA. Such employees are also entitled to statutory bonuses and other income supplements to which comparable whole-time employees on

similar duties with the same employer are entitled in terms of the recognised conditions of employment applicable to them. For the purposes of these entitlements, in cases of varying working hours, the weekly average number of hours is based upon the hours worked during successive thirteen-week periods commencing on the 1st January of each calendar year.

Regulation 6 also provides that where a maximum number of hours is less than twenty hours a week, in the case where the part-time employment is the principal employment of the employee and the employee is employed for not less than fourteen hours in any week, any part-time employee in such employment shall be entitled *pro rata* to the benefits in the same regulation. The wage of such employee shall be the hourly rate related to the number of hours of work for which the employee is employed.

No provision is made for periodic reviews.

There are no provisions with regard to Clause 4.4 of the Framework Agreement.

Poland

The principle of non-discrimination as a general principle is established in Article 32(2) of the Constitution. There is a ban on any kind of discrimination within employment relationships, including part time working under Article 11^3 of the Polish Labour Code. Article 11^3 states that any discrimination in employment, either direct or indirect, in particular that based on sex, age, disability, race, religion, nationality, political beliefs, trade unions' membership, ethnic origin, religious belief, sexual orientation, and also based on the type of employment contract (fixed term or indefinite) or a person's employment status (full-time or part-time) is not permitted. There is no case law concerning discrimination in part time contracts. Article 18(3a) also states that employees should be treated equally in the conclusion and termination of employment relationships, employment conditions, promotion and access to training to improve professional qualifications regardless of the same grounds.

The principle of non-discrimination is not included in contracts of employment. However, Article 94^1 obliges the employer to make the text of the provisions concerning equal treatment in employment accessible to workers. This information is to be distributed in written form or in the normal manner accepted by a particular employer.

Article 29^2 para 1 forbids less favourable terms and conditions and establishes a part time worker's right to proportionality of remuneration and other benefits related to working time including holiday periods, overtime working, leave and childcare leave.

There appear to be no specific provisions relating to Directive Article 4.4, although it would be normal for such measures to be the subject of consultation with the social partners.

Slovenia

The principle of non-discrimination is included in Article 64 of the Employment Relationship Act paragraph 3. It states that the worker who concluded a part-time employment contract shall have the same contractual and other rights and obligations arising from an employment relationship as the worker who works full time, and shall exercise these rights and obligations proportionately to the time for which the employment relationship was concluded, with the exception of those for which it is otherwise stipulated by law. This is stipulated for annual leave and for rights to participation in management. Neither of these

rights is dependent upon the number of hours worked. Exceptions which are specifically provided for are the right to a break (workers who work less than 4 hours per day do not have the same proportionate rights as those that work four hours or more) and re-imbursement of expenses for meals during work (workers who work less than 4 hours are not entitled to this). Wages and severance pay are specifically stated as being proportionate to the time worked.

Articles 154 and 159 of the ERA set out the rights to breaks and leave for part time workers which are essentially based on *pro rata temporis*. This is the only example of this given.

The principle of non-discrimination is also implied into contracts of employment.

There are no measures concerned with the implementation of Clauses 4.3 or 4.4.

Slovakia

Article 13 of the Labour Code states that 'an employer is obliged to treat with employees in accordance with the equal treatment principle as it is set for the area of labour relations in a separate legal document'. This document is the Act on Non-Discrimination of 2004 which is a general regulation applying to all legal relations including employment relations. A person who has been less favourably treated than another in a comparable situation is protected against direct discrimination and may take steps to remedy or receive compensation for damages. As "comparable situation" is not defined. It is not clear how it might be applied to "comparable full time worker" other than by drawing inferences such as the same undertaking, same or similar work/occupation, seniority and qualification/skills from the Directive itself.

Article 49 Sec. 5 of the Labour Code explicitly includes the principle of non–discrimination. Section 7 of the Article introduces a number of exceptions for employees whose working time is less than 20 hours per week. In particular, an employee who works less than 20 hours per week is entitled to only 15 days notice rather than the 2 months applicable to a full time employee. They can also be dismissed when on sick leave or military or public service duty. The dismissal can take place without discussion with employee representatives and carries no right to redundancy or severance payments.

The principle of *pro rata temporis* is applied in Article 49 Sec. 4 of the Labour Code which says that 'a part-time employee shall receive a salary which shall be reduced appropriately to agreed part-time working hours'. The same principle applies for days due for vacation which are to be paid out. The part-time employee shall receive a compensation of salary for days of vacation, however, up to a number of hours he/she should have been working as a part-time employee on that particular day.

There are no measures with regard to Clause 4.3.

