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**COMMISSION STAFF WORKING DOCUMENT**

**NATIONAL LEGISLATION TRANSPOSING DIRECTIVE 1999/70/EC ON FIXED-  
TERM WORK IN THE EU 10**

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### NATIONAL LEGISLATION TRANSPOSING DIRECTIVE 1999/70/EC ON FIXED-TERM WORK IN THE EU 10

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## 1. INTRODUCTION

Fixed-term work is an essential element in a dynamic and flexible labour market, where atypical work may be more common across a wide range of activities. A key component of the current debate on flexicurity, fixed-term work can increase the overall employment available and offer real solutions to fluctuations in employment markets.

The purpose of Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the European Centre of Enterprises with Public Participation (CEEP)<sup>1</sup>, is twofold:

- to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination is applied; and
- to establish a framework to prevent abuse arising from the use of successive fixed-term contracts or relationships.

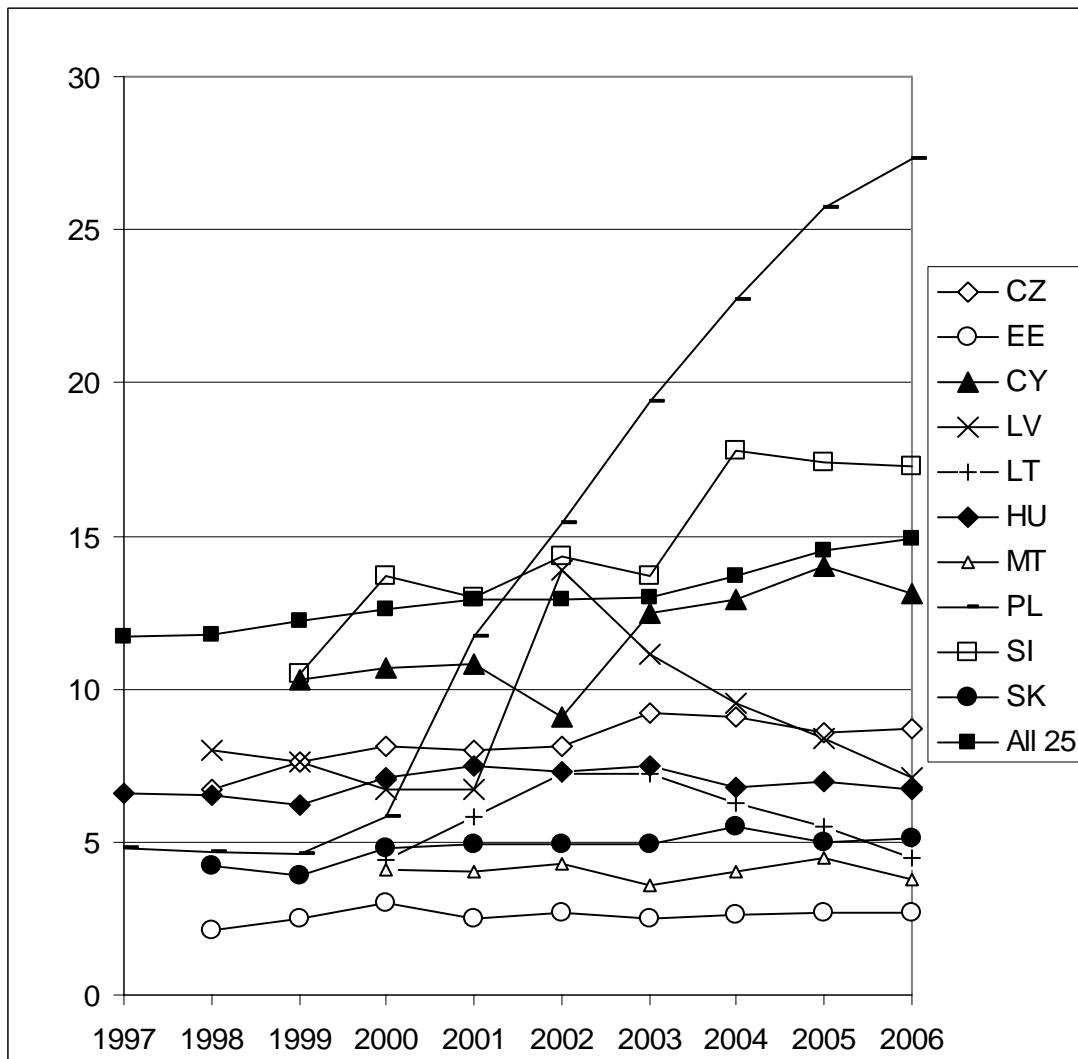
This Commission Report is the companion to SEC (2006) 1074, which reported on the implementation of the Directive by the 15 Member States which made up the European Union before 1 May 2004. The current document reports on the Directive's transposition and implementation by the so-called "EU 10", the ten Member States that acceded to the European Union on 1 May 2004. These ten countries were required to have transposed Directive 1999/70/EC into their national legislative frameworks in advance of their accession on 1 May 2004.

As the research was conducted in 2005, i.e. prior to their accession, this Report does not include implementation in Romania and Bulgaria. The Commission has arranged for a study to be conducted on the implementation of labour law Directives, including the fixed-term Directive, in those two Member States, the results of which are expected to be available in 2009.

In general, the number of fixed-term contracts as a percentage of total employees in the EU 25 has risen steadily in the 11 years from 1995 to 2006. In the case of the EU 10, the upward trend in Czech Republic, Cyprus and Slovakia mirrors the general trend across the 25 countries. Estonia, Malta and Hungary have remained largely stable; Latvia peaked in 2002 and is now steadily falling. The percentage of fixed-term employees in Poland has risen substantially from under 5% of all employees in 1997 to over 27% in 2006. Slovenia has also experienced a substantial rise.

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<sup>1</sup> OJ L 175, 10.7.1999, p. 43



**Fixed term as % of all employees in each of the 10 Member States and across the EU 25**

Source: Employment in Europe 2007 Eurostat

This report is based on a series of ten national reports and a synthesis report, which were the subject of comments from the Member States and social partners, and was commissioned by the European Commission from the Human European Consultancy in partnership with Middlesex University Business School. The research was conducted in 2005 and the report was concluded in March 2007. As far as we are aware, the data are current as of March 2007, except in the case of Malta, which introduced new legislation during 2007 which has been incorporated into this report and is, therefore, current as of March 2008.

This draft has not been circulated to Member States and social partners.

This document focuses on legislative implementation of Directive 1999/70/EC, as no clear picture is available of the detailed arrangements resulting from collective agreements in each Member State and how they may deviate from the arrangements provided for in national legislation. However, this does not seem to be a major issue in the EU 10.

The information in this Commission Report does not prejudice any position that the Commission may take in verifying the compatibility of national legislation and practice in

individual Member States with respect to the transposition and implementation of Community Law, and specifically Directive 1999/70/EC.

## **2. COUNTRY BY COUNTRY OVERVIEW OF TRANSPOSING MEASURES**

All 10 Member States had transposed Directive 1999/70/EC into their national legislation by their accession on 1 May 2004. With the exception of Malta and Cyprus, which introduced specific regulations to give effect to the Directive, all the Member States incorporated the requirements of the Directive into existing instruments of labour law.

### Czech Republic

The Czech Republic transposed the Directive by amending provisions in the 1965 Labour Code (zákon č. 65/1965 Sb) (hereinafter called "the Czech Labour Code") by Act 46/2004 Coll. (zákon č. 46/2004 Sb.) which came into force on 1 March 2004. Section 39 of the new Labour Code (Act No 262/2006 Coll) contains the provisions relating to fixed-term work.

### Estonia

In Estonia, the Directive was transposed into national law by amendment of existing laws. The Employment Contracts Act 1992 (Essti Vabariigi Töölepingu Seadus) and the Trade Union and Employee Representatives Act (AMETIÜHINGUTE SEADUS) (hereinafter called "the ECA") as amended by the Eesti Vabariigi Töölepingu Seadus ja Eesti Vabariigi Ülemnõukogu Otsuse - Eesti Vabariigi Töölepingu Seadus Rakendamise Kohta - Muutmise Seadus), which entered into force on May 1 2004.

It is understood that Estonia planned to introduce a new draft of the Act during 2007, but any changes introduced have not been taken into account in this report.

### Cyprus

Cyprus transposed the Directive by the Law on Employees with Fixed-term Work (Prohibition of Less Favourable Treatment) (Law No 98(I)2003 25.07.2003, which came into effect on 25/7/2003 - and was amended by Law 13(1) of 2007 to specify the role of the Labour Inspectorate) (hereinafter called the "2003 law").

In addition, the Termination of Employment (Amendment) Law (Law No. 70(I)2002 7-6-2002, which came into effect on 1/1/2003) and the Law on Health and Safety at Work (Law No. 99(1) 2003) are also relevant.

### Latvia

Latvia transposed the Directive by the Labour Law of Latvia (Darba likums) adopted on 6 July 2001 (published in the Official Gazette "Latvijas Vēstnesis", No. 105 (2492) 06.07.2001) (hereinafter called "the Labour Law"), which came into effect on 1 June 2002.

In addition, the following legislation is relevant:

- Cabinet of Ministers Regulation No 150 amending Regulation No 353 regarding Work in Activity Areas where an Employment Contract is Normally not Entered into for an

Unspecified Period, adopted on 27 February 2007, and in force since 3 March 2007 (published in the Official Gazette "Latvijas Vēstnesis" No 37 (02.03.2007) – not reported);

- Cabinet of Ministers Regulation No 272 regarding Seasonal Work (Noteikumi par sezonas rakstura darbiem Nr.272, adopted on 2 May 2007 and entered into force on 6 May 2007 (published in the Official Gazette, "Latvijas Vēstnesis" 72 05.05.2007);
- The Law on Institutions of Higher Education (Augstskolu likums, adopted on 2 November 1995, in force since 1 December 1995, published in the Official Gazette "Latvijas Vēstnesis", 179 (462), 17.11.1995).

