



**Implementation report  
Directive 1999/70/EC concerning the Framework Agreement on  
fixed-term work concluded by UNICE, CEEP and ETUC**

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

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## Content

<b>1. Introduction .....</b>	<b>2</b>
<b>2. Overview.....</b>	<b>4</b>
<b>3. Analysis of transposition measures.....</b>	<b>7</b>
Clause 1: Purpose.....	7
Clause 2: Scope.....	7
Clause 3: Definitions .....	13
Clause 4: Principle of non-discrimination .....	17
Clause 5: Measures to prevent abuse .....	21
Clause 6: Information and employment opportunities .....	29
Clause 7: Information and consultation.....	32
<b>4. Conclusions .....</b>	<b>36</b>

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## 1. Introduction

This report concerns the implementation of the Framework Agreement on fixed-term work concluded by UNICE, CEEP and ETUC on March 18 1999 and Directive 1999/70/EC in the ten newest Member States. It is written in the context of Contract reference VC/2005/0038, concerning *Studies on the Implementation of Labour Law Directives in the enlarged European Union*. This report is based upon the reports from national experts<sup>1</sup> submitted to the Commission.

The preamble to the Framework Agreement recognised that contracts of an indefinite duration are the general form of the employment relationship between employers and workers. This is true of all the Member States considered in this report with most of them having national rules that a contract of employment is for an indefinite period unless explicitly stated.

The preamble to the Framework Agreement also states that the agreement sets out the general principles and minimum requirements relating to fixed-term work.

All the ten Member States were required to transpose the Directive into national law prior to their accession on May 1 2004.

The use of fixed-term work varies significantly between the Member States concerned, as can be seen from the following table. It ranges from 2.6% of the workforce in Estonia to 22.7% in Poland.

### Fixed term contracts (% of total employment in 2004)<sup>2</sup>

Member State	Male	Female	Total
EU25	13.7	13.2	14.3
Czech Republic	9.1	7.8	10.7
Estonia	2.6	3.5	1.8
Cyprus	12.9	8.6	17.6
Latvia	9.5	11.6	7.3
Lithuania	6.3	8.7	3.9
Hungary	6.8	7.5	6.1
Malta	3.9	3.0	5.8
Poland	22.7	23.7	21.5
Slovenia	17.8	16.7	19.1
Slovakia	5.5	6.0	5.1

All the newer Member States had figures below the average for the EU25 in 2004, except for Poland and Slovenia. Both of these countries have experienced a significant increase in the proportion of the workforce working on fixed-term contracts. In Poland the figure has grown

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<sup>2</sup> Figures taken from Employment in Europe 2005 (DG for Employment, Social Affairs and Equal Opportunities 2005).

from 5.8% in 2000 to the figure of 22.7% by 2004. In Slovenia the figures are less dramatic, but nevertheless significant, with the proportion growing from 13.7% in 2000 to the 2004 figure of 17.8%. During this period the proportion of the EU25 workforce as a whole on fixed-term contracts was almost static (13.7% in 2000 and 13.6% in 2004), although the *Employment in Europe 2005* report comments that 'increases in the share of fixed-term employment since 2000 have mainly occurred in the new Member States (with some exceptions)'.

There does not appear to be an obvious correlation between the use of fixed-term contracts and employment levels. Poland had the highest unemployment rate in the EU (18.8%) in 2005 and the one of the highest usage rates of fixed-term contracts. Slovakia, on the other hand, had the second highest unemployment rate (16.4%) with one of the lower usages of such contracts.<sup>3</sup>

There appears to be no overall trend which would suggest a gender bias, although in individual Member States the difference is marked. In Estonia, Latvia, Lithuania, Hungary, Poland and Slovakia there are a greater proportion of the male work force, when compared to the female workforce, on fixed-term contracts. In the other four Member States the situation is reversed with more women than men, proportionately, on fixed-term contracts. In some Member States, however, the difference in fixed-term employment rates is quite marked, especially in the case of Cyprus.

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<sup>3</sup> Unemployment figures taken from Annual review of Working Conditions in the EU 2005-06 European Foundation for the improvement of Living and Working Conditions 2006

## 2. Overview

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

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

### Czech Republic

The Czech Republic notified the Commission that the Directive was transposed by provisions in the 1965 Labour Code (zákon č. 65/1965 Sb.) as amended by Act 46/2004 Coll. (zákon č. 46/2004 Sb.) which came into force on 1 March 2004. Section 30 of the Code contains the provisions relating to fixed-term work. 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.

Non-discrimination clauses of the Labour Code were adopted by act no. 155/2000 (zákon č. 155/2000 Sb.) after consultation with the social partners. They came into effect on 1 January 2001. Works councils were established by the act no. 155/2000.

A new Labour Code has been adopted and came into effect on January 1 2007. There are no changes to the rules implementing the Directive from the adoption of this new Code. Section 39 of the new Code has the same effect as Section 30 of the previous Code. Sec. 65 Para 2 of the new Code is the same as section 56 Para 2 of the previous Code.

### Estonia

Estonia notified the Commission that the Directive was transposed by:

The Employment Contracts Act 1992 (Essti Vabariigi Töölepingu Seadus) and the Trade Union and Employee Representatives Act (AMETIÜHINGUTE SEADUS) as amended by the Eesti Vabariigi Töölepingu Seadus ja Eesti Vabariigi Ülemnõukogu Otsuse - Eesti Vabariigi Töölepingu Seadus Rakendamise Kohta - Muutmise Seadus), which entered into effect on May 1 2004. It is planned to introduce a new draft of the Act during 2007.

