


# Procedure file

Basic information		
COS - Procedure on a strategy paper (historic)	<a href="#">1999/2047(COS)</a>	Procedure completed
Fixed-term work: framework agreement concluded by UNICE, CEEP and the ETUC		
Subject 4.15.03 Arrangement of working time, work schedules		

Key players			
European Parliament			
Council of the European Union	Council configuration	Meeting	Date
	Culture	<a href="#">2195</a>	28/06/1999

Key events			
22/04/1999	Vote in committee		Summary
21/04/1999	Committee report tabled for plenary	<a href="#">A4-0261/1999</a>	
26/04/1999	Non-legislative basic document published	COM(1999)0203	Summary
03/05/1999	Committee referral announced in Parliament		
05/05/1999	Debate in Parliament		
06/05/1999	Decision by Parliament	T4-0466/1999	Summary
06/05/1999	End of procedure in Parliament		
01/10/1999	Final act published in Official Journal		

Technical information	
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Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 142
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/4/10941

Documentation gateway					
Committee report tabled for plenary, single reading		<a href="#">A4-0261/1999</a>	22/04/1999	EP	

		<a href="#">OJ C 279 01.10.1999, p. 0009</a>			
Non-legislative basic document		COM(1999)0203	27/04/1999	EC	Summary
Text adopted by Parliament, single reading		T4-0466/1999 <a href="#">OJ C 279 01.10.1999, p. 0264-0430</a>	06/05/1999	EP	Summary
Implementing legislative act		<a href="#">31999L0070</a> <a href="#">OJ L 175 10.07.1999, p. 0043</a>	28/06/1999	EU	Summary
Follow-up document		<a href="#">SEC(2006)1074</a>	11/08/2006	EC	Summary
Follow-up document		<a href="#">SEC(2008)2485</a>	17/09/2008	EC	Summary

## Fixed-term work: framework agreement concluded by UNICE, CEEP and the ETUC

The UNICE, the CEEP and the ETUC have concluded a framework agreement on fixed-term work. The non-legislative report drafted by Karin JÖNS for the Committee recommends the approval of the agreement but not without criticism. Mrs. JÖNS welcomes the social partners' recognition that the quality of fixed-term employment must be improved and that the abuse of fixed-term employment contracts must be stopped. The agreement, however, is confined to fixed-term employment. It leaves totally out other forms of atypical employment. Furthermore, the agreement excludes social security questions which are in need of legal regulation. The Commission is urged to submit more far-reaching proposals to abolish discrimination in all forms of atypical employment. Mrs. JÖNS calls on the Commission and the social partners to propose rules which rid flexible working forms of their second-class image by setting practical objectives aimed at improving the situation of those in atypical employment.?

## Fixed-term work: framework agreement concluded by UNICE, CEEP and the ETUC

PURPOSE : conclusion of a framework agreement according to Social Protocol procedure on fixed-term work concluded by UNICE, CEEP and ETUC. CONTENT : the framework agreement concluded by the Social Partners looks to fulfil two purposes : 1) improving the quality of fixed-term employment by abolishing discrimination against fixed-term employees, and; 2) creating a framework to prevent abuse by repeated use of fixed-term employment contracts. The agreement is inspired by several other draft Commission proposals of the 1980's and the 1990's on "atypical work" which were not adopted. The scope of the framework agreement, compared with the Commission proposals is more restricted in two respects : - its application in relation to people and - its application in relation to practice. Concerning the application in relation to people, the framework agreement defines fixed-term workers as people who have an employment contract or employment relationship entered into directly with an employer, the end of which is determined by objective conditions such as reaching a specific date, completing a specific task or the occurrence of a specific event. Its application in relation to people is thus exclusively confined to fixed-term employees, excluding temporary employees (such as those employed by temporary employment agencies) but including seasonal workers. Concerning the application in relation to practice, the principle of non-discrimination is applied only to "employment conditions", without reference to the basic statutory social security legislation, the Member States having full responsibility in that respect. Finally, provisions are made to prevent abuse arising from the use of successive fixed-term employment relationships (notably, by obliging the employer to explain why he chose a fixed-term contract and not another kind of employment relationship). But, the agreement does not seek to prevent the abuse of fixed-term employment as a whole, the Member States having the power to fix all provisions in that respect.?