### Lithuania

Lithuania transposed the Directive in the Labour Code (Darbo Kodekso Patvirtinimo, Sigaliojimo Ir Gyvendinimo, Statymas IX-926 of 4 June 2002) (hereinafter called "the Lithuanian Labour Code"), which came into effect on 1 January 2003. The Code was amended by the Law on Amendment and Supplement of the Labour Code of 12 May 2005.

The Law on Equal Treatment (Law IX – 829 of 18 November 2003, Official Gazette 2003 No 114-5115), which has been in force since 1 January 2005, is also relevant.

### Hungary

Hungary transposed the Directive into national law by:

- 2001. évi XVI törvény és a 2003. évi XX. Törvény a Munka Törvénykönyvéről szóló 1992. évi XXII. törvény, valamint az ezzel összefüggő törvények jogharmonizációs célú módosításáról (Act 22/1992 on the Labour Code as amended by Act 16/2001 in force from 1 July 2001 and Act 20/2003 in force from 1 July 2003) (hereinafter called "the Hungarian Labour Code");
- 2003. évi CXXV. Törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról (Act 125/2003 on equal treatment and on the promotion of equal opportunities, in force since January 2004);
- 1992. évi XXIII. Törvény a köztisztviselők jogállásáról (Act 23/1992 on the Legal Status of public servants);
- 1992. évi XXXIII. Törvény a közalkalmazottak jogállásáról (Act 33/1992 on the Legal Status of public employees);
- 1993. évi LXXVI. Törvény a szakképzésről (Act 76/1993 on Vocational Training).

### Malta

Malta originally adopted the Contracts of Service for a Fixed Term Regulations (Legal Notice 429/02), which came into force on 1 January 2003. These Regulations were issued under the Employment and Industrial Relations Act 2002 (Act XXII of 2002, Cap. 452 of the Laws of Malta) (Regolamenti Dwar Kuntratti Ta' Servizz Ghal Terminu Ta' Zmien Fiss that 1-Att dwar 1-Impiegi u r-Relazzjonijiet Industrijali). However, Legal Notice 429/02 was repealed

and replaced by Contracts of Service for a Fixed Term Regulations 2007 (Legal Notice 51/2007), which came into force on 15 June 2007<sup>2</sup> and which was extended to service with the Government (except for the provision of Regulation 7(3)) by the extension of Applicability to Service with Government (Contracts of Service for a Fixed Term) Regulations 2007 (Legal Notice 157/2007).

### Poland

Regulations concerning successive fixed-term contracts were introduced into the Labour Code (hereinafter called the "Polish Labour Code") in 1996. After that the regulations were brought into line with the Community legislation by an Act of 14 November 2003 amending the Polish Labour Code (Ustawa z dnia 26 czerwca 1974 r. – Kodeks pracy) and certain other Acts (Official Journal no 213, Item 2081).

### Slovenia

Slovenia notified the Commission that it had transposed the Directive by the Employment Relationship Act in 2002 (Zakon o delovnih razmerjih, Uradni list RS, št. 42/2002) (hereinafter called "the ERA"), which took effect on January 1 2003, The Civil Servants Act (Zakon o javnih uslužbencih Uradni list RS 56/2002 ) and The Workers' Participation in Management Act (Zakon o sodelovanju delavcev pri upravljanju Uradni list RS 42/1993 ,Zakon o spremembah in dopolnitvah zakona o sodelovanju delavcev pri upravljanju Uradni list RS 56/2001).

Other legislation which makes provision for fixed-term contracts is:

- The Act on Enforcing Public Interest in the Field of Culture (Zakon o uresničevanju javnega interesa na področju kulture, Uradni list RS. Št. 96/02);
- The Research and Development Activities Act (Zakon o raziskovalni in razvojni dejavnosti, Uradni list RS, št. 96/02); and
- The Organisation and Financing of Education Act (Slovenian Official Gazette Nos 12/1996 (23/1996 corr).

Fixed-term work is also regulated by:

- 101/1999 Constitutional Court Decision: U-I-215/96, 22/2000-ZJS, 64/201;
- 101/ 2001 Constitutional Court Decision: U-I-68/98-42. 108/2002, 34/2003, 79/2003, 65/2005;
- 117/2005 Constitutional Court Decision: U-I-240/04-11, 129/2006.

### Slovakia

Slovakia transposed the Directive by the:

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<sup>2</sup> Although this report is based on information collected in 2006 and reported in early 2007, the arrangements for Malta are current to March 2008 as the details are known to the Commission.



- Act on Economic and Social Partnership (the Tripartite Act) (Zákon o hospodárskom a sociálnom partnerstve (zákon o tripartite) (Act No.106/1999 Coll) repealed in 2004 by Act No. 585/2004 Coll.;
- Labour Code of 2001 (Zákonník práce) as amended (Úplné znenie zákona) (Act No. 433/2003 Coll.) (hereinafter called "the Slovak Labour Code"). Article 48 primarily governs fixed-term contracts, although Articles 11, 13 and 42 are also relevant.
- Act on Social Insurance (Zákon o sociálnom poistení) (Act No. 461/2003 Coll.)

There are also relevant provisions in the Act on Equal Treatment and Protection against Discrimination as amended (Antidiscrimination Act) (Zákon o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon) (Act No. 365/2004 Coll.)

### **3. ANALYSIS OF TRANSPOSITION MEASURES**

#### **3.1. Clause 1: Purpose**

*The purpose of this framework agreement is to:*

- *improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;*
- *establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.*

These objectives are not explicitly referred to in national legislation in the Member States, with the exception of Cyprus and Slovenia. An indication of the purpose is sometimes given in preparatory works or similar documents.

#### **3.2. Clause 2: Scope**

- (1) *This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.*
- (2) *Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:*
  - (a) *initial vocational training relationships and apprenticeship schemes;*
  - (b) *employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.*

An important issue, with regard to the scope of application, is the exceptions to the coverage of the Directive allowed by national law as contained in the implementing measures in many Member States.

The Framework Agreement does not cover fixed-term workers placed by a temporary work agency. Accordingly, many Member States have excluded temporary agency workers from the scope of their implementing legislation.

### Czech Republic

There is no definition of the term employee or worker, except that a person who engages in an employment relationship (or ‘dependent work’) and is in receipt of pay is considered to be an employee or worker. There is no distinction between these terms. Certain employees are not subject to private-law employment relationships – soldiers, policemen, firefighters, warders and customs officials. They are considered civil servants and they have a special regulation: Act No. 361/2003 Coll., on Civil Service. It came into force on 1 January 2007. Other state officials (mostly clerical) are regulated by Act No. 218/2002 Coll. which came into force on 1 January 2007; Regional and municipal clerks are regulated primarily by the Czech Labour Code and also by Act No. 312/2002 Coll.

Labour law provisions, with certain exceptions, apply to all employees irrespective of the duration of the contract of employment. The legislation does not take advantage of the exceptions stipulated in Clause 2.2 of the Directive, but section 30(5) of the Labour Code permits them to be included in collective agreements, although there is no evidence that this has been done so far.

The rules on fixed-term work do not apply to:

- older employees who are in receipt of retirement pensions. The Act No. 155/1995 Coll., on Income Insurance, provides that old-age pensioners have to conclude fixed-term contracts for one year maximum at a time if they wish to continue to draw retirement benefits. If they conclude longer fixed-term contracts or contracts for an indefinite period they lose their retirement benefits. It is permissible to conclude annual fixed-term contracts repeatedly.
- academic employees (section 70 of Act No. 111/1998 Coll provides for this, and also provides for successive contracts).
- casual workers – such as where a fixed-term contract is agreed as a temporary replacement for an absent employee; to cover serious operational reasons on the part of an employer or on account of the special nature of the work to be performed by the employee.

It is prohibited to conclude a fixed-term contract with workers of a special status unless the worker requests this in writing from their future employer. These include graduates, young people and other employees specified in a collective agreement.

### Estonia

The Employment Contracts Act 1992 (ECA) covers employment relationships and employment contracts. An employment contract is defined as ‘an agreement between an employee and an employer under which the employee undertakes to do work for the employer in subordination to the management and supervision of the employer, and the employer undertakes to remunerate the employee for such work and to provide working conditions prescribed in the agreement between the parties, a collective agreement, law or administrative legislation.’

Article 7 excludes 13 groups of employees from the scope of the ECA (officials appointed to office by the President or Parliament; state officials and local government officials whose services are covered by the Public Service Act; active service in the armed forces; work as a member of a farm family for family farm enterprise or family enterprise; household work by parents, spouses or children for one another; work by family members in a shared household and care for family members; work on basis of contract of service; work in a religious organisation as a person conducting religious services if no employment contract is required; work based on 'authorisation'; directors of bodies of legal persons of Estonian branches of foreign companies and members of administrative boards; activities based on contracts of services or other civil-law contracts; work during imprisonment; other activities directly prescribed by law or persons referred to by law.

Of particular concern are state officials and local government officials whose service relationships are regulated by the Public Service Act.

Estonian law does not take advantage of the options in Clause 2.2 of the Directive (trainees, etc).

### Cyprus

The 2003 Law extends the protection to all employees with a fixed-term employment contract or relationship as defined by legislation, collective agreements or practice, and Article 4(2) contains the same exclusions as Clause 2.2 of the Framework Agreement.

The adoption of the 2003 Law appears to have led to a new type of public sector category. Temporary employees in the public and semi-public sector are having their contracts changed from temporary ones to contracts of indefinite duration. There are concerns about the comparator for such workers in respect of equal treatment considerations.

### Latvia

Employment relationships are established by an employment contract (Article 28 (1) of the Labour Law). The Labour Law 2001 does not make a distinction between permanent workers and fixed-term ones. The circumstances in which fixed-term contracts are permissible is set out in Article 44 of the Labour Law. These areas are: replacement of an employee; casual work not usually performed; emergency work to mitigate an instance of force majeure; as well as:

- Cabinet of Ministers Regulation No. 353 regarding Work in Activity Areas where an Employment Contract is normally not entered into for an Unspecified Period lists the following cases as being excluded from the effect of the Framework Agreement: cultural activities; certain aspects of banking, finance and trade, including property administration; sporting activities; protection and management of parks, forestry and nature protection; education – teaching and training activities of less than six months, professional training; guest teaching; diplomatic and related management/technical work; other activities including organisation of exhibitions, fairs, congresses and seminars; development and implementation of projects; forest fire protection; display of clothes and commodities, etc. These are all activities that are an exception to the general principle that labour contracts should be concluded for an unspecified period of time (Article 43).