Trade Union Act (Ametiühingute Seadus).

### Cyprus

Cyprus notified the Commission that the Directive was transposed 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.

Also the Termination of Employment (Amendment) Law; Law No. 70(I)2002 7-6-2002, which came into effect on 1/1/2003.



## Latvia

The Latvian Government notified the Commission that the Directive was transposed by the Labour Law of Latvia (Darba likums) which was adopted on 6 July, 2001 (published in the Official Gazette "Latvijas Vēstnesis", No. 105 (2492) 06.07.2001).

The Labour Law of Latvia took effect from 1 June, 2002. Also of relevance is

1. Cabinet of Ministers Regulation No.353 regarding Work in Activity Areas where an Employment Contract is Normally not Entered into for an Unspecified Period, adopted 6 August 2002, and in force since 16 August, 2002 (published in the Official Gazette "Latvijas Vēstnesis" 116 (2691) 15.06.2002) – not reported; amended by Cabinet of Ministers Regulations No. 73 amending Regulations No 353 regarding Work in Activity Areas where an Employment Contract is Normally not Entered into for an Unspecified Period, adopted 1 February, 2005 and entered into force in 5 February, 2005; (published in the Official Gazette "Latvijas Vēstnesis" 20 (3178) in 04.02.2005).
2. Cabinet of Ministers Regulation No 272 regarding Seasonal Work (Noteikumi par sezonas rakstura darbiem Nr.272, published in the Official Gazette, "Latvijas Vēstnesis" 98 (2673) 02.07.2002) in force since 3 July, 2002; and Cabinet of Ministers Regulations No. 3 amending Regulations No 272 regarding Seasonal Work Grozījumi Ministru kabineta 2002.gada 25.jūnija noteikumos Nr.272 "Noteikumi par sezonas rakstura darbiem", published in the Official Gazette "Latvijas Vēstnesis" 4 (3162) 07.01.2005).
3. 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

The Lithuanian Government notified the Commission that the Directive was transposed through the adoption of the new Labour Code (Darbo Kodekso Patvirtinimo, Sigaliojimo Ir Gyvendinimo, Statymas IX-926) which came into effect on January 1, 2003. The Code was amended by the Law on Amendment and Supplement of the Labour Code of 12 May 2005.

## Hungary

Hungary notified the Commission that it had transposed the Directive into national law by

- 1992. évi XXII. törvény a Munka Törvénykönyvéről Labour Code
- 1993. évi LXXVI. Törvény a szakképzésről on Occupational Training
- 2003. évi XX. a Munka Törvénykönyvéről szóló 1992. évi XXII. Törvény, valamint az ezzel összefüggő törvények jogharmonizációs célú módosításáról on Amendment to the Labour Code

## Malta

Malta notified the Commission that the Directive was transposed by the Contracts of Service for a Fixed Term Regulations (Legal Notice 429/02), which came into force on January 1 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).



## Poland

Poland notified the Commission that it had transposed the Directive by the Polish Labour Code as amended (Ustawa z dnia 26 czerwca 1974 r. – Kodeks pracy.)

## 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) 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).

Of relevance also 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); and

The Research and Development Activities Act (Zakon o raziskovalni in razvojni dejavnosti, Uradni list RS, št. 96/02);

## Slovakia

The Slovakian Government informed the Commission that the Directive had been transposed by:

- 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) (Act No. 311/2001 Coll.); as amended by Act No. 165/2002 Coll., Act No. 408/2002 Coll., Act No. 413/2002 Coll., Act No. 210/2003 Coll., Act No. 461/2003 Coll., Act No. 5/2004 Coll., Act No. 365/2004 Coll., Act No. 82/2005 Coll., Act No. 131/2005 Coll., Act No. 244/2005 Coll., Act No. 570/2005 Coll., Act No. 231/2006 Coll, and Act No. 124/2006 Coll.
- Full wording of the Labour Code Act (Úplné znenie zákona) (Act No. 433/2003 Coll.)
- Act on Social Insurance (Zákon o sociálnom poistení) (Act No. 461/2003 Coll.)

Of relevance is also

- 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

#### Clause 1: Purpose

The purpose of this framework agreement is to:

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

The purposes of the Framework Agreement are not explicitly referred to in national legislation in the Member States, with the exceptions of Cyprus, Malta and Slovenia.

#### 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 there are exceptions contained in the implementing measures in Member States.

With regard to the exceptions in Clause 2.2, Cyprus is the only Member State to adopt both sub sections. Others, such as the Czech Republic, Estonia and Latvia have neither of the exceptions, whilst others, such as Hungary, Malta, Slovenia and Slovakia, take advantage of the exception in Clause 2.2(a) only.

#### Czech Republic

There is no definition of the term employee or worker, except that a person who works 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 do not conclude private law employment relationships – soldiers, policemen, fire fighters, 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 first by the 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 para 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:

1. 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 take retirement benefits. If they conclude longer fixed-term contracts or contracts for an indefinite period they lose their retirement benefits. This may be a breach of Directive Clause 5.1, but it is also appears to be a reason for not informing older workers about contracts available for an indefinite period.
2. academic employees – this is provided for in section 70 of Act No. 111/1998 Coll. There are some specific rules concerning this group – Sec. 77 Para 1 indirectly mentions the possibility of successive employment contracts. That is why there is no measure to prevent abuse. Academic employees are defined by Sec. 70 both generally and as a list: professors, assistant professors, assistants, lecturers, scientific and scholar employees who teach at the university.
3. temporary agency employees, not including main employees of the agency
4. casual workers

Certain employees do not conclude private law employment relationships – soldiers, policemen, fire fighters, 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 first by the Labour Code and also by Act no. 312/2002 Coll.