Clause 4.4 is reflected in Article 49 Sec. 6 and 7 of the Labour Code. The first of these permits a shorter period of notice (15 days), without reasons being given, for employees working less than 20 hours per week. This was settled after consultation and is, apparently, objectively justified for reasons related to high unemployment. There are proposals to reduce this 20 hour threshold to 15 hours. In addition there are a number of other exceptions, for those working for less than 20 hours per week. These include the lack of a right to redundancy

payments and severance payments. The Labour Code does no define objective grounds, which apparently permits this discrimination against part-time employees.

Clause 5: Opportunities for part-time work

1. In the context of Clause 1 of this Agreement and of the principle of non-discrimination between part-time and full-time workers:

    a. Member States, following consultations with the social partners in accordance with national law or practice, should identify and review obstacles of a legal or administrative nature which may limit the opportunities for part-time work and, where appropriate, eliminate them;
    b. the social partners, acting within their sphere of competence and through the procedures set out in collective agreements, should identify and review obstacles which may limit opportunities for part-time work and, where appropriate, eliminate them.

2. A worker's refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment, without prejudice to termination in accordance with national law, collective agreements and practice, for other reasons such as may arise from the operational requirements of the establishment concerned.
3. As far as possible, employers should give consideration to:

    a. requests by workers to transfer from full-time to part-time work that becomes available in the establishment;
    b. requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise;
    c. the provision of timely information on the availability of part-time and full- time positions in the establishment in order to facilitate transfers from full-time to part-time or vice versa;
    d. measures to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions, and where appropriate, to facilitate access by part-time workers to vocational training to enhance career opportunities and occupational mobility;
    e. the provision of appropriate information to existing bodies representing workers about part-time working in the enterprise.

Czech Republic

The Czech Republic appears not to have taken any action to identify or remove any obstacles to part-time working.

The only valid reasons for termination are those set out in an exhaustive list in Sec. 46 of The Labour Code (Sec. 52 of the new Labour Code). The refusal to transfer between full and part time working is not a valid reason.

Directive Clause 5.3(a) and (b) are transposed by Sections 86 and 156 of The Labour Code in respect of all employees, but especially pregnant employees and mothers with children under 15. The New Labour Code only addresses Directive Clause 5.3 in respect of parents of

children under 15, those having care responsibilities for handicapped persons and pregnant employees (Sec. 241 para 2 of the new Labour Code).

There are no statutory provisions concerning Directive Clauses 5.3(c), (d) and (e). The New Labour Code offers no better provision.

Article 4.4 is not taken advantage off.

Estonia

The obligation to identify and review obstacles to opportunities for part-time work set in Clause 5.1 of the Directive is not transposed into Estonian Law. Consultation with the Confederation of Estonian Trade Unions on labour and social law matters do take place but the Confederation does not see any issues with the regulation of part-time employment in Estonia.

The second paragraph of Clause 5, providing that a worker's refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment is also not specifically provided for under the ECA. The ECA, however, includes an exhaustive list of permitted reasons for dismissal and this does not include the refusal to transfer from full-time to part-time work and vice-versa. Thus the refusal to transfer from full-time to part-time does not constitute a valid ground for termination of the employment relationship.

Clause 5.3 is transposed into national law through Article 63^{1} of the ECA. This Article states that an employer, where possible, shall consider the request of a full-time employee to work part-time and a part-time employee to work full-time or to increase the number of hours worked. Additionally, Article 68 of the ECA provides that the employer has the right, with the consent of the labour inspector, in case of a temporary decrease in work volume or orders "to establish part-time working time for an employee for up to three months per year or to send the employee on holiday with partial pay for the same period with the agreement of the employee."

Article 13^{1}(2) provides that an employer must notify the representatives of the employees and full time workers, in good time, of the opportunity for part-time work and a part time worker of the opportunity to work full-time, taking into account the qualifications and skills of the worker.

There is no information regarding initiatives at the enterprise level to facilitate part-time work. Based on the information of the recruitment agencies the demand for part-time work is low where at the same time the supply, i.e. individuals who are willing to work part-time is rather high.

Cyprus

The Employers' Association claim that there are no barriers to part time working and that they wish to encourage part time work, but consider that there is a reluctance from trade unions. Trade unions see no barriers at all, and no legal barriers have been identified.

Clause 5.2 is copied verbatim into Cypriot law (Article 8(2)).

Clause 5.3 is copied verbatim into Cypriot law (Article 9); there is little information describing the mechanism of giving consideration to requests from workers to transfer from full-time to part-time work or from part-time to full time work or also about informing workers or their representatives of full-time and part-time opportunities.