- Seasonal work, determined by the Cabinet of Ministers, where entering into a contract of limited duration is permissible. Regulation 272 specifies an extensive list of seasonal work relating to: agriculture; fish farming; sea fishing; fish handling; land treatment, forestry-related, harvesting; beach and tourism facilities; seasonal retail outlets; passenger carriage undertakings; activities of a boiler fireman; territory improvement; ship building; care of animals in zoos; construction of electronic communications; digging work for laying tubes and cables.

The Labour Law permits temporary paid work for unemployed persons or other work related to their participation in active employment measures, and Latvia has exercised the Clause 2.2 option to exclude public or publicly-supported training, integration and vocational retraining programmes. There is no explicit exclusion of initial vocational training relationships and apprenticeship schemes, although a Supreme Court decision (SKA-207, 10.05.2006) appears to suggest that initial vocational training may be exempted.

### Lithuania

An employee is defined in the Lithuanian Labour Code as ‘a natural person possessing legal capacity in labour relations employed under an employment contract for remuneration’ (Article 15). All employees are covered by the definition, including those in the public and the private sector, and there are no workers or groups of workers who are excluded from the scope of the implementing legislation.

There are special rules governing apprentices, but there are no other specific rules relating to the groups of workers indicated in Clause 2.2 of the Framework Agreement.

### Hungary

The Hungarian Labour Code provisions apply to private employment relationships. There is no definition of an employment relationship or an employee (worker). However, a worker is a person who works on the basis of a contract of employment. Section 79 of the Labour Code contains the labour law provisions on fixed-term work.

Public-sector employment relationships are regulated by two Acts: Act 23 of 1992 on the Legal Status of Civil Servants (Ktv) (evi XXIII. Torvény a Koztiszttviselok jogallasarol) and Act 33 of 1992 on the legal status of public employees (Kjt) (evi XXXIII. Torvény a Kozalkalmazottak jogallasarol ). The scope of the Civil Servant Act covers the Institutions of the Central Public Administration (Prime Minister’s Office, Ministerial Departments, Central Offices, Ministerial Offices) and their regional and local bodies and the offices of the Local Government’s Board of Representatives. The scope of Act 33 of 1992 on the legal status of public employees extends to public employees working for bodies and institutions of state and local government, and public service providers. Civil servants and public employees are not employees under Hungarian law. They have a special public service relationship.

There are special rules for study contracts in the Act 76/1993 on Vocational Training but there are no other rules for the groups which may be excluded under Clause 2.2 of the Framework Agreement.

### Malta

The Employment and Industrial Relations Act 2002 (EIRA) defines a contract of service and contract of employment.

Malta has made use of the option in Clause 2.2 and has excluded training or work experience under an approved training or apprenticeship or scholarship or trainee scheme from the scope of the fixed-term regulations (Regulation 3(2)(c) of Legal Notice 51/07). In addition, Malta has specifically excluded from the scope of the regulations the following categories:

- persons appointed to serve on any Board of any statutory or public Authority, Commission, Committee, Corporation or the Board of any body corporate established by law or of any other public sector entity as referred to in Article 80(3) of the [Employment and Industrial Relations] Act;
- assignments for the performance of a task of a specific nature or a specific task to be performed in a specified period of time given by an employer to an employee who is already working for the employer on an indefinite contract of service;
- a contract of service in the Public Service or the Public Sector not made in accordance with the applicable laws of Malta and, in particular, the provisions of the Constitution.

### Poland

Article 2 of the Polish Labour Code defines an employee as ‘a person employed on the basis of an employment contract, appointment, election, nomination or co-operative employment contract’. Persons employed on any other basis are not considered as employees. This definition applies to both the private and the public sectors.

The types of fixed-term employment contracts are set out in Article 25 of the Polish Labour Code. The Directive concerns any fixed-term employment, while Polish legislation differentiates the contracts and attributes various levels of protection for employees based on the particular type of fixed-term contract they are on. There are generally four types of fixed-term contracts: the fixed-term employment contract, the employment contract for a trial period, the contract for the replacement of a worker absent for justified reasons, and the employment contract for performance of specific work. The latter contract also covers seasonal employment contracts.

Poland has made use of the option to exclude initial vocational training relationships, apprenticeship schemes and employment contracts and relationships concluded within the framework of a specific public, or publicly supported training, integration and vocational retraining programme.

### Slovenia

The Employment Relationship Act defines all the employment relationships; however, there are some specific provisions in the Civil Servants Act on public workers and their employment contracts where there are differences.

Article 5 of the ERA states that a worker is any natural person who has entered into an employment relationship on the basis of a concluded employment contract. Special provisions of fixed-term contracts laid down in the Civil Servants Act relate only to employees working in State bodies and local government bodies, not to the entire public sector (which comprises

state bodies and institutions of the self-governing local communities; public agencies, public funds, public institutions and public commerce institutions; other persons of public law if they are indirect users of the State budget or the local community budget).

Fixed-term contracts must lay down the duration of the employment relationship and the way in which annual leave is used.

Many collective agreements allow the conclusion of fixed-term contracts for project work, in particular for a period longer than that laid down in the ERA.

In keeping with Clause 2.2 of the Framework Agreement, there are special rules applying to traineeships where a maximum term is fixed. There are no other exceptions to the Framework Agreement.

### Slovakia

The Slovak Labour Code applies to employees in both private and public employment. No distinction is made between fixed-term and permanent employees as concerns rights and obligations of employees, except for one special case where it is stated that certain rights or obligations do not apply to fixed-term employees (Article 71 Sec. 4 of the Slovak Labour Code, according to which 'an employer might terminate immediately a fixed-term employment relationship without any objective reason').

Civil servants (eg employees of various Ministries, state authorities, judges, prosecutors, etc.) are outside the scope of application of the Directive. The Directive does apply to fixed-term employment relationships involving public servants (eg employees of state bodies, municipalities, regional municipal authorities and certain legal entities which are, under special laws, empowered to decide about the rights and obligations of individuals and legal entities in the area of public administration).

Slovakia has not made use of the permitted Clause 2.2 exception, and there are no explicit exemptions.

### **3.3. Clause 3: Definitions**

- (1) *For the purpose of this agreement the term "fixed-term worker" means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.*
- (2) *For the purpose of this agreement, the term "comparable permanent worker" means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills.*

*Where there is no comparable permanent 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.*

Cyprus is the only Member State that uses the words of the Directive verbatim. Most other Member States do not have a definition of a fixed-term worker, nor of a comparable worker. Some Member States assume that a contract of employment is for an indefinite duration unless otherwise specified. A number of Member States provide specific conditions for justifying the establishment of a fixed-term contract.

Crucial to the meaningful and effective application of the non-discrimination principle in Clause 4 is the definition of a comparable permanent worker. There appears to be an issue with regard to what action is required by the Directive if there is no comparable permanent employee in the same establishment. In some Member States this means that no comparison is possible, thus weakening considerably the effect of the Directive. For some the general principle of non-discrimination is sufficient.

### Czech Republic

Although there is no specific definition of a fixed-term worker, Section 30 paragraph 1 of the Czech Labour Code (Section 39 paragraph 1 of the new Labour Code) provides a legal assumption that every employment contract is for an indefinite period of time, unless the period is explicitly expressed.

There is no definition of a 'comparable permanent worker'. If there is no comparable permanent worker in the same establishment, then there are no provisions for any comparisons to be made elsewhere.

### Estonia

The ECA does not specifically provide a definition of a fixed-term worker and Articles 1 and 2, which define an employment contract and an employee, do not refer to duration. There are, however, references to the differences between fixed-term and indefinite-term employment contracts in Articles 26 and 27.

If the employment contract is to be concluded for a fixed term, then (Article 26 (1)3) it must include information on the duration of the contract and the grounds for entering into a fixed-term contract.

A fixed-term employment contract may be defined either by a specific date or by completion of the work (Article 27 (1) 2).

Article 13 provides that 'comparable permanent worker means an employee working for the same employer, who is engaged in the same or similar work, due regard being given to other considerations which may include qualification and skills of the employee. When there is no comparable permanent worker employed by the same employer the comparison shall be made by reference to the applicable collective agreement. Where there is no collective agreement, a worker engaged in the same or similar work in the same region shall be deemed to be a comparable permanent worker'.

The national definition goes beyond the definition in the Framework Agreement, which only refers to qualifications and skills. The reference to "other considerations" potentially limits the scope of the principle of non-discrimination.

### Cyprus

Articles 2 and 6 of the 2003 Law replicate verbatim the definitions in the Framework Agreement of a fixed-term worker and of a comparable permanent worker and the arrangements for a comparator if none exists within the same establishment (ie both paragraphs of Clause 3.2 of the Framework Agreement).

### Latvia

The Labour Law 2001 does not distinguish between a permanent and a fixed-term worker. Article 3 of this Law 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 43 of the Labour Law states that ‘an employment contract shall be entered into for an unspecified period except in the cases set out in Article 44’. Article 44(1) specifies the following exhaustive list of circumstances in which a fixed-term contract may be concluded:

- seasonal work;
- work in activity areas where an employment contract is normally not entered into for an unspecified period, taking into account the nature of the relevant occupation or the temporary nature of the relevant work;
- replacement of an employee who is absent or suspended from work, as well as replacement of an employee whose permanent position has become vacant until the moment a new employee is hired;
- casual work which is normally not performed in the undertaking;
- specified temporary work related to short-term expansion of the scope of work of the undertaking or to an increase in the amount of production;
- emergency work occasioned by *force majeure*, an unexpected event or other exceptional circumstances which adversely affect or may affect the normal course of activities in an undertaking; and
- temporary public work intended for an unemployed person or other work related to his or her participation in active employment measures, or work related to the implementation of active employment measures.