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 ECA covers employment relationships and employment contracts. An employment contract is defined '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.'

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

Article 7 excludes 13 groups of employees from the scope of the ECA. Of particular concern are state officials and local government officials whose service relationships are regulated by the Public Service Act.

Article 27 (4) limiting the number and conditions of consecutive fixed-term contracts provides that this does not apply to employees appointed to a post specified in the law or a regulation by way of public competition for a fixed term. This provision has a significant

impact on educational institutions of higher education and of professional higher institutions 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 concerned with 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.

Estonian law does not take advantage of the options in Clause 2.2 of the Directive.

### **Cyprus**

Article 4(1) of 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 employee category. Temporary employees in the public and semi-public sector are having their contracts changed from temporary to contracts of indefinite duration. The new category into which they fall are 'public employees of indefinite duration'. Such employees appear to have less employment rights than those in permanent public employee posts. There is uncertainty about their position with regard to continuity of employment and their rights on the termination of their employment.

### **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 Labour Law does not explicitly exclude initial vocational training relationships and apprenticeship schemes, although it appears that a recent Supreme Court decision (SKA-207, 10.05.2006) appears to suggest that initial vocational training may be exempted.

There are also provisions (Article 44(1)(7) of the LL) which excludes publicly supported temporary work provided for unemployed people with regard to training and integration.

### **Lithuania**

Employee is defined in the Labour Code, as 'a natural person possessing legal capacity in labour relations employed under employment contract for remuneration' (Article 15). All employees are included in the definition, including those in the public and the private sector

and there are no workers or groups of workers who are excluded 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 contained in Clause 2.2 of the Framework Agreement.

## **Hungary**

The 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. Torveny a Koztiszttviselok jogallasarol) and Act 33 of 1992 on the legal status of public employees (Kjt) (evi XXXIII. Torveny 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.

The Equal Treatment Act came to effect in January 2004 and covers all employment relationships, however, including private employment relationships under the Labour Code and public sector employment relationships under Act 23 of 1992 on Civil Servants and Act 33 of 1992 on Public Employees.

There is no employment relationship concluded within the framework of a specific public or publicly-supported training, integration or vocational retraining, which is not covered by the Labour Code. However Act 76 of 1993 on Vocational Training contains provisions (Section 28 and 34 of Act 76 of 1993 on Vocational Training) on study contracts complying with Clause 2.2(a) of the Framework Agreement.

## **Malta**

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

The EIRA 2002 and Legal Notice 429/02 apply to employees in the private sector only. Regulation 7(5) of the Legal Notice states that it shall not be applicable to employment in the public sector. Employment in the public sector is regulated by the Public Service Management Code. It regulates the conditions of employment in the public service and lays down rules of conduct for public service employees. Article 48(1) of the EIRA 2002 empowers the Prime Minister to prescribe the provisions of the Act to public sector employees. To date no such regulations have been prescribed.

According to Regulation 7(4) of Legal Notice 429/02, collective agreements may modify the application of Regulation 7(2) of the Legal Notice (which provides that that a provision in a contract of service for a fixed term restricting the duration of the contract shall be of no effect if the employee has been continuously employed under the contract (taken alone or with a previous contract of service) for a fixed term exceeding a period of four years) by substituting different provisions which, in order to prevent abuse arising from the use of successive contracts of service for a fixed term, specify one or more of the following:

- a. the objective reasons justifying the renewal of such contract;
- b. the maximum total duration of successive fixed term contracts of service;
- c. the number of renewals of such successive fixed term contracts of service.

Article 34(1) of the EIRA 2002 provides that the rule that the conditions of employment in a fixed term contract shall not be less favourable than those which would have been applicable had the same contract of employment at the same place of work been for an indefinite time, unless different treatment is justified on objective grounds, does not apply to contracts of employees on initial vocational training and, or, on apprenticeship schemes.

No mention is made to the exception under Clause 2.2(b) of the Framework Agreement.

## **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.

There are three types of fixed-term contracts:

1. the fixed-term employment contract
2. the employment contract for a trial period
3. the employment contract for performance of specific work, which includes seasonal employment contracts.

The first of these is included within the scope of the implementing measures and there is a lesser protection for the latter two. These two contracts generally precede the indefinite period contract, and have lesser protection. The period of notice is shorter than in the case of "regular" fixed-term contract (3 days, 1 week or 2 weeks – depends on the period of contract). The trial period contract may not be calculated as one of contracts being calculated for purposes of an indefinite contract.

Other provisions apply to 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 Employment Relationship Act states that a worker is any natural person who has entered into an employment relationship on the basis of a concluded employment contract. According to Article 1 of the Civil Servants Act a public employee is a natural person, who has entered into an employment relationship in the public sector. According to the Public Servants Act the public sector is comprised of state bodies and institutions of the self-governing local communities; public agencies, public funds, public institutions and public commerce institutions; other persons of the public law if they are indirect users of the state budget or the local community budget

If a fixed-term employment contract is concluded in the private sector the content of the contract includes: whether the employment is part or full-time; the rules on normal daily or weekly working time and the organisation of working time; the amount of the basic; any other components of the worker's wage; payment period; payment day and manner of payment of the wage; and rules on annual leave and/or the manner of determining the annual leave. For all persons employed in the public sector, employment relations are regulated by the Civil Servants Act.

All collective agreements in different sectors are based on the national general employment Act and do not differ from it in defining fixed-term contracts. The only exception is the collective agreement for constructional activity, which allows fixed term employment contracts for the duration of a construction project, mostly 5 years in length.