Facilitating access to part-time work and vocational training is a matter of dispute. Employers' claim that this is done in accordance with the principle of equal treatment and part time workers are given full access, but Trade Unionists claim otherwise that it is extremely difficult in practice for part time workers to have full and equal access to vocational training and promotion, although no cases have gone to court.

Latvia

Article 3(2)(1) of the State Labour Inspection Law (Valsts Darba Inspekcijas likums, adopted in 13 December 2001) obliges the State Labour Inspectorate to supervise the implementation of all acts concerning labour relations.

Article 134(4) of the LL expressly states that the refusal by an employee to change over from regular working time to part-time or vice versa may not of itself serve as a basis for a notice of termination of an employment contract or restriction of the rights of an employee in any other way. However an employer has the right to give a notice of termination if such notice is on economic, organisational, technological or similar measures.

Article 101(1) provides an exhaustive list of grounds for dismissal, which does not include transfer to and from part-time work. This exhaustive list applies equally to full-time and part-time workers.

Article 134(5) and (6) of the LL implements Clause 5(3)(a) and (b) of the Framework Agreement and obliges the employer to transfer the employee from regular working time to part-time or vice versa if such a possibility exists within the undertaking. The transfer obligation arises when the employer has received an application from the employee for a change. Apart from this there seem to be no procedural obligations laid down.

Clause 5.3(c) is implemented by the requirement in Article 134 (6) of the LL which states that an employer shall inform employee representatives about the possibility of employing employees part-time in the undertaking if the employee representatives request such information.

There are no provisions with regard to Clauses 5.3(d) or (e).

Lithuania

There is no information available on how the obstacles to part-time work (if any) have been identified and removed. It appears that there has been little consultation with the social partners.

Transfer to part-time work or vice versa is deemed to be a change of the essential conditions of employment contract. Essential conditions of an employment contract (such as the employee's place of work, job functions or agreement on the term of the contract), may be changed only with the prior written consent of an employee. The only exceptions are for cases relating to temporary changes in working conditions in cases of emergency when it is

necessary to prevent a natural disaster or industrial emergency, to respond to it or immediately eliminate its consequences, to prevent accidents, to fight fire and in other cases of emergency that have not been anticipated.

A worker's refusal to transfer from full-time to part-time work, or vice versa, could not of itself constitute a valid ground for the termination of employment.

There are no provisions with regard to the implementation of Clauses 5.3(a), (b) or (d) of the Framework Agreement.

Employees, have the right to information relating to the current and future activities, conditions and structure of the enterprise but there is no obligation to employers to inform part-time workers (unlike for those working on a fixed-term contract) about vacancies that become available to ensure that they have the same opportunity to secure full-time positions. There is no evidence of how this is controlled or enforced by the Labour Inspectorate.

There is no express obligation for employers to as far as possible facilitate access by part–time workers to appropriate training opportunities provided by the Lithuanian legislation. However, pursuant to para 1 article 143 of the Labour Code, employers are obliged to include in the working time of employees a study programme, qualification improvement in a workplace or training centres. This applies to all categories of employees irrespective of the type of their employment contract. Employers may provide incentives to employees by expressing priority in offering to them a training programme for conscientious performance of their employment duties, good quality production, long and excellent work as well as for other results of work the employees.

Hungary

Labour Code provisions do not present any obstacle to part-time work. Government decree No. 2017 of 2003 contains a programme on the elimination of obstacles to part-time employment centred on social security aspects of part time work such as the payment of health-care contributions and service for pension entitlement.

Under Section 89 of the Labour Code the termination of part time employment must be on the same grounds as full time employment. An employee may ask to transfer between full and part time work and the employer must respond and explain their decision within 15 days. The employer is not obliged to accept the offer although may not reject it on grounds that amount to discrimination. The refusal of a worker to transfer from full-time to part-time or vice-versa, can not constitute a valid reason for termination of employment. Both the employee and the employer may terminate the employment relationship established for an indefinite duration by notice and the employer must justify the dismissal. An employee may be dismissed only for reasons in connection with his or her ability, behaviour in relation to the employment relationship(Section 89).

An employer has an obligation to inform employees about part time opportunities although the existing employment contract is not invalidated if the employer fails to do so.

Hungarian legislation does not specifically guarantee compliance with Clause 5.3 (d).

Clause 5.3(e) is implemented by Section 65 of the Labour Code which provides for information to be given to the workers' council, including the 'characteristics features of employment, utilisation of work time, and the characteristics of working conditions'.

Malta

Regulation 9 LN 427/02 provides that 'Every employer shall inform part-time employees about the availability of whole-time work opportunities, and whole-time employees about part-time opportunities to facilitate transfers from full-time to part-time or vice-versa within the same place of work. Such information is to be given in a timely manner in order to allow the employees to apply for the vacancy'.