There is no definition of a comparable permanent worker, as no distinction is made in Latvian law between a permanent and a fixed-term worker

### Lithuania

Article 93 of the Lithuanian Labour Code defines an employment contract as an agreement between an employee and an employer whereby the employee undertakes to perform work within a certain profession or particular area, or to perform special duties ..., whereas the employer undertakes to provide the employee with the work specified in the contract, to pay him/her ...and to ensure working conditions as set out in labour laws, other regulatory acts, the collective agreement and by agreement between the parties. Paragraph 1 of Article 109 states that a fixed-term employment contract is a contract concluded between an employee



and an employer for a certain period of time or for the period of performance of certain work or for the occurrence of a specific event, not exceeding five years.

There is no definition of a comparable full-time worker and the national law is silent on how a comparison should be made if there is not a comparable worker in the same establishment. However, the equal treatment guarantees provided for in the Lithuanian Labour Code are applied to all workers.

### Hungary

In the absence of an agreement to the contrary, all employment relations are assumed to be for an indefinite duration (Section 79(1) of the Hungarian Labour Code).

The meaning of a fixed-term employment relationship is defined by the Hungarian Labour Code (Section 79(2)). If the duration of an employment relationship is not determined by a date, the employer is obliged to inform the employee about the expected duration of employment. If the duration of an employment relationship is not determined by the calendar, then the employer is obliged to inform the employee of the expected duration of employment. If determination of the period is not precise, i.e. the date of expiry is uncertain, then the employment relationship will be considered as indefinite.

There is no definition of a comparable permanent worker, but the Equal Treatment Act specifically prohibits discrimination against fixed-term workers.

### Malta

Regulation 2(1) of the Legal Notice 51/07 defines the term ‘contract of service for a fixed term’. It provides that: such contracts are ones that are entered into between the employer and an employee where the end of the contract is determined by reaching a specific date, by completing a specific task or through the occurrence of a specific event.

Regulation 2(1) also states that: a ‘comparable permanent employee’ means a full-time employee in the same establishment employed on a contract of service of indefinite duration and who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualifications and skills.

The Regulation differs from the Framework Agreement in that it only refers to full-time comparators. It also differs in the reference to seniority as a consideration to be taken into account when making a comparison between employees.

If there is no comparable permanent employee in the same establishment, Regulation 2(1) of Legal Notice 51/07 provides that comparison shall be made by reference to collective agreements covering similar comparable permanent employees in other establishments.

### Poland

Article 2 of the Polish Labour Code defines an employee as ‘a person employed on the basis of an employment contract, appointment, election, nomination or co-operative employment contract’. Persons employed on any other basis are not considered as employees. This definition is used for the private and public sectors.

This definition covers fixed-term workers. Article 2 in relation to Article 25 provides that employment contracts may be concluded for an indefinite or for a fixed term.

As there are no specific provisions on fixed-term workers, their rights and obligations arising from the employment contract should be no less favourable than those of a permanent worker. This approach results from the general anti-discrimination provisions of Articles 11<sup>3</sup> and 18<sup>3a</sup> to 18<sup>3e</sup> of the Polish Labour Code, and in particular Article 18<sup>3b</sup>. The social partners were consulted on the formulation of the anti-discrimination provisions.

The Polish Labour Code does not use the term “comparable permanent worker”, but a more general definition of a comparator from anti-discrimination provisions (Article 11<sup>2</sup>, Articles 18<sup>3a</sup> to 18<sup>3e</sup> of the Polish Labour Code) applies.

### Slovenia

Article 52 of the ERA defines fixed-term employment contracts and the conditions to be fulfilled in order for such a contract to be legally binding. In addition, fixed-term contracts can also be concluded in other cases laid down by law or collective agreement. In these situations legitimate and objective reasons for concluding a fixed-term contract are defined by law.

A fixed-term contract in the public sector can only be concluded in certain circumstances defined by the Civil Servants Act.

On the basis of collective agreements at economic activity level, the social partners are able to define other cases where fixed-term contracts can be concluded.

There is no definition of a comparable permanent worker in the ERA.

### Slovakia

Fixed-term employment is generally defined as ‘employment of limited duration’ (doba určitá). The Slovak Labour Code states (Article 48(1)) that an employment relationship is for an indefinite term if the employment contract does not explicitly define the exact period of duration of the employment relationship to be established or when the statutory requirements to complete a fixed-term contract have not been fulfilled. The employment relationship is also treated as indefinite if the fixed-term contract is not put in writing.

There is no explicit definition of a comparable permanent worker in the Labour Code.

## **3.4. Clause 4: Principle of non-discrimination**

- (1) *In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.*
- (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 after consultation with the social partners and/or the social partners, having regard to Community law and national law, collective agreements and practice.*

- (4) *Period-of service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of service qualifications are justified on objective grounds.*

A number of Member States expressly provide for the principle of non-discrimination with regard to fixed-contract workers. In other Member States there is either a general provision against discrimination in labour relations or is implied in the employment relationship.

#### Czech Republic

Both Sec. 16 Para 1 of the New Labour Code and Sec. 1 Para 3 of the Czech Labour Code provide for the principle of equal treatment and for the possibility of objective justification for any different treatment.

There is no specific mention of fixed-term employees in these provisions, although the expectation is that a distinction between permanent and fixed-term employees cannot be justified on the basis of the length of the contract. There appears to be no case law on this subject or other evidence to show how this works in practice.

The principle of *pro rata temporis* (poměrným dílem) is not expressly defined.

The non-discrimination clauses of the Czech Labour Code were adopted by Act No. 155/2000 Coll. after wide consultation of social partners.

#### Estonia

Article 13 of the ECA states that ‘fixed-term workers shall not be treated in a less favourable manner in an employment relationship than comparable permanent workers unless different treatment is justified on objective grounds arising from the law or collective agreement’.

There is no reference to the principle of *pro rata temporis* or of the Framework Agreement Clause 4.4.

#### Cyprus

Article 5(1) of the 2003 Law repeats verbatim the text of Clause 4.1 of the Framework Agreement. There is no definition in Cypriot law of ‘employment conditions’.

Article 5(2) of the 2003 Law repeats verbatim the text of Clause 4.2 of the Framework Agreement without any further explanation. Article 2 provides that an employee performing fixed-term work shall be employed on the same terms and working conditions pro rata for the duration of employment as a comparable worker on a contract of indefinite duration.

Article 5(3) of the 2003 Law copies verbatim the text of Clause 4.4 of the Framework Agreement. There is no definition of ‘objective grounds’.

The principle of non-discrimination applies by law in all contracts of employment. However, the interpretation of a comparable permanent worker is crucial to the question of non-discrimination and there has been dispute as to the appropriate comparator for public sector and semi-public sector employees on fixed-term contracts.

#### Latvia

There is a general principle of non-discrimination contained in Article 7 of the Labour Law 2001, which states that ‘everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair work remuneration’.

Article 29 of the Labour Law 2001 provides for a general prohibition of discrimination based on gender, race, colour, age, disability, religious, political or other belief, national or social origin, property or marital status or other circumstances of an employee. In September 2006 sexual orientation was added to this list.

Article 44 (6) of the Labour Law 2001 contains an equality clause specifically regarding temporary workers, including those on fixed-term contracts, and permanent ones providing that ‘the same provisions, which apply to an employee with whom an employment contract has been entered into for an unspecified period, shall apply to an employee with whom an employment contract has been entered into for a specified period’.

The principle of *pro rata temporis* is not explicitly stated, but Article 3 of the Labour Law 2001 provides that there is no distinction between permanent and fixed-term workers in this respect.

### Lithuania

The principle of non-discrimination in respect of fixed-term workers is not expressly defined in labour legislation. However, it is universally applied and it is unlawful to refuse to employ someone on discriminatory grounds. The Lithuanian Labour Code defines equality as one of the governing principles of the legal regulation of labour relations by stating that gender, sexual orientation, race, national origin, language, origin, citizenship and social status, religion, marital and family status, age, opinions or views, political party or public organisation membership, factors unrelated to the employee's professional qualities are not to be taken into account (Para 1 Article 2). The Law on Equal Treatment provides additional safeguards against unjustified discrimination, including applying the non-discrimination principle to qualifications.

The Lithuanian Labour Code does not stipulate that period of service qualifications should be the same for fixed-term workers as for permanent workers.

### Hungary

Article 5(1) of the Hungarian Labour Code states that ‘equal treatment must be obeyed during the employment relationship’ and the detailed rules are contained in Article 125 of the Equal Treatment Act 2003. The Act defines five ways of violating the principle of equal treatment: direct discrimination, indirect discrimination, harassment, segregation and victimisation, all of which apply to discrimination against fixed-term workers.

All employment relationships fall within the scope of the Act. Consequently, the provisions on equal treatment are applied not only to employment relationships under the Labour Code, but generally to all kinds of contractual relationships related to employment.

The principle of *pro rata temporis* in relation to fixed-term workers is not expressed in legislation.

There are no distinctions with regard to periods of service in legislation or collective agreements.

The purpose of the Equal Treatment Act is – as a general rule – to provide equal treatment and effective remedies for all disadvantaged groups, at the same time implementing relevant Community law including the Directive in question. The Equal Treatment Act came into effect in January 2004 and covers all employment relationships, whether public or private, especially private employment relationships under the Hungarian Labour Code and public service employment relationships under Act 23 of 1992 on Civil Servants and Act 33 of 1992 on Public Employees. In case of discrimination against fixed-term workers the regulations of the Equal Treatment Act should be applied. Direct and indirect discrimination is prohibited against fixed-term workers.

### Malta

Regulation 4 of Legal Notice 51/07 deals with the principle of non-discrimination. It provides that employees on a contract of service for a fixed term shall not be treated in a less favourable manner than comparable permanent employees solely because they have a contract of service for a fixed term. However, it provides that an employer may differentiate between the conditions of employment where (a) such treatment arises as a result of the recognition of length of service (the pro rata temporis principle under Clause 4.2 of the Framework Agreement), experience or qualifications or conditions of pay attached to the contract of service immediately preceding the contract of service for a fixed term and such other differences are justified on objective grounds; or (b) the task for which the employee has been employed is specific and includes objective considerations which justify such differentiation.