## Fixed-term work: framework agreement concluded by UNICE, CEEP and the ETUC

Adopting the resolution by Karin Jöns (PSE,DE) on the Commission proposal for a Council directive concerning the framework agreement on fixed-term work concluded by UNICE, CEEP and the ETUC, the European Parliament welcomes the principle of non-discrimination against fixed-term employees set out in the agreement. However, it notes that the agreement concluded by the social partners is confined to fixed-term employment, and calls on the Commission to submit forthwith proposals for directives that will place the forms of atypical employment relationships that have not yet been regulated, in particular temporary work (through agencies and telework, on the same footing as indefinite full-time working relationships. As the agreement excludes social security questions, the report calls on the Commission to put forward as soon as possible a proposal for a supplementary directive, to include the field of social protection. It calls for future agreements between the social partners to establish the principle of non-discrimination not only as regards conditions of employment and occupational social security but also for mandatory social security and social protection. The Commission and the social partners are called upon in future to propose rules designed to rid flexible forms of work of their second-class image. While welcoming the progress achieved by this agreement in terms of combatting abuse of fixed-term employment relationships, the Parliament regrets that the agreement only establishes provisions for successive fixed-term employment relationships and that the non-binding nature of the provisions that are supposed to prevent abuse arising from the use of such employment relationships do not comprise any qualitative or quantitative standards. The report points out that the agreement does not set a uniform European minimum standard for successive fixed-term employment contracts. It insists that, when this agreement is transposed into national law or when any future rules are laid down for flexible forms of working, it should not be possible to justify differential treatment solely on the grounds that the activity is pursued in the context of a flexible form of employment. The Parliament regrets the fact that the protocol on social policy was incorporated virtually unchanged in the Treaty of Amsterdam and calls for a right of codecision for Parliament under the legislative procedure pursuant to Articles 138 and 139 of the Treaty analogous to that of the Council. For this reason, it repeats its call for an interinstitutional agreement for joint rules on the practical application of these articles of the Amsterdam Treaty. Finally, the Parliament calls on the Member States and/or the social partners to place all the necessary information at the Commission's disposal on the further progress of fixed-term employment in the Union and, in accordance with the framework agreement, to

improve the quality of fixed-term employment in practical terms, to prevent abuse and bring social protection into line with the conditions applying to indefinite employment.?

## Fixed-term work: framework agreement concluded by UNICE, CEEP and the ETUC

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ACT: Council Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

BACKGROUND: the Community Charter of the Fundamental Rights of Workers provides that the completion of the internal market must lead to an improvement in the living and working conditions of workers in the EC - including forms of employment other than open-ended contracts such as fixed-term contracts, part-time working, temporary work and seasonal work. Although the Council has been unable to reach a decision on the proposed Directive on certain employment relationships with regard to distortions of competition, it did issue a Resolution in 1999 inviting the social partners to negotiate agreements that modernise the organisation of work ? including flexible working arrangements. The aim being to make undertakings more productive and competitive and to seek a balance between flexibility on the one hand and security on the other.

Accordingly, the Commission entered into consultation with both management and labour on the possible direction of Community action with regard to flexible working time and job security. In March 1999 the cross-industry organisations (UNICE, CEEP and ETUC) concluded a framework agreement on fixed-term work. Both parties (i.e. management and labour) wish to give particular attention to the matter of fixed-term work that sets out the general principles and minimum requirements for fixed-term employment contracts and employment relationships. In it the social partners emphasise that fixed-term work should be characterised by the principle of non-discrimination and one that prevents abuse arising from the use of successive fixed-term employment contracts.

CONTENT: the purpose of this Directive, therefore, is to put into effect the framework agreement on fixed-term contracts that was concluded in March 1999 by ETUC, UNICE and CEEP.

The framework agreement on fixed-term work illustrates the role of the social partners in the European employment strategy (that was agreed at the Luxembourg extra-ordinary summit in 1997). The agreement also sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations. As such the purpose of the framework agreement is two-fold. Firstly to improve the quality of fixed-term work by ensuring the principle of non-discrimination and secondly, to establish a framework that prevents abuse arising from the use of successive fixed-term employment contracts.

The agreement?s scope extends to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State. Following Member State and social partner consultation it may be agreed that the agreement will not apply to initial vocational training or apprenticeship schemes nor will it apply to employment contracts that have been concluded within the framework of a specific public or publicly-support training/vocational programme.

Measures to prevent abuse are detailed and include, for example, requiring the Member States to introduce measures whereby objective reasons justifying the renewal of fixed-term contracts must be stated or the maximum total duration of successive fixed-term employment contracts specified. Provisions have also been put in place concerning information on employment opportunities and consultation.