Regulation 10 of LN 427/02 states that an employee's refusal to transfer between part-time and whole-time work shall not be a valid reason for termination of employment. The EIRA does not define what would constitute a good and sufficient cause but lists those circumstances which cannot be deemed to be such a cause. Similarly LN 427/02 provides the unfair reasons for dismissal.

Regulation 9 places the duty on the employer to inform employees about the availability of opportunities to facilitate transfers between full-time and part-time employment. Such information must be given in a timely manner in order to allow any interested employees the opportunity to apply for any possible vacancy.

Regulation 8 provides that part-time employees are entitled to participate in vocational training programmes, in the same manner as whole-time employees at the same place of work. This is provided that they are employed for not less than twenty hours a week or 50% of the normal working week, whichever is the lesser and falls within the same class or category of employees.

There are no provisions concerning the need for employers to give consideration to providing appropriate information to existing bodies representing workers on part-time employment.

Poland

No reviews have taken place in accordance with Clause 5.1(a).

Article 94^2 of the Polish Labour Code obliges employers to inform employees of opportunities to work full-time or part-time.

Article 29^2 states that an employer should, where possible, take into consideration a request to change the working time in the employment contract. Under Article 42 there is provision for the employer to introduce part time working if economic circumstances dictate.

Article 94^2 states that the employer is obliged to inform employees of opportunities to apply for a full-time job. There is no standard procedure for informing workers of these vacancies, except within the Civil Service, which uses a central database for its recruitment.

There are no specific rules concerning the implementation of Clause 5.3(d) apart from a general obligation in the Labour Code for employers to enable workers to develop their professional skills and qualifications (Articles 17, 94).

Slovenia

There appear to be no specific provisions with relation to Clause 5.1(a) or (b), except that it is reported that there is a continuing debate amongst the social partners about the need to ensure adequate protection for workers and to balance this with achieving a flexible labour market.

Refusal of an employee to change from full to part-time work cannot be a valid ground for the termination of employment Article 90 para 3 ERA). There are no provisions for protection for refusing to change from part-time to full-time.

Article 23 of the Employment Relationship Act states that an employer recruiting workers, is obliged to advertise the vacancies in public. The public advertisement of a vacancy must contain the conditions for carrying out the work and the deadline for submitting applications, which may not be less than eight days. Article 24 provides an exception to this duty of public advertising vacancies – when a part-time employee concludes a contract to become a full-time employee. The Labour Inspectorate observed three cases of violations of these provisions in 2004, where the employer did not appropriately and in due time inform the part-time workers of vacancies for positions for full time employment.

The duty of the employer to inform part-time workers of full-time opportunities is implemented through Article 23, which in paragraph 4, states that the employer, employing workers for a definite period of time or part time and recruiting workers for an indefinite period of time or full time, must inform the workers in due time of the vacant positions or of the public advertisement of vacancies on the notice board at the employer's registered office.

The ERA was adopted after long consultations with the social partners. In the past year there have been further consultations to discuss a draft law amending the ERA, although not in relation to part-time work.

There are no measures in relation to Clause 5.3(d) or Clause 5.3(e), except that Article 91 of the Workers Participation in Management Act provides an obligation for an employer to inform and consult worker representatives on all personnel matters.

Slovakia

The social partners agreed on the current wording of Article 49 on part-time work, and have not indicated obstacles to part time working. However, there is no mechanism for review.

The refusal to transfer to part-time work or vice versa is not listed as a legal reason for the dismissal of an employee. Despite this part-time employees, who work less than 20 hours per week (Article 49 Sec. 6) can be dismissed for any reason or without a reason being specified. The Labour Code has not implemented this Clause properly as it does not protect part-time employees properly against dismissals regardless of whether the termination is due to operational requirements of the establishment concerned or not.

The Labour Code provides that employers should give consideration to requests for transfer between full and part time working (Article 49.Section2)

Article 49 Sec 8 states that employers must 'inform in a comprehensive way employees and employees' representatives about availability of part-time positions as well as full-time positions'.

Employers may, but there is no compulsion, create measures to facilitate access to part-time work at all levels (see Article 49 Sec. 8 Labour Code).

Article 49 Section 8 requires employers to provide information to employees and their representatives on opportunities for part time working.

Clause 6: Provisions on implementation

The level of protection has not been decreased as a result of the implementation of the Directive in any of the Member States concerned.