Employment conditions are defined under Article 2(1) of the EIRA. Accordingly, conditions of employment means wages, the period of employment, the hours of work and leave, and includes any conditions related to the employment of any employee under a contract of service including any benefits arising, terms of engagement, terms of work participation, manner of termination of any employment agreement and the mode of settling any differences which may arise between the parties to the agreement.

### Poland

Article 32(2) of the Constitution states that ‘No one shall be discriminated against in political, social or economic life for any reason whatsoever’.

The Polish Labour Code prohibits any discrimination in employment. Article 11<sup>2</sup> of the Labour Code states that all employees performing the same duties have equal rights. Article 18<sup>3a</sup> of the Polish Labour Code states that employees should be treated equally in the conclusion and termination of employment relationships, employment conditions, promotion and access to training to increase their professional qualifications, regardless of sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, religious belief, sexual orientation, employment status (full or part time) and the employment contract (indefinite or fixed term). However, the period of notice in the case of fixed-term contracts is only two weeks, which may be discriminatory given that many fixed-term contracts are concluded for relatively long periods of time. Similarly, the absence of the possibility of reinstatement in the case of unlawful dismissal may in practice be discriminatory.

Article 18<sup>3a</sup>(3) states that direct discrimination occurs where an employee, based on the above-mentioned grounds, was, is or would be treated less favourably than an employee in a comparable situation.

The *pro rata temporis* rule applies particularly to holidays and contributions for social insurance. Periods of holiday leave are calculated proportionally to the period of employment in a particular place.

### Slovenia

Article 55 of the ERA provides for the principle of non-discrimination. It states that during the period of employment for a definite period of time, the contracting parties shall have the same rights and obligations as in the case of employment for an indefinite period of time.

Article 73 of the Civil Servants Act also incorporates the principle of non-discrimination, whereby the provisions of the Act governing the rights and obligations of civil servants in permanent employment shall apply to the rights and obligations arising out of fixed-term employment relationships.

Fixed-term workers cannot be given preference in keeping their jobs, in the event of redundancies created by the employer for business reasons.

### Slovakia

Article 13(1) of the Slovak Labour Code states that an employer is obliged to treat employees in accordance with the equal treatment principle. This is set out in the Act on Non-Discrimination of 2004. The Act is considered as a general regulation applying to all types of legal relations, including employment relations.

The only express principle of non-discrimination with regard to fixed-term workers is contained in Article 48(6) of the Slovak Labour Code, which provides that an employee in a fixed-term employment relationship must be neither advantaged nor constrained, in particular concerning working conditions with respect to occupational health and safety, in comparison to an employee in an employment relationship agreed for indefinite duration

There are differences of treatment contained in the Slovak Labour Code, especially with regard to the termination of a contract. The legal option to terminate fixed-term employment with immediate effect was strongly criticised by Slovak Trade Union Confederation representatives, who declared this provision of the Slovak Labour Code to be unfair and a violation of the equal treatment principle.

The *pro-rata-temporis* principle is not expressly said to apply whenever rights are accrued or earned in relation to the qualifying time of employment, although in practice this is the case.

### **3.5. Clause 5: Measures to prevent abuse**

(1) *To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:*

(a) *objective reasons justifying the renewal of such contracts or relationships;*

- (b) *the maximum total duration of successive fixed-term employment contracts or relationships;*
  - (c) *the number of renewals of such contracts or relationships.*
- (2) *Member States after consultation with the social partners and/or the social partners shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:*
- (a) *shall be regarded as "successive"*
  - (b) *shall be deemed to be contracts or relationships of indefinite duration.*

Some Member States specify in legislation the circumstances under which fixed-term contracts are permitted (Estonia, Latvia, Lithuania and Slovenia). However, this is not required by the Directive and cannot be regarded as a stand-alone measure to prevent abuse of successive fixed-term contracts.

The most popular measure for preventing abuse of fixed-term contracts, on its own or combined with another measure, is a cap on the total duration of such contracts. Three Member States (HU, SI and SL) have this measure as the only means to prevent abuse. Five Member States (Cz, Cy, LV, LT, and MT) combine the maximum total duration measure with objective reasons for exceeding the maximum duration. Only one (EE) has implemented all three measures. However, there is a considerable difference between various Member States in relation to the maximum period – ranging from 2 years in the Czech Republic and Slovenia to 2 contracts of 5 years in Estonia (ie a total of 10 years on fixed-term contracts).

Poland is unique among the EU 10 in that it has introduced a maximum number of renewals of fixed-term contracts, but without any maximum total duration.

Most Member States do not take advantage of the option to limit the number of successive fixed-term contracts within the maximum period for entering into such contracts. Objective justification is not normally required during the maximum period, but is required for any extension thereafter.

There are a number of exceptions to the principle of a maximum term for different categories of workers which are of concern.

### Czech Republic

The Czech Labour Code provides two methods for preventing abuse:

- a requirement for objective justification for certain categories of workers with regard to the renewal of fixed-term contracts after two years. There is no requirement for any justification in the first two years. Objective reasons justifying the renewal of contracts are:
  - older employees; if a person is in receipt of a retirement pension
  - academic employees
  - serious operational reasons; regional and municipal clerks require objective reasons for entering into a fixed-term contract in the first place, as well as for

renewing contracts. Such justification can include the need for temporary administrative work and/or for the substituting of a temporarily absent employee for reasons connected with disability, maternity or parental leave and military service, and for carrying out public functions.

- a maximum total duration of successive fixed-term contracts. The maximum period is two years, provided that there has not been a break of more than six months between contracts. After this period any further contract is automatically regarded as a contract of indefinite duration.

Seasonal work is excluded from any specific mention because of the possibility of a six-month break, but the need for seasonal work may be considered to be objective justification.

Section 56 Para 2 of the Code also provides that task-related contracts may, if the employee continues to work after the expiry of the agreed term, become contracts of indefinite duration.

### Estonia

A fixed-term employment contract may be defined either by a specific date or by completion of the work (Article 27 (1) 2).

If the term of an employment contract is not specified, then the employment contract is deemed to have been entered into for an unspecified term (Article 27(3) ECA).

Article 27 (2) provides an exhaustive list of objective reasons for which it is possible to enter into a fixed-term employment contract:

- completion of a specific task;
- replacement of an employee who is temporarily absent;
- temporary increase in work volume;
- performance of seasonal work;
- if the employment contract prescribes special benefits (training at the expense of the employer, waiver by the employer of termination of the employment contract due to lay-off of the employee, etc.);
- in the cases prescribed by law or by regulations of the Government.

Judicial decisions emphasise that this list is exhaustive.

The maximum duration of a fixed-term contract is five years (Article 27 (1) 2) ECA).

Renewals of successive fixed-term contracts for performance of the same work are limited to two. If an employment contract is entered into for more than two consecutive terms the contract is deemed to become one of indefinite duration. Contracts are consecutive if there is a break of no more than two months between them. This limitation on the number of renewals only applies to contracts entered into for the completion of a specific task or for a temporary increase in work volume. It does not apply to fixed-term contracts entered into for the replacement of an employee who is temporarily absent or for the performance of seasonal



work, or if the employment contract prescribes special benefits. It is not clear whether this means that such fixed-term contracts may be successively entered into more than two times. There are no judicial decisions on this as yet.

There is a further limitation, which is that the rule on the maximum total duration of fixed-term contracts does not apply to employees appointed to a post filled by way of public competition for a fixed term. This provision has a significant impact on educational institutions of higher education where teaching and research staff are appointed by way of public competition. The Universities Act (Ülikooliseadus) Article 34 (3) states that

‘a member of the ordinary teaching staff or research staff shall be elected to office by way of competition for up to five years. Members of the extraordinary teaching and research staff shall be employed for a term of up to three years. A contract of employment for an unspecified term shall be entered into with any person who has been working as a professor at the same university for at least eleven years.’

A similar rule applies to those teaching staff covered by the Professional Higher Education Act (Rakenduskõrgkooli seadus). Only professors have an entitlement to a contract of indefinite duration, after 11 years of service at the same institution.

## Cyprus

Article 7(1) of the 2003 Law provides that where an employer employs an employee on a fixed-term contract, either following a renewal of the contract or otherwise, and the employee had previously worked for a total period of 30 months or more with a fixed-term contract, irrespective of the order or number of successive fixed-term contracts, then the contract shall be considered a contract of indefinite duration. In such a case any provision in the contract restricting its duration will be void, unless the employer proves that the employment on a fixed-term basis can be justified on objective grounds. There are no limitations on the number of successive contracts.

There is no statutory period set as to the length of time between contracts before continuity is broken. This is done on a case-by-case basis.

Article 7(2) of the 2003 Law provides that objective grounds exist especially where:

- The needs of the undertaking with regard to the execution of particular work are temporary;
- The employee is replacing another employee;
- The special nature of the work which must be carried out justifies the fixed-term duration of the contract;
- The employee is employed on probation;
- The employment on the basis of a fixed-term contract is in pursuance of a Court decision;
- The employment on the basis of a fixed-term contract concerns employment, in the National Guard of the Republic of Cyprus, of volunteers with a five-yearly obligation and of volunteer officers.

The use of the word ‘especially’ in the opening section of this article implies that the above list is not exhaustive.

There are no other measures in national law or practice which may stop the abuse of, or encourage the use of, fixed-term contracts or relationships.

### Latvia

Article 45 (4) of the Labour Law 2001 states that ‘if, upon expiry of the term for which an employment contract has been entered into, no party has requested termination of the employment contract and employment legal relationships are effectively continuing, the employment contract shall be regarded as entered into for an unspecified period’.

There is an exhaustive list of situations in which a fixed-term contract may be entered into. There is no provision as to any further objective justification for entering into these contracts or renewing them.