There are special rules applying to traineeships where a maximum term is fixed. There are no other exceptions to the Framework Agreement.

## **Slovakia**

The Labour Code applies to employees in both private and public employment. The Labour Code does not distinguish between fixed-term and permanent employees as concerns rights and obligations of employees, except for one special case where it is states that certain rights or obligations do not apply to fixed-term employees (Article 71 Sec. 4 of Labour Code which says that 'an employer might terminate immediately a fixed-term employment relationship without any objective reason').

Employment relations of public and civil servants are governed by special laws. There are special laws No. 312/2001 Coll. on Performance of Duties in Civil Services and Act No. 552/2003 Coll. on Performance of Duties in Public Services that establish employment relationship with these employees. Based on these special laws, civil servants are outside the scope of application of the Directive. The Directive does apply, however, to fixed-term employment relationships with public servants. Civil servants are, for example, employees of various Ministries, state authorities, judges, prosecutors, etc. Public servants are employees of state bodies, municipalities, regional municipal authorities and certain legal entities which are, under special laws, entrusted to decide about rights and obligations of individuals and legal entities in the area of public administration.

The general rules on the permitted scope of fixed-term employment apply to all employees, except for employees placed by a temporary work agency (Article 48 Sec. 5 point g) of the Labour Code).

The Labour Code provides a limit of three years for the duration of successive fixed-term contracts but there are a number of exceptions contained in Article 48(5). After the initial three years period an employer is entitled to continue employment relations with special categories of employees, with whom the use of successive fixed-term contracts over a period of initial three years is permitted, even though there is no legal reason given. A list of special categories of employees includes employees who are first level executives, those in receipt of old-age pensions and University teachers. 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 are no explicit exemptions with regard to Clause 2.2 of the Framework Agreement.

### **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. 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.

An important issue for Member States in this regard 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**

Section 30 para 1 of the Labour Code (Section 39 para 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 entered for a fixed-term then (Article 26 (1)3) the contract must include information on the duration of the validity of the contract and the grounds for entry into 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.

### **Cyprus**

Article 2 of the 2003 Law repeats verbatim the definition of a fixed-term worker. It also copies, with Article 6, verbatim the Framework Agreement's definition of a comparable full-time worker in both paragraphs of Directive Clause 3.2.

### **Latvia**

The Labour Law 2001 does not contain a distinction between a permanent and a fixed-term worker. Article 3 of the Labour Law 2001 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 an exhaustive list as justifying a fixed-term contract.

Cabinet of Ministers Regulations 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. These are 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).

Article 44(2) of the Labour Law 2001 provides that seasonal work, and work in activity areas where an employment contract is normally not entered into for an unspecified period, shall be determined by the Cabinet of Ministers.

Cabinet of Ministers Regulation No 272 regarding Seasonal Work and Cabinet of Ministers Regulations No. 3 amending Regulations No 272 regarding Seasonal Work define seasonal works. Regulations determine seasonal type work for the performance of which entering into a contract of employment of limited duration is permissible.

The definition of a comparable permanent worker contained in Article 3 of the Labour Law 2002 is identical to that for a fixed-term worker contained in the same Article.

### **Lithuania**

Para 1 Article 109 of the Labour Code 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.

There is no definition of a comparable full-time worker.

The national law is silent how a comparison should be made if there is not a comparable worker in the same establishment.

### **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 Labour Code).

The meaning of a fixed-term employment relationship is defined by the Labour Code (Section 79(2)). If the duration of an employment relation is not determined by a date, the employer is obliged to inform the employee about the expected duration of employment. This may be for a maximum period of five years. If the date of completion or the duration is in doubt, then the employment relationship is considered to be of indefinite duration.

If official approval is necessary to establish an employment relationship then the employment relationship shall be concluded according to the period defined in the official approval and may be extended or prolonged beyond the 5 year upper limit.

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 the 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. The treatment of a fixed-term worker can be compared with any other workers in a comparable situation.



## Malta

Regulation 2(1) of the Legal Notice 429/02 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, qualification 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 the comparison between employees.

If there is no comparable permanent employee in the same establishment, Regulation 2(1) of Legal Notice 429/02 provides that the 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. The Labour Code does not use the term fixed-term worker, but the terms parties to or person who concluded the fixed-term employment relationship.

As there are no specific provisions on fixed-term workers, their rights and obligations arising from the employment contract should be not less favourable than 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 particularly Article 18<sup>3b</sup>. The social partners were consulted in the formulation of the anti-discrimination provisions.

The Labour Code does not define the term "comparable full-time worker, but applies the anti-discrimination provisions (Article 11<sup>2</sup>, Articles 18<sup>3a</sup> to 18<sup>3e</sup> of the Labour Code).

## Slovenia

Article 52 of the Employment Relationship Act defines fixed-term employment contracts and the conditions to be fulfilled in order for such a contract to be legally binding. The common ground is that they are applicable to situations where a temporary need for a worker arises (e.g. temporary absence of a worker). The list is not conclusive, as, according to Article 52, 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.

Article 54 of The Civil Servants Act incorporates the principle that a public servant can conclude an employment relationship for an indefinite period in cases defined by the law or by some of the other available laws defining employment relationships in the public sector (e.g. the Defence Act). A fixed-term contract in the public sector can only be concluded in certain circumstances defined by the Act.

The social partners are also able to define other cases where fixed-term contracts can be concluded, through collective agreements.

There is no definition of a comparable permanent worker in the Employment Relationship Act.

### **Slovakia**

Fixed-term employment is generally defined as 'employment of limited duration' (doba určitá). The 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 the 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 an indefinite employment relationship if the fixed-term contract is not in writing.