4. Practical application

Generally there is a paucity of information about the practical application of the Framework Agreement in the 2004 Member States. This is partly because of the relative newness of the implementing legislation, the smallness of the part-time labour force in some member States and the lack of subsequent studies or reports that have been carried out. Specifically: in Cyprus there have been no official reports or research published concerning the opportunities related to part-time work, although the Employers Association are of the view that it has made a positive impact. Both the Employers Association and the trade unions state that they see no barriers to part time working. In the Czech Republic the trade union confederation states that it has not been consulted by the Ministry of Labour about the possibilities for developing part-time work. In Estonia, the obligation to identify and review obstacles to opportunities for part-time work set out in Clause 5.1 of the Directive is not transposed into national law. The Confederation of Estonian Trade Unions does not see any issues with regard to the regulation of part-time employment. In Latvia, the Council of the National Tripartite Co-operation has not been very active on the issues covered by the Framework Agreement. In Lithuania there is no information, statistical data or evidence about the practical implementation. The Ministry of Labour does not report any problems or limitations concerning implementation. In Hungary, there is no evidence of discrimination against part-time workers, although there is reported abuse of part-time employment contracts. In Malta, there are no reported cases of breaches of the provisions or information about the application of Regulation 9 LN 427/02. In Poland it is suggested that there appears to be some abuse of part-time work contracts, specifically concerning workers employed on part-time contracts but obliged to work full-time. In Slovenia there is some information from the Labour Inspectorate which noted an increase in the use of part-time contracts in 2004, but also noted an increase in the number of cases of abuse of such contracts, particularly with employees employed on part-time contracts who are then obliged to work much longer hours. There are no Government publications on the implementation of the national provisions. In Slovakia part-time contracts are most used for workers with less than 20 hours per week, resulting in some lesser protection for such workers. There have been no cases on the implementation of the Framework Agreement.

5. Conclusions

Clause1: Purpose

Clause 1 of the Framework Agreement states that its purpose is, firstly, to provide for the removal of discrimination against part-time workers and to improve the quality of work; secondly, to facilitate the development of part-time work on a voluntary basis and to contribute towards the flexible organisation of work.

Generally the Member States do not explicitly state these purposes in the national legislation. The exceptions to this are Cyprus and Malta. The only difference being that, in the case of Malta the words 'on a voluntary basis', contained in the Framework Agreement Clause 1(b), are not included. This does not serve to narrow the scope of the implementation measures.

Clause 2: Scope

Clause 2 of the Framework Agreement extends its application to part-time workers who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in the Member State. It also provides that, after consultation with the social partners at the appropriate level, in accordance with national laws and practice, and for objective reasons, Member States may exclude, wholly or partly, part-time workers who work on a casual basis. Such exclusions are to be reviewed periodically to establish if the objective reasons remain valid.

In most Member States there is no distinction made between full-time and part-time workers in terms of the legal definition of the employment relationship, meaning that part time workers, with some exceptions, generally receive the same rights as full time employees.

There are some exceptions for the public sector. In the Czech Republic different legislation applies to those in the fire service, the armed forces, the police service, warders and customs officials. In practice these groups are not treated as employees and therefore fall outside of the scope of the Labour Code.

In Estonia there is a list of 13 different excluded categories contained in Article 7 of the Employment Contracts Act. This includes state officials and local government officials whose service relationships are regulated by the Public Service Act. This provides that officials are regulated by a directive or order and therefore do not have contracts of employment. In Slovenia also office holders such as those in position as a result of a political decision, are also excluded by not being included in the definition of public employee.

In Hungary public service employment relationships are not regulated by the Labour Code but by Act XXIII of 1992 (Ktv) and Act XXXIII of 1992 (Kjt) , but this legislation applies the terms of the Framework Agreement to this sector. In Slovakia, public and civil servants are also regulated by special laws, but still remain within the scope of application of the Labour Code.

In Malta much of the public sector, at the time of writing this report, does not appear to be the subject of applicable regulation and this must be seen as a deficiency in terms of the Directive's application.

Most Member States have not taken advantage of the option in Clause 2.2 of the Framework Agreement.

In some Member States there are certain contracts used for casual work that fall outside the employment relationship, and are therefore excluded from the national rules protecting part-time workers. In Estonia there is the opportunity to enter into contracts other than employment contracts, which are then said to be outside the scope of the Employment Contracts Act. In Poland there is also the possibility of casual work being done outside the employment relationship. In Slovenia casual work is restricted to a small number of groups which carry out work under the Law of Obligations and are therefore not categorised as in an employment relationship.

The option in Clause 2.2 of the Framework Agreement is taken advantage of in:

Cyprus, where part-time workers working on a casual basis are excluded as are for those workers whose hours are temporarily reduced for economic, technical or organisational reasons. The former were to be determined by Regulations, but, at the time of the report, these had not been issued.