The maximum period for which consecutive fixed-term contracts may be entered into is three years. A break of no more than 30 days is allowable for preserving continuity (Article 45(1)). Seasonal work may not exceed 10 months within any one-year period (Article 45 (2)).

There is no limit stated for the number of renewals during the three-year term.

There are a number of exceptions, where the three-year period may be extended:

- replacement for an employee who is absent or suspended from work;
- filling a position during the period from when a permanent employee leaves until a new employee replacement arrives;
- those elected to academic positions may have contracts for six-year terms (Article 27(5) of the Law on Institutions of Higher Education (Augstskolu likums, adopted on 2 November 1995, in force since 1 December 1995, published in the Official Gazette "Latvijas Vēstnesis", 179 (462), 17.11.1995).
- Members of boards of directors may be elected for three years unless a shorter term is specified (Commercial Law of Latvia Komerclikums, adopted on 13 April 2000, in force since 1 January 2001, published in the Official Gazette "Latvijas Vēstnesis", 158/160 (2069/2071) 04.05.2000). Also Article 44(3) Labour Law 2002 states that the employment contract with board members should be concluded for a specified time.

### Lithuania

National legislation envisages a number of special situations when an employer is permitted to enter into a fixed-term employment contract. These include:

- The Enterprise Bankruptcy Law permits the bankruptcy administrator to recruit employees under fixed-term agreements for work during the bankruptcy process (Para 4 article 19, the Enterprise Bankruptcy Law of the Republic of Lithuania No. IX-216 of 20 March 2001 (as amended by Law of 28 January 2003, No. IX-1332), Official Gazette No.19).

- The Law on Higher Education envisages that positions of higher education establishment teachers and research workers are to be occupied by way of open competition for a period no longer than five years (Para 1 article 31, The Law on Higher Education of the Republic of Lithuania No.VIII-1586 of 21 March 2000, Official Gazette No.27).
- The Law on Theatre and Concert Establishments states that directors of national, state and municipal theatre and concert establishments selected and appointed through public competition are to be employed on the basis of a five-year employment contract (Para 1 article 10, The Law on Theatre and Concert Establishments of the Republic of Lithuania No. IX-2257 of 1 June 2004, Official Gazette No.96.).
- The Law on Social Enterprises states that employment contracts with employees belonging to a particular group (disabled people, long-term unemployed persons, former prisoners, etc.) may be, by agreement between the parties, concluded for a fixed term not shorter than 12 months (Para 2 article 5, The Law on Social Enterprises of the Republic of Lithuania No. X-1040 of 18 January 2007, Official Gazette 2007 No. 17.).

The Lithuanian Labour Code also states that it is possible to conclude other types of employment contracts – those with farm employees, those which are ‘special purpose enterprises’, those concerning vocational education and training.

Paragraph 1 of Article 109 of the Lithuanian Labour Code states that a fixed-term employment contract may be concluded for a certain period of time or for the performance of certain work, but not exceeding five years.

Paragraph 2 of Article 109 of the Lithuanian Labour Code states that it is prohibited to conclude a fixed-term employment contract if the work is of a permanent nature, except where this is provided for by law or collective agreement. Paragraph 3 of Article 109 of the Lithuanian Labour Code states that fixed-term employment contracts with employees who are elected to their posts shall be concluded for the term they are elected for, while fixed-term employment contracts with employees who are appointed to their posts in accordance with laws or regulations of an enterprise, establishment or organisation shall be concluded for the term of office of these elective bodies.

Paragraph 3 of Article 111 of the Lithuanian Labour Code states that if an employment contract, upon the expiry of its term, is renewed within one month by another fixed-term employment contract for the same work, then, at the request of the employee, such a contract is to be recognised as concluded for an indefinite period of time, except in the cases established by paragraphs 2 and 3 of Article 109 of the Lithuanian Labour Code.

There are no limitations on the renewal of such contracts and relationships. There is no difference in application on a national, sectoral and seasonal basis. There are no other measures in national law or practice which may stop the abuse of (or encourage the use of) fixed-term employment contracts or relationships.

There are also special rules applying to seasonal and temporary contracts of less than two months.

### Hungary

Section 79 of paragraph 3 of the Hungarian Labour Code provides that employment shall be deemed to be for an indefinite duration. If a fixed-term employment period is renewed or extended between the same parties it must be said to be in the 'rightful interest' of the employee'. This does not apply to the initial contract.

According to the Hungarian Labour Code the maximum period of one or more fixed-term contracts is five years with the same employer, irrespective of the nature of the work. Continuity is maintained providing that there is not a break of more than six months between contracts. Exceptions to this are:

- employees in executive positions – the executive manager and his/her deputy.
- those working with official approval such as foreign workers needing a permit.

There are no measures restricting the number of successive fixed-term contracts during the five-year period.

According to the main rule of Act 23 of 1993, the legal status of civil servants (Ktv) is established by appointment for an indefinite period of time. Public-service employment relationships can only be established for a fixed period to provide a substitute replacement or for the completion of a definite task.

Act 33 of 1992 on the legal status of public employees (Kjt) covers all public employees working for both state and local government financial bodies and public utilities. Act 23 of 1992 also applies to this group.

Since 1 January 2004 it has been possible for sectoral Acts to determine in which cases and on what conditions a fixed-term public service relationship may be established. The public employee legal status created for a fixed period becomes indefinite if the employee works for at least one more day after the expiry date of the fixed period with the knowledge of the person directly in charge of the employee. The maximum duration of fixed-term appointments is five years. The Kjt allows the Minister to make exceptions to the five-year rule.

Public employee legal relationships created for 30 days or less are an exception to this rule and in such cases the public employee relationship is extended only for the duration originally determined in the contract.

Besides the Hungarian Labour Code provisions, collective agreements may also include rules serving the aims of the Directive.

No objective justification is required, from an employer, for entering into a fixed-term contract. Judicial decisions have ensured that the concept of 'rightful interest' effectively places an obligation upon the employer to objectively justify the renewal of such contracts.

### Malta

Regulation 7 of Legal Notice 51/07 provides that a fixed-term contract shall be converted into a contract of indefinite duration if the employee has been continuously employed under a contract (taken alone or with a previous contract of service) for a fixed term exceeding a period of four years, provided that the employer cannot provide objective reasons why the conversion should not take place.

The Legal Notice indicates at Regulation 7(4) a list of objective reasons which may justify the retention of an employee on a fixed-term contract in excess of four years.

Continuity of employment is maintained if a contract is renewed within six months of the previous contract.

### Poland

A fixed-term contract becomes a contract of indefinite duration after two successive contracts, provided that there has not been a break of more than one month between them. Contracts concluded over 30 days apart are not regarded as successive. However, this does not apply to the other three types of fixed-term contract specified in Article 25 of the Polish Labour Code (see Scope above): contracts for the performance of seasonal work, temporary replacement contracts, temporary contracts, contracts for the performance of specific work, and contracts for a trial period. Periods spent under these contracts do not count towards the maximum number of successive fixed-term contracts. The notice period is two weeks and reinstatement of workers unlawfully dismissed is not permitted.

Although Article 22(1)<sup>2</sup> of the Polish Labour Code prohibits the replacement of an employment contract when the job performed is typical of an employment relationship, there is a practice of using different types of contract, including civil contracts, to increase the number of consecutive contracts allowed. These are contracts based on the Civil Code and having attributes typical of civil contracts as contracts of mandate and contracts to perform a specific task. Workers are performing a regular job, but they apparently sign civil contracts for the purpose of reducing employment costs. Labour inspectors are charged with eradicating this practice.

Fixed-term contracts are used widely for young employees.

There are no maximum limits on the duration of individual fixed-term contracts or on the total duration of the two successive contracts. Periods before 1 May 2004 do not count. The Supreme Court has, however, ruled that these periods should not be too long, because this would not comply with the Framework Agreement's objectives.

No objective reasons are needed to enter into or renew a fixed-term contract.

### Slovenia

Slovenian legislation has implemented all of the three measures listed in Clause 5.1 of the Framework Agreement. Article 52 of the ERA explicitly states the circumstances under which fixed-term contracts can be concluded. Paragraph 3 provides that a collective agreement at economic activity level may also allow a smaller employer to conclude agreements on fixed-term employment, irrespective of the restrictions listed.

According to Article 53 an employer may not conclude one or more successive fixed-term employment contracts with the same worker and for the same job, for more than a total of two years in duration (although there are exceptions to this – see below).

Renewing a fixed-term contract within three months does not break continuity for the calculation of the two-year cap.

The Act provides for a transitional period in which employers can conclude fixed-term contracts for a maximum uninterrupted period of three years. The transitional period lasts until 2010 for small employers and until 2007 for larger employers.

The Act also stipulates that the time period of two years does not apply to:

- managerial staff;
- employment of a foreigner or person without citizenship who has been granted a work permit for a definite period, except in the case of a personal work permit;
- replacement of a temporarily absent worker;
- elected and appointed officials and/or other workers related to the term of office of a body or official in local communities, political parties, trade unions, chambers, associations and their federations.

In addition, the two-year time limit does not apply if the fixed-term contract is concluded for the preparation or execution of work which is organised as a project, but only if stipulated by a collective agreement.

A fixed-term contract may also be concluded for a longer period if provision is made for this in another law (such as the Act on Enforcing Public Interest in the Field of Culture - Zakon o uresničevanju javnega interesa na področju kulture, Uradni list RS. Št. 96/02 - which permits, under Article 46, renewable fixed-term employment contracts of five years in the artistic and cultural field),

Article 10 provides that if the duration of employment is not included in the employment contract, and/or if the fixed-term employment contract is not concluded in writing upon commencement of work, the employment contract shall be assumed to be for an indefinite period of time. Secondly, if a fixed-term employment contract is concluded contrary to law or collective agreement, or if the worker continues to work even after the expiry of the fixed-term employment contract, it shall be assumed that the worker had concluded an employment contract for an indefinite period of time.