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

### **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 countries expressly provide for the principle of non-discrimination with regard to fixed-contract workers. In other countries there is either a general provision against discrimination in labour relations or an implied term in the relationship.

### **Czech Republic**

Both Sec. 16 Para 1 of the New Labour Code and Sec. 1 Para 3 of the 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 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 on fixed-term work shall be employed on the same terms and working conditions *pro rata* during 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 is implied by law into all contracts of employment. There are, however, still some areas where there appears to be discrimination, e.g. public sector and semi-public sector employees on temporary or fixed-term contracts receive less favourable treatment than permanent public employees with regard to sick leave provisions, access to pension plans and promotion into permanent public service posts.

### **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.

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 specific term workers in this respect.

## **Lithuania**

The principle of non-discrimination of fixed term-workers is not expressly defined in labour legislation. However, it is universally applied and it is unlawful to refuse to employ on discriminatory grounds. The 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).

In every employment contract, the parties must agree on the essential conditions of the contract: the employee's place of work (enterprise, establishment, organisation, structural subdivision, etc.), and job functions, i.e. on work of a certain profession, speciality, qualification, or specific duties (Para 1 Article 95).

The 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 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 and all these 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.



## Malta

Regulation 4 of Legal Notice 429/02 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; unless such difference of treatment arise as a result of the recognition of length of service, experience or qualifications and such other differences are justified on objective grounds; or the task for which the employee has been employed is specific and includes objective considerations which justify such differentiation.

Non-adherence to the principle of non-discrimination on objective grounds is justified under Regulation 4 if such difference of treatment is based upon the recognition of length of service (the *pro rata temporis* principle under Clause 4.2 of the Framework Agreement), experience or qualifications and such other differences are justified on objective grounds; or 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. This provides that 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'.

Article 11<sup>2</sup> of the Labour Code states that all employees performing the same duties have equal rights. Article 11<sup>3</sup> states that any discrimination in employment, either direct or indirect, in particular based on sex, age, disability, race, religion, nationality, political beliefs, trade unions' membership, ethnic origin, religious belief, sexual orientation, and also based on the type of employment contract (fixed term or indefinite) or a person's employment status (full or part time) is inadmissible.

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).

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 to an employee in a comparable situation.

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

## Slovenia

Article 55 Employment Relationship Act 2002 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. It provides that the provisions of the Act governing the rights and obligations of civil servants that entered into permanent employment, shall apply to the rights and obligations arising out of fixed-term employment relationships.

Fixed-term workers can not be given preference in keeping their employment, in cases of redundancies, by the employer for business reasons.

## Slovakia

Article 13(1) of the 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 Labour Code which provides that an employee in a fixed term employment relationship must neither be 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 Labour Code, especially with regard to the termination of a contract. The legal option to terminate a fixed-term employment with immediate effect was strongly criticized by Slovak Trade Union Confederation representatives, who declared this provision of the Labour Code to be unfair establishing violation of 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.

### 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.

There is a considerable difference between various Member States in relation to the maximum period for the use of fixed-term contracts, ranging from 10 years in Estonia to Poland where there is no maximum period.

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. Some Member States have specific examples of situations which might constitute objective justification.

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

### **Czech Republic**

The Labour Code provides two methods for preventing abuse:

1. 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:
  - i. older employees; if a person is in receipt of a retirement pension
  - ii. academic employees
  - iii. 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 to disability, maternity or parental leave, and military service and for the carrying out public functions.
2. 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.

### **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:

1. completion of a specific task;
2. replacement of an employee who is temporarily absent;
3. temporary increase in work volume;
4. performance of seasonal work;
5. 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 a lay-off of the employee etc.);
6. 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 the 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 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 as they do not apply to employees appointed to a post filled by way of public competition for a fixed term. See above (Scope) for this in relation to teaching staff in higher education.

## 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 between contracts before continuity is broken. This is done on a case by case basis.

Any period of employment before the enactment of the 2003 Law was not taken into account for the purposes of calculating the 30 month period.

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 a 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 when a fixed-term contract may be entered into. There is no provision as to any further objective justification to enter these contracts or to renew them.

The maximum period for which consecutive fixed-term contracts are allowed is two 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 a proposal before Parliament to extend the period to three years.

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

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

1. replacement for an employee who is absent or suspended from work;
2. filling a position during the period from when a permanent employee leaves until a new employee replacement arrives;
3. 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 in 2 November 1995, in force since 1 December, 1995, published in the Official Gazzete "Latvijas Vēstnesis", 179 (462), 17.11.1995).
4. Members of boards of directors may be elected for three years unless a shorter term is specified (Commercial Law of Latvia Komerclikums, adopted in 13 April, 2000, in force since 1 January 2001, published in the Official Gazzete "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

Para 2 Article 109 of the Labour Code states that it is prohibited to conclude a fixed-term employment contract if the work is of a permanent nature, except for the cases when this is provided for by laws or collective agreements. Para 1 Article 109 of the Labour Code states that a fixed-term employment contract may be concluded for a certain period of time or for the period of the performance of certain work, but not exceeding five years.

The Labour Code prohibits a fixed-term employment contract if the work is of a permanent nature, except for the cases when this is provided by laws or collective agreements (Para 2 Article 109).

Para 3 Article 111 of the 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 paras 2 and 3 Article 109 of the Labour Code

There are no limitations on the renewals 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.