Hungary, where casual workers are excluded by virtue of Act LXXIV of 1997 on Casual Work with Registration, which provides that casual workers are in a particular form of legal relationship and commit themselves for a period of time and become excluded on this basis.

Clause 3: Definitions

The Framework Agreement defines the term part-time worker as applying to an employee whose normal hours of work are less than the normal hours of a comparable full-time worker. A comparable full-time worker is a worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or similar work with due regard being given to other considerations such as seniority and qualifications/skills. There are also provisions for when there is no comparable worker in the same establishment.

Some Member States have a definition of the standard hours worked by a full time worker, in relation to which any person working fewer hours is categorised as a part-timer. There are sometimes categories of work for which normal hours are fewer than the standard, but which also are regarded as full-time work. This occurs in the following member States:

In the Czech Republic, the standard working hours are 40 over a reference period of one week (Sec. 83a of the Labour Code and Sec. 79 para 1 of the new Labour Code). There are shorter standard hours set for miners, shift workers and those employed in continuous service work. These shorter hours may be set unilaterally by employers or by collective agreements.

In Estonia there is a general national standard for working full time of 8 hours per day or a reference period of 40 hours per week (Article 4(1) Working and Rest Time Act). There are several groups for whom a shorter standard working week is permitted. These are young workers, underground workers and school teachers.

In Latvia there is a daily (24 hours), weekly and an annual reference period. Article 13(1) of the LL provides that the daily working time is 8 hours, the weekly time is 40 hours and the annual time is 2080 hours. There are provisions for a shorter standard working week for those subject to special risks.

In Hungary, the Labour Code and the Ktv specify a working period of 40 hours over a one week period.

In Slovenia Article 142 para 1 of the labour Code provides that full working hours must not exceed 40 hours and must not be less than 36 hours over a period of one week. It is possible to provide for full working hours of less than 36 where there is a risk to injury or health. Part-time hours are less than the full-time hours in an undertaking.

In Slovakia full time hours consist of 40 hours per week. Regular hours are calculated over a 4 week period and irregular hours over a 4 month period, where the average, in both cases, must not exceed the agreed weekly hours. The reference period for the irregular hours can be extended to 52 weeks by agreement.

Some Member States do not have this approach and do not set a fixed number of hours. In Cyprus Article 2 of the Cypriot Law uses a reference period of one week or one year and provides that a part-time employee is someone who works less than the normal hours for a comparator full-time employee. The comparator employee is defined in the same terms as that used in Clause 3.2 of the Framework Directive. The same approach is adopted in Malta. In Lithuania, there is no definition of a full-time or part-time worker, but a definition may be inferred from Article 142 of the Labour Code which provides for a maximum working time of 40 hours per reference period of one week or 8 hours per day. There are some categories of worker who may be entitled to work a shorter standard week. These are young people, night workers and those involved in hazardous work. Also in Poland there is no specific definition, although there is reference to 'employment on a part-time basis' in the Labour Code.

Cyprus and Malta adopt the definition of a comparable full-time worker as used in Clause 2.2 of the Framework Directive. In Estonia the definition contained in Article 13^1 ECA is similar except that there is neither reference to the need for the same establishment nor any reference to having the same sort of employment contract or relationship. In Latvia there is a definition which refers to the comparable worker being someone who is working 40 hours per week. This definition raises a problem that is similar to those Member States that do not have a definition at all (see below).

A number of Member States do not have any specific definition of who the comparable full-time worker should be. It may be that there is reliance upon the definition of a full-time worker and a part-time worker when related to a standard working week. In such a situation the comparable full-time worker will be one working a full standard working week. This may lead to issues about further comparison based upon nature of work and contract which are unresolved or have not been an issue yet. A particular problem with not having a definition of a comparable full-time worker is when there is not one in the same establishment and, according to the Framework Agreement, there is a need to refer to look elsewhere. This is the case in the Czech Republic, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia.

Although the general requirements for equal treatment may include the need not to treat part-time employees less favourably, not having a suitable definition of a comparable full-time employee is likely to cause difficulties in implementing the purpose of the Framework Agreement.

Clause 4: The principle of non-discrimination

The principle of non-discrimination means that part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time unless there are objective grounds for doing so. Where appropriate, the principle of *pro rata temporis* should apply. There is also provision that Member States where justified by objective reasons and after consultation of the social partners in accordance with national law, collective agreements or practice, may, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualification. Qualifications relating to access by part-time workers to particular conditions of employment need to be reviewed periodically with regard to the principle of non-discrimination.