### Slovakia

If a fixed-term contract or a series of such contracts has been entered into and there is no expiry date, or if it has not been put in writing or it continues after the expiry date, then the contract is regarded as an employment contract of indefinite duration (Article 48(1)). According to the Slovak Labour Code, in principle, any fixed-term contract not exceeding three years – whether first or successive – does not require objective justification.

There are no special rules on the number of renewals of successive fixed-term contracts provided that the renewal occurs in the initial three-year period

A fixed-term contract is deemed to have been renewed if it is entered into before the lapse of a period of six months from the time when the previous contract came to an end.

According to the Slovak Labour Code, Article 45, there is a possibility of a probationary period, of no more than three months, during which the employment can be terminated without the need to specify reasons. After expiry of the probationary period, a spell of fixed-

term employment can be terminated only if there is a justified statutory reason given by the Slovak Labour Code. Article 71 of the Slovak Labour Code, however, allows immediate termination without a justified legal reason. Employers are legally entitled to terminate a fixed-term employment contract by notice without having to give reasons. In such an event the employee will be entitled to receive the balance of their pay, as if there had been no termination.

According to Article 48(3), after a three-year period the fixed-term contract may be prolonged or concluded anew if the purpose is:

- (1) replacement of an employee,
- (2) performance of work for which a substantially increased number of employees is required for a transitional period not exceeding eight months in a calendar year,
- (3) fulfilment of task restricted by result,
- (4) agreement in the collective contract.

There are also a number of exceptions listed in Article 48(5) to which the three-year rule does not apply. The list of special categories of employees includes first level executives, persons in receipt of an old-age pension, creative employees in science, research or development,, employees for performance of work for which art education is prescribed, University teachers, persons performing a nursing care service pursuant to a special regulation.

Employees in these categories are treated differently under national law without explicit legal grounds to justify this. There is no limit applied to the permitted number of contracts or their maximum duration for these employees.

There is also an exception for employers with fewer than 20 employees, to whom the limits on the use of fixed-term contracts do not apply (Article 48(5)f).

### **3.6. Clause 6: Information and employment opportunities**

- (1) *Employers shall inform fixed-term workers about vacancies which become available in the undertaking or establishment to ensure that they have the same opportunity to secure permanent positions as other workers. Such information may be provided by way of a general announcement at a suitable place in the undertaking or establishment.*
- (2) *As far as possible, employers should facilitate access by fixed-term workers to appropriate training opportunities to enhance their skills, career development and occupational mobility.*

In all Member States there is an obligation to inform fixed-term workers of vacancies. Member States do not distinguish between fixed-term contract workers and other workers as far as the right to education and training is concerned. Generally, fixed-term workers do not have special rights compared to others.

#### Czech Republic

Section 279 paragraph 1(g) of the Czech Labour Code provides that an employer shall inform fixed-term employees about 'suitable' vacancies. This duty is supervised by the Labour Inspectorate.

There is no legal distinction between a permanent worker and a fixed-term worker in relation to access to training, and there are no specific measures ensuring equality of treatment apart from the non-discrimination requirements in sections 11 and 24 of Act No. 251/2005 Coll.

### Estonia

Article 13(2) ECA provides that 'an employer shall notify the representatives of employees and a fixed-term worker of vacant jobs in good time during the validity of the fixed-term employment contract, considering the qualifications and the skills of the worker'.

An individual can appeal against failure of the Labour Inspectorate to fulfil its duty in accordance with the Administrative Procedure and Code of Administrative Court Procedure.

There are no references in national law to the access of fixed-term workers to training opportunities as referred to in Clause 6.2 of the Framework Agreement. Article 13<sup>2</sup> prohibiting discrimination on the basis of the nature of the employment contract may in principle cover provisions on training.

### Cyprus

Articles 8(1) and 8(2) of the 2003 Law repeat verbatim the text of Clauses 6.1 and 6.2 of the Framework Agreement.

Responsibility for enforcement lies with the Labour Relations Department of the Ministry of Labour and Social Insurance. Individuals can also bring enforcement action.

### Latvia

Clause 6.1 of the Framework Agreement is effectively implemented by Article 44 (7) of the Labour Law 2001. Clause 6.2 is not explicitly implemented by law, although there are general provisions on the training of workers in Article 96 of the Labour Law, including the requirement that an employee who has been sent for occupational training to raise his or her qualifications shall be retained. The employer shall cover expenses associated with occupational training or the raising of qualifications. The Labour Inspectorate supervises enforcement.

### Lithuania

The employer's obligation to inform fixed-term workers about vacancies that become available is set out in the Lithuanian Labour Code as amended on 12 May 2005 (The Law on Amendment and Supplement of the Labour Code).

It applies to all vacancies as there are no restrictions introduced in relevant laws. The Labour Inspectorate has responsibility for enforcement.

There is no formal obligation for employers to facilitate access by fixed-term workers to appropriate training opportunities.



## Hungary

The employer must inform the fixed-term employee in due time, so that the employee may apply, by means which are customary at the workplace (board, internet, etc.), for all permanent vacancies (Section 84/A(2)). There is an obligation on the employer to inform workers but there is no sanction if he or she does not do so.

With regard to training opportunities, there is no difference between employees having a fixed-term or an indefinite employment contract. Any distinction would be a breach of section 5 of the Hungarian Labour Code and the Equal Treatment Act.

## Malta

Regulation 5(1) of Legal Notice 51/072 implements Clause 6.1 of the Framework Agreement and provides that it shall be the duty of the employer to inform employees on a contract of service for a fixed term about vacancies which become available in the place of work and to give such employees the same opportunity as other employees to secure work on a contract of service for an indefinite time within the place of work. Such information may be given by way of a general announcement at a suitable place in the place of work.

Clause 6.2 of the Framework Agreement is implemented by Regulation 6 of Legal Notice 51/07. This provides that employers shall endeavour to facilitate access by employees on a contract of service for a fixed term to appropriate training opportunities to enhance their skills, career development and occupational mobility. There is no mechanism for checking that employers comply with this duty apart from the Labour Inspectorate.

## Poland

Article 94<sup>2</sup> of the Polish Labour Code states that the employer is obliged to inform employees about opportunities to apply for permanent jobs in the usual way that the employer does this. There is no standard procedure for informing workers of these vacancies, except within the Civil Service, which uses a central database for its recruitment.

Employers may facilitate access of fixed-term workers to appropriate training opportunities as provided for in other instruments. Article 103 of the Polish Labour Code is the general provision. It is further developed in the Regulation of the Minister of Education and Science of 3 February 2006 on the acquisition and development of knowledge, skills and professional qualifications by adults (Rozporządzenie Ministra Edukacji i Nauki z dnia 3 lutego 2006 r. w sprawie uzyskiwania i uzupełniania przez osoby dorosłe wiedzy ogólnej, umiejętności i kwalifikacji zawodowych w formach pozaszkolnych, Dz. U. z dnia 27 lutego 2006 r. Nr. 31, poz. 216).

Fixed-term employees' access to training is also guaranteed by the ban on discrimination against such personnel in terms of promotion and access to training.

## Slovenia

Article 23 (4) of the ERA stipulates that an employer is obliged to inform his/her workers, regardless of employment status (i.e. fixed-term, part-time or full-time) and in due time, of vacant positions or of the public notification of vacancies at the employer's registered office.

The Civil Servants Act also places an obligation on the employer to inform fixed-term workers about vacancies. Article 71 states that no permanent contract of employment may be concluded without open competition with civil servants that entered into a fixed-term employment relationship, with the exception of trainees/interns selected on the basis of open competition.

Article 172 of the ERA states that a worker shall have the right to continuing education, advanced training and training in accordance with the requirements of the working process with the purpose of maintaining and/or improving his/her capability to progress at work and keep the job. An employer is also obliged to provide education, advanced training and training of workers if so required by the needs of the working process, or if the education, advanced training or training may prevent termination of the employment contract due to incapacity or business reasons.

As the law explicitly states, during a spell of employment for a definite period of time the contracting parties shall have the same rights and obligations as in the case of employment for an indefinite period of time, and provision of the right to education applies to those on fixed-term contracts.

A fine of 300 000 SIT (1 250 euro) may be imposed on an employer who, employing workers for a definite period of time and recruiting workers for an indefinite period of time, fails to inform the workers in due time of vacant positions or of the public notification of vacancies at the employer's registered office.

### Slovakia

Clause 6 of the Framework Agreement is implemented through Article 48(7) of the Slovak Labour Code, which obliges employers 'to inform fixed-term employees and employees' representatives about all indefinite-term vacancies in the most appropriate manner'. In addition, many collective agreements contain more detailed rules on a duty to make positions public.

Employers are not obliged to provide fixed-term employees with special training opportunities compared to permanent employees. In general, employees are obliged to maintain or develop qualifications by participating in training and employers are obliged to ensure that employees' qualifications are adequate before their first working day as well as every time that they are to be transferred to another workplace or to perform another job. These general rules are laid down in Article 153 of the Slovak Labour Code and apply to fixed-term workers also.

### **3.7. Clause 7: Information and consultation**

- (1) *Fixed-term workers shall be taken into consideration in calculating the threshold above which workers' representative bodies provided for in national and Community law may be constituted in the undertaking as required by national provisions.*
- (2) *The arrangements for the application of clause 7.1 shall be defined by Member States after consultation with the social partners and/or the social partners in accordance with national law, collective agreements or practice and having regard to clause 4.1.*

(3) *As far as possible, employers should give consideration to the provision of appropriate information to existing workers' representative bodies about fixed-term work in the undertaking.*

Member States have implemented Clause 7 either expressly or implicitly, by not differentiating between those on permanent contracts and those on fixed-term contracts, although there are issues in the Czech Republic and Slovenia.

### Czech Republic

There are four kinds of worker representatives. These are trade unions, works councils and representatives concerned with health and safety, European works councils and employee representatives <sup>i</sup> and employee representatives on supervisory boards.

The Labour Code deals with trade unions. A trade union is considered to be operating within a company or organisation when at least one of its members is an employee, regardless of his or her permanent or fixed-term status.