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

1. 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 March 20, 2001 (As amended by 15 April 2004, No. IX-2129), Official Gazette No.31).
2. 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).
3. 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 five year employment contract (Para 1 article 10, The Law on Theatre and Concert Establishments of the Republic of Lithuania No. IX-2257 of June 1, 2004, Official Gazette No.96.).
4. The Law on Social Companies states that employment contracts with employees belonging to a particular group (handicapped people, long-term unemployed persons, former prisoners, etc.), may be, by agreement between the parties, concluded for fixed-term not shorter than 12 months ( Para 2 article 5, The Law on Social Companies of the Republic of Lithuania No. IX-2251 of June 1, 2004, Official Gazette No.96.).

The 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.

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

## Hungary

Section 79 para 3 of the 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 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

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

There are no measures restricting the numbers 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 1st January 2004 it has been possible for sectoral Acts to determine in which cases and on what conditions may a fixed-term public service relationship 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 5 years. The Kjt allows the Minister to make exceptions from the 5 year rule.

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

Besides the 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 429/02 provides that a provision in a contract of service for a fixed term restricting the duration of the contract shall have no effect and the employee shall be considered an employee employed under 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 (from the time of the Regulations taking effect on January 1 2003).

The Regulation does not indicate what objective reasons may justify the limitation of a renewal of such a contract for a fixed term and therefore each case is to be determined by the Industrial Tribunal on its own merits.

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

Regulation 7 of Legal Notice 429/02 is subject to the two important exceptions: collective agreements which may modify the application of paragraph 2 and public sector employees – see comments under Scope above.

## Poland

Article 25 of the Polish Labour Code differentiates between various types of fixed-term contracts with varying protection levels (see Scope above).

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. This does not apply to contracts for the performance of seasonal work, temporary replacement contracts, temporary contracts, and contracts for a trial period. Periods spent under these contracts do not count towards the maximum number of successive fixed-term contracts.

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 for 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 decreasing employment costs.

Fixed-term contracts are used widely for young employees especially.

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 May 1 2004 do not count. There has been a Supreme Court ruling, however, 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 implemented all of the three measures listed in Clause 5.1 of the Framework Agreement. Article 52 Employment Relation Act explicitly states the circumstances under which the fixed-term contracts can be concluded.

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.

This limitation is not used for the replacement of absent workers, foreigners' employment and mandate work officials. An interruption of three months or less does not represent an interruption of the uninterrupted two-year period.

The Act provided for a transitional period in which employers can conclude fixed-term contracts for the 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 circumstances under which the time period of two years does not apply:

1. managerial staff;
2. employment of a foreigner or person without citizenship who was granted a work permit for a definite period, except in case of a personal work permit,
3. replacing a temporarily absent worker
4. 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

The 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.

The new labour law legislation does not forbid the renewal of fixed-term contracts; however the reason for which the contract is concluded must be legitimate.

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 had been entered into and there is no expiry date; or it was not in writing; or it continues after the expiry date, then the contract is regarded as an employment contract of indefinite duration (Article 48(1)). The Labour Code requires that, in principle, any fixed-term contract not exceeding three years – whether first or successive – does not require objective justification.

According to the 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. During the existence of the fixed-term employment (after the expiry of the probationary period) it can be terminated only if there is a justified statutory reason given by the Labour Code. Article 71 of the 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 three years period the fixed-term contract may be prolonged or re-entered if the purpose is the

1. replacement for an employee,
2. performance of work for which substantially increasing of 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 the exceptions listed in Article 48(5) (see Scope above)

There are no special rules on number of renewals of successive fixed-term contract provided that the renewal occurs in the initial three years period. As mentioned above, employers are legally entitled to use successive fixed-term contracts to employ many categories of employees who are concerned (listed in Article 48(5) a) to h) of the Labour Code), while there is no legal limit to do so.

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

### **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 or all workers of vacancies. Member States do not distinguish between fixed-term contract workers and other workers in the right to education and training. Generally fixed-term workers do not have special rights compared to others.

### **Czech Republic**

Section 18 para 2(i) of the Labour Code provides that an employer shall inform fixed-term employees about 'suitable' vacancies (but see comments on older workers under Scope above). 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 pursue claims 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 in Directive Clause 6.2. 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 is with the Labour Inspectorate. The representatives of the Ministry of Labour state that there is an informal process of informing fixed-term workers of opportunities for permanent positions and for training. Individuals do have the right to take action if they are not informed.

### **Latvia**

Article 6 (1) of the Directive is effectively implemented by Article 44 (7) of the Labour Law 2001. Article 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. The Labour inspectorate supervises enforcement.

### **Lithuania**

The obligation of employers to inform fixed-term workers about vacancies that become available is set out in the Labour Code as amended on May 12, 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 employees in due time, so that the employee may apply, by means which are customary at the workplace, (board, internet etc) about all permanent vacancies (Section 84/A(2)). There is an obligation on the employer to inform 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 contracts. Any distinction would be a breach of section 5 of the Labour Code and the Equal Treatment Act.

## Malta

Regulation 5(1) of Legal Notice 429/02 implements Framework Agreement Clause 6.1 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.

Framework Agreement Clause 6.2 is implemented by Regulation 6. 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 in the Regulation to control and/or inspect that employers comply with this duty apart from the Labour Inspectorate.

## Poland

Labour Code Article 94<sup>2</sup> 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 it is provided in other provisions. Article 103 of the Code is the general provision. It is further developed in Regulation of Minister of Education and Science of 3 February 2006 on acquiring 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).

## Slovenia

The national law ( Article 23, paragraph 4 of the ERA) stipulates the obligation of an employer to inform his/her workers regardless of employment status (i.e. fixed term, part time or full time) in due time of the vacant positions or of the public advertisement of vacancies on the notice board at the employer's registered office.