Member States all implement, to some degree, the principle of non-discrimination in employment in national law. The Czech Republic and Slovakia rely upon a general non-discrimination clause in the Labour Code.

In the Czech Republic the Labour Code (Sec 16 para 1) provides for the equal treatment of all employees. There is no legal definition of employment conditions, but the term working conditions is used. There is an issue with those who are employed in an employment relationship based on an agreement on working activity have only 15-day notice periods for termination of employment and may be dismissed without a reason. A similar issue arises in Slovakia, where employees working less than 20 hours per week is only entitled to 15 days notice compared to the 2 months applicable to full-time employees. This is an exception to the general rule of non-discrimination embodied in the Act on Non-Discrimination of 2004 and explicitly incorporated into the Labour Code (Article 49 Sec 5). In Slovakia this is made clear in Article 13 of the Labour Code.

All other Member States have an explicit statement about non-discrimination between full-time and part-time workers. These include:

Estonia, where Article 13[1] states that part-time workers shall not be treated in a less favourable manner than comparable full-time workers, unless this different treatment can be justified on objective grounds. The definition does not refer to employment conditions. There are a number of situations which are not deemed to be discrimination contained in Article 10[1].

Cyprus where Clause 4.1 of the Framework Agreement is repeated verbatim in Article 6(1) of the Cypriot law. There is, however, no definition of employment conditions.

Latvia where Article 134(3) of the LL states that ' the same provisions which apply to an employee who is employed for regular working time shall apply to an employee who works part-time'. It is suggested that the term 'provisions' should incorporate the term 'conditions'.

Lithuania where there is a general prohibition of discrimination in employment relationships in the Labour Code, but Article 146(3) states that part-time work shall not result in limitation when setting the duration of annual leave, calculating length of service, promotion, improving qualifications as well as other labour rights.

Hungary where Article 8 of the Equal Treatment Act prohibits direct and indirect discrimination, harassment, segregation and victimisation against part-time workers, especially with regard to access to employment, establishing and terminating the employment relationship, training, determining and providing working conditions, benefits including wages, participation in employees' organisations and promotion.

Malta where Article 25 of the EIRA provides that part-time employees shall not be treated in a less favourable manner than comparable whole-time employees solely because they work part-time unless different treatment is justified on objective grounds. This is further reinforced by Regulation 4(1) of the LN 427/02.

Poland where there is a ban on any kind of discrimination within employment relationships, including part time working under Article 11^3 of the Polish Labour Code.

Slovenia where the principle of non-discrimination is included in Article 64 of the Employment Relationship Act paragraph 3.

The application of the principle of *pro rata temporis* does not appear to be an issue in Member States and is not expressly referred to in the Labour Codes of the Czech Republic and Poland or the ECA in Estonia, or the LL in Latvia.

In other Member States it is referred to. The wording of Clause 4.2 of the Framework Agreement is copied verbatim into Article 6(2) of the Cypriot Law; in Lithuania there is reference to the principle in Article 146 para 3 of the Labour Code; in Hungary Section 78/A subsection 2 of the Labour Code applies the principle for remuneration and non pecuniary allowances; in Malta the principle is provided for in Regulations 6 and 7 of LN 427/02; in Slovenia there is a reference in Articles 154 and 159 of the ERA; in Slovakia there is reference in Article 49.4 in relation to salary and paid leave.

There is the possibility of different treatment on objective grounds in a number of Member States, but generally there is little practice or legal interpretation to be found.

In the Czech Republic there is the possibility of justification on objective grounds. Objective grounds are determined by the nature of work and when different treatment is necessary, but these provisions do not appear to be related specifically to part-time workers, but are more concerned with the general principle of non-discrimination. In Slovakia, the shorter notice period and other detriments (also for the Czech Republic – see above) for employees working less than 20 hours per week is, apparently, objectively justified on the grounds of high unemployment, although the Labour Code offers no definition of objective grounds for this discrimination contained in Articles 49.6 and 49.7 of the Code.

In Estonia Article 13^1(1) of the ECA states that: 'part-time workers shall not be treated in a less favourable manner in an employment relationship than comparable full-time workers, unless different treatment is justified on objective grounds arising from the law or collective agreement'. it is not clear what the 'objective grounds' that may justify unequal treatment between part-time and full-time employees are, but no examples are reported.

In Cyprus, Clause 4.4 of the Framework Agreement is replicated in Articles 6.3(a) and 6.3(b), but, in practice, these possibilities have not been taken advantage of.

In Hungary there are provisions in Section 7 (section 22) which provide that the principle of equal treatment is not violated in employment relationships if the distinction is proportional and is justified by the characteristics or nature of the work and is based on relevant and legitimate terms and conditions. There have not been any cases interpreting this Section.