Employees with an agreement for the performance of a work assignment or an agreement on working activity are not taken into account with regard to works councils, European works councils and supervisory boards. Employees with a contract of employment, whether for a fixed-term or indefinite term, are included.

Trade unions are informed about fixed-term work in the undertaking according to sections 18b paragraph 2(b) of the Czech Labour Code and 287 paragraph 1(b) of the new Labour Code. Works councils are informed about fixed-term work in the undertaking according to section 24 paragraph 2 of the Czech Labour Code and section 278 of the new Labour Code.

### Estonia

The Trade Union and Employee Representatives Act applies to employees and there is no distinction between fixed-term and permanent employees with regard to thresholds. Therefore, all rights and obligations stemming from the Trade Union Act apply equally to employees with fixed-term and indefinite duration contracts. According to the Act a trade union must be founded by at least five employees. Employees have the right to be members of trade unions of their workplace or other trade unions and have the right to act as elected members of trade unions.

There are no provisions on information about fixed-term work.

### Cyprus

Article 9(1) of the 2003 Law provides that fixed-term workers are to be taken into account when calculating the threshold above which workers' representative bodies may be constituted in an undertaking according to the legislation in force, collective agreements and practice. No further details are provided in respect of the manner in which their number is to be taken into account.

Article 9(3) repeats verbatim the provisions of Clause 7.3 of the Framework Agreement regarding the employer's duty to inform workers' representative bodies.

There is a strong tripartite system including trade unions, so the question of numbers of fixed-term workers being taken into account is not an issue.

### Latvia

Clause 7.1 of the Framework Agreement is implemented by Article 10(5) of the Labour Law 2001, using almost identical wording.

Clause 7(3) is implemented by Article 11(1) of the Labour Law.

### Lithuania

- The activities of labour councils and trade unions are governed by special laws. These laws do not distinguish between fixed-term workers and permanent workers when calculating the thresholds for worker representation.

Employees have the right to information including information relating to the current and future activities of the enterprise and its economic and financial condition; information on the current state and structure of labour relations, and potential changes in employment; information about measures concerned with possible redundancies; other information connected with labour relations and activities of the enterprise (Para. 1 Article 47 of the Lithuanian Labour Code). There is no specific reference to information about fixed-term contracts.

### Hungary

Fixed-term workers are taken into consideration in electing workers' representative bodies. All employees having an employment contract with the employer are eligible to vote for the members of the Works Council (section 47 of the Hungarian Labour Code).

Employers are obliged to notify their works councils at least every six months regarding trends in wages and salaries, liquidity related to the payment of wages, the characteristic features of employment, utilisation of work time, and the characteristics of working conditions (section 65 of the Hungarian Labour Code).

### Malta

There is no distinction between fixed-term and permanent employees in calculating representation thresholds (Article 51 EIRA 2002 in respect of trade unions).

There are no legislative provisions implementing Clause 7.3.

### Poland

Fixed-term workers may be members of trade unions without any distinction being made. (Act on Trade Unions Ustawa z dnia 23 maja 1991 r. o związkach zawodowych (Dz. U. Z 2001, Nr 79, poz. 854). Under Article 2 of this Act, the right to establish and run a trade union organisation is vested in persons, irrespective of the basis of employment, employed under an employment contract or an agency contract, members of agricultural production co-operatives, and retired persons. To establish a trade union organisation, 10 persons with the right to do so are needed.

There are no specific provisions implementing Clause 7.3, but Article 28 of the Trade Union Act obliges the employer to present to trade unions on demand information necessary to perform trade union activities, and in particular information on working conditions and rules governing remuneration payments. This may include information on fixed-term contracts.

### Slovenia

The Workers' Participation in Management Act (Zakon o sodelovanju delavcev pri upravljanju, Ur. L. 42/93 in 56/2001) sets out the right of workers to be informed directly or through their representatives, to be consulted, to make proposals and voice opinions to the employer, and to demand joint consultations with the employer. Workers who have been employed for at least six months continuously have the right to elect representatives in the works council. The right to be elected to the works council is enjoyed by all workers who have been employed for a minimum of 12 months without a break.

The law states that workers have a right to elect a works council in larger organisations (minimum of 20 workers with the right to vote; all workers who have been employed for at least six months have the right to vote), whilst in smaller organisations worker representatives are elected (organisations with up to 20 employees, who have the right to vote).

### Slovakia

There is no distinction between permanent and fixed-term workers with regard to numbers necessary to calculate thresholds for the establishment and election of employee representatives.

There is no specific requirement to provide information on fixed-term working to workers or their representatives apart from the more general rules on information given to trade unions and other bodies.

#### 4. CONCLUSIONS

The foregoing analysis indicates that the ten Member States which acceded to the EU on 1 May 2004 have introduced measures at national level that cover the main elements in the Framework Agreement annexed to Directive 1999/70/EC on fixed-term work. The report, however, also identifies a number of areas where further information and reflection is required to assess whether the transposition and implementation is compatible with the Directive.

The first area of concern relates to the scope of the transposition measures in some Member States. In addition to the exclusion of civil servants in a number of Member States on the grounds that they are not employees and thus not covered by the Directive, there are some Member States (CZ, EE, MT, PL, SI, SK) in which specific groups of workers are exempted from the national legislation, or where not all fixed-term work contracts are included in the national legislation or where the measures to prevent abuse are much less stringent for certain groups without objective reasons (eg LV). Where the exemptions or exclusions go beyond those areas permitted by the Directive itself, then questions are raised as to whether the national legislation gives effect to the purpose of the Directive and, indeed, whether it is compatible with the Directive.

The Commission intends to take further action in relation to the exemptions from the scope of the Directive, and the exceptions in regard to the measures to prevent abuse, in CZ, EE, LV, MT, PL, SI and SK.

Secondly, six of the Member States (CZ, LV, LT, HU, SI and SK) have no definition of a comparable permanent worker and it is not clear how such a comparison would be made. The absence of a definition of a comparable permanent worker can effectively nullify the application of the principle of non-discrimination, which is central to the purpose of the Directive.

The issue of a comparable permanent worker was identified in the report on implementation in the EU 15 (SEC (2006) 1074). A separate internal investigation on the arrangements for a comparator across the EU 25 will be conducted.

Thirdly, a number of Member States expressly provide for the principle of non-discrimination with regard to fixed-contract workers (EE, CY, LV, MT, SI). In other Member States there is either a general provision against discrimination in labour relations or is implied in the employment relationship (CZ, LT, HU, PL, SL). However, both Poland and Slovakia make it easier to terminate a fixed-term worker's contract, as compared to a permanent contract, which may not be in conformity with the Directive.

There is no reference or no specific definition in legislation of the principle of *pro rata temporis* in the Czech Republic, Estonia, Latvia, Hungary and Slovakia. In addition, Slovakia permits differences of treatment with regard to the termination of a contract for fixed-term workers.

Fourthly, there are areas of concern around the measures introduced to prevent abuse of successive fixed-term contracts. Clause 5.1 of the Framework Agreement obliges Member States to introduce one or more of the three measures listed. Only two Member States (EE and

PL) have taken advantage of the option to limit the number of successive contracts within the maximum period for entering into such contracts.

Clause 5.2(b) places an obligation on Member States to define the conditions in which fixed-term contracts are regarded as successive or continuous, which is important for those Member States where measures to prevent abuse consist in a maximum number of renewals or a total maximum time. However, the European Court of Justice in Case C-212/04 *Adeneler and others* found that

*"While such a reference back to national authorities for the purpose of establishing the specific rules for application of the terms 'successive' and 'of indefinite duration' within the meaning of the Framework Agreement may be explained by the concern to preserve the diversity of the relevant national rules, it is, however, to be remembered that the margin of appreciation thereby left for the Member States is not unlimited, because it cannot in any event go so far as to compromise the objective or the practical effect of the Framework Agreement.... In particular, this discretion must not be exercised by national authorities in such a way as to lead to a situation liable to give rise to abuse and thus to thwart that objective.*

*Such an interpretation is especially vital in the case of a key concept, like the concept of 'successive' employment relationships, which is decisive for definition of the very scope of the national provisions intended to implement the Framework Agreement.*

*It is clear that a national provision under which only fixed-term contracts that are separated by a period of time shorter than or equal to 20 working days are regarded as successive must be considered to be such as to compromise the object, the aim and the practical effect of the Framework Agreement."*

Whilst the Court gave no indication of what gap between contracts would have been appropriate to regard contracts as either continuous or successive, it concluded that a break of 20 days between contracts was insufficient to determine that contracts were successive. The question arises as to whether the periods in Latvia, Lithuania and Poland (30 days in the first case and 1 month for the latter two) are adequate in the light of the Court's decision.

Further consideration is warranted on the effectiveness of the purpose of the Directive when the single anti-abuse measure adopted is a maximum number of renewals, but no maximum time, permitting very long single fixed-term contracts in some Member States.

Fifthly, the importance of training and lifelong learning is stressed in the current debate on flexicurity where workers can no longer expect a job for life but are likely to need to continually update and acquire new skills throughout their working lives. Training is of particular importance for fixed-term workers as they compete for permanency or move on to other areas of fixed-term work. No Member State has taken active measures to give effect to Clause 6.2 of the Framework Agreement to require employers to promote training for fixed-term workers. Whilst three Member States (CZ, HU and SI) make no distinction between permanent and fixed-term workers in respect of training, another three Member States (EE, LV, and LT) have made no reference at all in their national law to the access of fixed-term workers to training opportunities.

Sixthly, there is a need to look more closely at sanctions and their application in some of the EU Member States. Whilst the starting point is that Member States have procedural autonomy

and can choose appropriate sanctions or means of redress, under general principles of EU law there is a requirement that the sanctions chosen should be effective and verifiable. The Court confirmed, in C-212/04 *Adeneler and others*, that conversion into a contract of indefinite duration is not required where there are other effective measures in place to prevent and, where relevant, punish the use of successive fixed-term contracts. This is particularly important in that collusion between an employer and a fixed-term worker, who may choose to have a job rather than comply with the law, could lead to avoidance of the law where the sanctions for non-compliance are not clear.