The Civil Servants Act also provides an obligation for 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 Employment Relationship Act 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 be 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 the termination of the employment contract due to incapacity or business reasons.

As the law explicitly 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, the provision of the right to education applies to those on fixed-term contracts.

A fine of 300,000 SIT( 1250 Euro) may be imposed on the employer if the employer, employing workers for a definite period of time and recruiting workers for an indefinite period of time, did not inform the workers in due time of the vacant positions or of the public advertisement of vacancies on the notice board at the employer's registered office.

## **Slovakia**

Clause 6 of the Framework Agreement is implemented through Article 48(7) of the 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 qualification via participating in training and employers are obliged to take care of employees' qualification before their first working day as well as every time before they are going to be transferred to another workplace or to perform other job. These general rules are laid down in Article 153 of the Labour Code and apply to fixed-term workers also.

### **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 in SE, and employee representatives on supervisory boards.

The Labour Code deals with trade unions. A trade union is considered to be operating within an employer 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 as to sec. 18b para 2(b) of the Labour Code. Work councils are informed about fixed-term work in the undertaking according to sec. 24 para 2 of the 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 Trade Unions Act a trade union may 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, in accord with Directive Clause 7.3.

### **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 the workers' representative bodies may be constituted in the undertaking according to the legislation in force, the 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 Directive 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 workers' representation.

Employees have the right to information which embraces 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 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 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, utilization of work time, and the characteristics of working conditions (section 65 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 distinctions. (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 the Act, the right to establish and organise a trade union organisation is vested in persons, irrespective of the basis of employment, employed on the basis of an employment contract, an agency contract, members of agricultural production co-operatives, and retired persons. To establish a trade union organisation 10 persons with the right to establish trade union organisation 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 unions 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) provides the right of workers to be informed directly or through their representatives, to be consulted, to make proposals and opinions to the employer, to demand joint consultations with the employer. Workers who have been employed for at least 6 months continuously have the right to elect representatives in the workers council. The right to be elected into the workers council is provided for 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 workers council in larger organisations (minimum of 20 workers with the right to vote; all workers who have been employed for at least 6 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 giving to trade unions and other bodies.

## 4. Conclusions

### Clause 1: Purpose

Clause 1 of the Framework Agreement states that its purpose is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination; and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships

These purposes are not explicitly referred to in national legislation in the Member States, with the exceptions of

1. Cyprus, which repeats it verbatim in Article 3 of the Fixed-term Work (Prohibition of Less Favourable Treatment) Law;
2. Malta, where the Contracts of Service for a Fixed Term Regulations 2002 state as their purpose 'the granting of employees on fixed term contracts the same benefits and conditions as those enjoyed by persons with indefinite contracts; and to ensure that employees on a fixed term contract become eligible for a contract of indefinite duration after 4 years'

### Clause 2: Scope

Clause 2 provides that the Framework Agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreement or practice in each Member State. It also states that Member States may, after consultation with the social partners, provide that the Agreement does not apply to initial vocational relationships and apprentice schemes; and also to employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.

There are important exceptions to the scope of the national legislation implementing the scope of the Framework Agreement. Some Member States exclude certain categories of employees.

1. older employees - in the Czech Republic, older employees in receipt of a pension can only conclude fixed-term contracts of one year in duration if they wish to receive their retirement benefits. Comparable older workers in permanent positions are also discriminated against as they lose their pension rights whilst working.
2. academic employees - in the Czech Republic a whole range of staff in higher education are excluded. In Estonia academic employees in higher education have special rules applied to them resulting, for example in University Professors not being able to receive a contract of indefinite duration until they have served for 11 years at the same institution. In Lithuania, there is a requirement for elections and a professor, for example, will need to be elected three times before he or she is entitled to permanency. In Slovenia University teachers are amongst a list of exclusions. In Slovenia different rules are applied to workers in research and development.
3. public employees – in Cyprus public and semi public employees on fixed-term contracts have been moved to contracts of indefinite duration, but they still appear to be treated less well than those who were already public employees of indefinite duration. There is uncertainty about their position with regard to continuity of employment and their

- rights on the termination of their employment. In Malta the whole of the public sector is excluded, thus leaving the Regulations to apply to the private sector only.
4. fixed-term contracts – in some Member States not all fixed-term contracts are included in the protection offered by the implementing legislation. In Poland, contracts for a trial period and contracts for the performance of specific work (including seasonal work) are excluded.
  5. small employers – employees on fixed-term contracts are excluded in Slovakia if they work for an employer with less than 20 employees.
  6. other excluded groups – in Estonia and Slovakia there are lists of excluded groups apart from those mentioned here which require justification.

With regard to the exceptions in Clause 2.2, Cyprus is the only Member State to adopt both sub sections. Others, such as the Czech Republic, Estonia and Latvia have neither of the exceptions, whilst others, such as Hungary, Malta, Slovenia and Slovakia, take advantage of the exception in Clause 2.2(a) only.

### **Clause 3: Definitions**

Cyprus is the only Member State that repeats the words of the Directive verbatim.

In some Member States there is an assumption that contracts of employment are for an indefinite period unless the contract specifically states otherwise. This is the situation in the Czech Republic, Estonia, Latvia, Hungary and Slovakia,

Other Member States refer to fixed-term contracts or to the rules applying to them. These rules include a specific statement as to the duration, or the reason for, of the contract. This is the case in Estonia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

Some Member States have an indicative or exhaustive list of situations when a fixed-term contract may be entered into.