There is no specific application of Clause 4.4 in Latvia (but although the Supreme Court has held that overtime premiums only begin after the normal full-time hours have been worked), Lithuania, Malta (although again there is a similar rule on overtime as in Latvia), Poland and Slovenia.

Clause 5: Opportunities for part-time work

Member States, after consultation with the social partners, should identify and remove obstacles which may limit opportunities for part-time work. The social partners, within the limits of their competence, should also identify and review such obstacles. A worker's refusal to transfer from full-time to part-time, or vice versa, work should not in itself constitute a valid reason for termination. In addition employers should, as far as is possible, give consideration to requests from employees to transfer from full-time to part-time work or vice versa. They should also facilitate access to part-time work at all levels and ensure the provision of appropriate information to existing bodies representing workers in the enterprise about part-time working.

Few Member States appear to have taken specific action to identify and remove obstacles to part-time working. Those with no specific measures include the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia.

In Cyprus, however, the social partners have stated that they see no barriers to part-time working. In Hungary Government Decree 2017 of 2003 contains such a programme.

Some Member States define specifically when the contract of employment may be terminated. In such cases a refusal to change between part-time and full-time work is not included as a permissible reason. This is the case in the Czech Republic (where the only valid reasons for termination are contained in Article 46 of the Labour Code; Sec. 52 new Labour Code), Estonia, Hungary (Section 89 Labour Code). In Slovenia there are no provisions for protection for refusing to change from part-time to full-time.

Other Member States do have a specific provision that such a refusal is not a valid reason for dismissal. These include Cyprus, Latvia (Article 134(4) LL), Lithuania, Malta (Regulation 10), Slovenia and Slovakia.

In Slovakia the refusal of an employee to transfer cannot be a valid reason for dismissal, but there is an issue with those working less than 20 hours per week (see above).

In Cyprus, Clause 5.2 and 5.3 are repeated verbatim in Articles 8(2) and 9 of the Cypriot law.

There are no provisions for the implementation of Framework Agreement Clause 5.3(a) or (b) in Lithuania.

In the Czech Republic measures have been taken in Sections 86 and 156 of the Labour Code in respect of all employees, but especially pregnant employees and mothers with children under 15; the new Labour Code, Section 241 para 2, applies Clause 5.3(a) and (b) to parents of children under 15, those with caring responsibilities for disabled persons and pregnant employees. In Estonia measures are taken in Article 63^1. In Latvia the provisions are contained in Articles 134(5) and (6). Measures in Hungary are contained in Article 84/A of the Labour Code. In Malta, Regulation 9. In Poland, Article 29^2 states that an employer where possible should consider a request. In Slovenia Article 23 of the ERA also has this requirement to advertise, but Article 24 provides an exception to this duty – when a part-time employee concludes a contract to become a full-time employee. Article 49.2 of the ERA in Slovakia provides that employers must consider employee transfer requests.

There are no provisions for the implementation of Clause 5.3(c) of the Framework Agreement in the Czech Republic.

In Estonia, Article 13^1(2) ECA provides that an employer must notify the representatives of the employees and a full time worker in good time of the opportunity for part-time work and a part time worker of the opportunity to work for full-time, considering the qualification and skills of the worker. In Latvia this is achieved by Articles 134(5) and (6) LL. In Latvia, Article 134(6) provides an obligation upon employers to provide information at the request of the employee representatives. In Hungary an employer has an obligation to inform employees about part time opportunities although the existing employment contract is not invalidated if the employer fails to do so. In Malta, Regulation 9 places the employer under a duty to provide information in a timely manner. In Poland this is reflected in a general obligation to advertise vacancies in public (Article 23 ERA). In Slovenia there is a requirement in Article 23 para 4 ERA to inform employees. In Slovakia Article 49 Sec 8 states that employers must 'inform in a comprehensive way employees and employees' representatives about availability of part-time positions as well as full-time positions'.

There are no provisions for the implementation of Clause 5.3(d) of the Framework Agreement in the Czech Republic, Latvia, Lithuania, Hungary, Slovenia or Slovakia.

In Malta, regulation 8 provides for employees working at least 20 hours per week to participate in vocational training programmes in the same manner as full-time employees.

There are no provisions for the implementation of Clause 5.3(e) of the Framework Agreement in the Czech Republic, Malta or Slovenia.

In Lithuania measures are contained in Sub-para 7 Para 1 Article 22 of the Labour Code. In Hungary Section 65 of the Labour Code provides for the information to be given to the workers' council. In Slovakia Article 49 Section 8 requires employers to provide information to employees and their representatives.