There is no provision for a definition of a comparable permanent worker in

1. the Czech Republic but it appears that the anti-discrimination provisions of the Labour Code will not permit discrimination between permanent workers and those on fixed-term contracts. There is no evidence that this is the practice, however.
2. Lithuania, Hungary, or Slovakia
3. Poland where the national author reports that anti discrimination provisions of the Labour Code stops fixed-term workers being treated less favourably than permanent workers.
4. Slovenia, but the Employment Relations Act explicitly states the principle of non-discrimination between those on definite and indefinite contracts.

Estonia, Cyprus and Latvia appear to have definitions of a comparable permanent worker which meet the definitions in Clause 3.2 of the Framework Agreement. Malta also has a similar definition but there are some differences in that the Regulation only refers to full-time comparators. It also differs in the reference to seniority as a consideration to be taken into account when making the comparison between employees.



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

Please see comments above on the lack of definition relating to comparable permanent workers.

A number of countries expressly provide for the principle of non-discrimination with regard to fixed-contract workers; these include Estonia, Latvia, Hungary, Malta, Poland and Slovenia.

For all other countries there is either a general provision against discrimination in labour relations or an implied term in the relationship. There is an issue with regard to

1. Cyprus where fixed-term workers in the public sector receive less favourable treatment with regard to pension and sick leave provision.
2. Lithuania where the Labour Code does not stipulate that period of service qualifications should be the same for fixed-term workers as for permanent workers.
3. Slovakia, where the principle of equal treatment does not appear to be consistently applied as between those on fixed-term contracts and those on indefinite contracts.

The principle of pro rata temporis is not expressly defined in the Czech Republic, Estonia, Latvia, Lithuania, Hungary, or Slovakia.

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

All Member States have a situation where contracts of limited duration can be turned into contracts of indefinite duration.

The maximum duration for fixed-term contracts is normally (years)

Czech Republic	2
Estonia	10
Cyprus	2.5
Latvia	2 (proposal to extend this to 3 years)
Lithuania	5
Hungary	5
Malta	4
Poland	no maximum
Slovenia	2
Slovakia	3

There is, therefore, a considerable difference between various Member States. Estonia has a maximum of 10 years, whilst Poland has none, but does have a limitation on the number of successive fixed-term contracts. Whilst it can be argued that Poland has met its obligations by adopting one of the three measures contained in Clause 5.1 of the Framework Agreement, it is clearly not a measure that can prevent abuse on its own. Clause 5.1(c) implies a maximum period for a fixed-term contract, otherwise it has no meaning. This lack of a maximum duration, combined with the high levels of fixed-term contracts in Poland, suggest that the measures to control abuse are not adequate.

The Court of Justice in *Adeneler*<sup>4</sup> stated that whilst Member States have a margin of appreciation 'they are required to guarantee the result as required by Community Law'. Poland does not appear to have measures which will achieve the result required by Clause 1.2 of the Framework Agreement. Additionally, of course, certain types of fixed-term contracts are excluded from the scope of the implementing measures allowing further possibilities of abuse.

There are also a number of exceptions to the principle of a maximum term which are of concern. These include academics in the Czech Republic, Estonia, Latvia and Lithuania; workers in receipt of a pension in the Czech Republic; a small employer exemption in Slovakia, the exclusion of the public sector in Malta; and other exceptions in Estonia, Lithuania, Hungary and Slovenia.

Clause 5.2(a) leaves it to Member States to determine under what conditions fixed-term employment contracts or relationships can be regarded as 'successive'. The Court of Justice in *Adeneler* also held that an 'inflexible and restrictive' definition of when a number of subsequent employment contracts are successive would also be contrary to the requirements of Clause 5 and allow abuse. In this case the Court of Justice referred to a gap of 20 days plus which Greek legislation allowed to break continuity and thus establish that subsequent contracts were not successive. In the light of this it is interesting to look at the periods allowed for in the national legislation considered in this report:

Czech Republic	6 months
Estonia	2 months
Cyprus	No fixed period
Latvia	30 days
Lithuania	1 month
Hungary	6 months
Malta	6 months
Poland	1 month
Slovenia	3 months
Slovakia	6 months

It must be questionable as to whether the periods in Latvia, Lithuania and Poland are adequate in the light of the decision of the Court of Justice.

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. Exceptions to this are Estonia and Poland.

Some Member States have specific situations which constitute objective justification. This is the case in the Czech Republic, Estonia, Cyprus, Latvia and Slovakia.

<sup>4</sup> Case C-212/04 *Adeneler v Ellinikos Organismos Galaktos*



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

In all Member States there is an obligation to inform fixed-term workers or all workers of vacancies. Restrictions to this are

1. the qualification that it is only 'suitable' vacancies that are notified in the Czech Republic.
2. vacancies are notified considering 'the qualifications and skills of the worker' in Estonia.

but generally those on fixed-term contracts have the same rights to notification as those on other types of contract. The extent of enforcement is not known, although there are some suggestions that it is lightly done.

### **Clauses 6.1 and 6.2 are repeated verbatim in Cyprus**

Member States do not distinguish between fixed-term contract workers and other workers in the right to education and training. Generally fixed-term workers do not have special rights compared to others. There are no special provisions in accord with Clause 6.2 in the Member States apart from Cyprus and Malta.

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

All Member States have implemented Clause 7.1 either expressly or implicitly, by not differentiating between those on permanent contracts and those on fixed-term contracts.

There is an issue in Slovenia which has a rule on elections to workers councils which require 6 months employment before an employee can vote. This may indirectly discriminate against those on fixed-term contracts.

The provisions of Clause 7.3 are specifically implemented in the Czech Republic, Cyprus (verbatim), Latvia and Hungary.