ENTRY INTO FORCE: 10 July 1999.

## Fixed-term work: framework agreement concluded by UNICE, CEEP and the ETUC

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PURPOSE: the presentation of a Report by the Commission services on the implementation of the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP.

CONTENT: the 1990?s confirmed the growing upward trend of fixed-term work contracts. The share of employed people with contracts of limited duration is rising in almost all of the EU Member States. In 2004 the average EU share rose from 13% in the previous three years to 13.7%. However, the proportion of fixed-term workers in individual Member State varies widely ? from a few percent in Estonia, Malta, Ireland, Luxembourg, Slovakia and the UK, to well above 30% in Spain and above 20% in Poland and Portugal.

There is also considerable variation between different groups and sectors on the national labour market. Fixed-term work, for example is heavily concentrated among young people (close to 40% of individuals aged 15-24). It also appears that it is more important in the primary and construction sectors rather than in the manufacturing sector.

Fixed-term work contributes to flexible labour markets and provides a buffer for crucial fluctuations of demand. This allows companies to adjust employment levels without incurring high firing costs. Fixed-term work also allows companies to reap market opportunities by entering into projects of short term duration without the need to cover costly personnel requirements. This is particularly important for labour markets where permanent employment is protected by strict regulations.

A number of risks, nevertheless, are associated with the use of fixed-term work. These include: higher turnover; lower wages and less training. In addition, excessive career instability can be associated, at a macro-level, to the lowering of consumption propensity and to the fertility rate. Available statistical data highlights that one third of those in temporary employment find a stable job after one year. However, after six years around 16% still have fixed-term contracts and 20% have moved out of employment all together.

The Community has long debated the need to set the right balance between the need to preserve flexibility and job creating dynamics, on the one hand, and the need to enhance labour market prospects for fixed-term workers, on the other. In 1999 a Directive on the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP was approved. The final date for transposition in the Member States was 10 July 2001.

The purpose of this Report is to give an overview of the Directive?s transposition in the EU-15. A series of six studies were commissioned and one synthesis report by independent experts. These studies form the basis of this Commission working document. The implementation of the Directive in the EU-10 is the matter of a separate report, which will be issued in the course of 2007. What is said in this Report does not prejudice what position the Commission will take in verifying the compatibility of legislation and practice of individual Member States.

In its Conclusions, the Commission notes that the EU-15 have introduced measures at a national level that cover the main elements of the framework agreement annexed to Directive 1999/70/EC on fixed-term work. At the same time, however, a number of questions arise concerning the process of transposition. A number of Member States, for example, were late in transposing the Directive and the Commission has had to start infringement proceedings for non-Communication of national measures. (Now resolved).

The Report also shows that in some Member States there are exemptions and/or special regulations pertaining to specific groups of workers ? such as Members of the Defence Forces in Ireland and the UK. When the Directive was adopted the Commission stated that the agreement would not cover the personnel of armed forces who work in a combatant capacity. However, this should not exclude the entire personnel of armed forces.

Other Member States have exempted specific categories of workers or have allowed for special regulations as is the case in Spain, France, Italy and Portugal. The Commission has, therefore, started infringement proceedings against Spain vis-à-vis religious teachers.

The transposition of the principle of non-discrimination, including the definition of ?comparable permanent worker? also merits further attention. Based on the Report?s findings the Commission has identified a number of problems associated with the transposition of national rules. They include, inter alia:

- Cases where there is no comparable worker in the same establishment. This applies, in particular, to Spain, France, Italy, Luxembourg, the Netherlands, Austria and Portugal. The Commission services will investigate this further.
- The principle of non-discrimination. The Directive states that fixed-term workers can not be treated less favourably in respect of the ?package? of working conditions. It also states that the question of whether working conditions assessed together constitute less favourable treatment will be considered in the light of individual circumstances and the details of national law and practices. The Commission will follow the developments in the Member States and notably those in which comparisons between fixed-term and permanent employees can be made on the basis of employment conditions taken as a whole.
- The Commission is not entirely clear about how provisions on the equality of period of service qualifications have been transposed.
- As regards measures to prevent abuse of successive fixed-term contracts the Commission notes that there have been many complaints and that, in some EU Member States, the transformation of fixed-term contracts into a permanent contract is not possible in the public sector. As is the case in Greece and Italy.
- Sweden and Luxembourg have not transposed the framework agreement on the duty of employers to inform fixed-term workers about vacancies, although Sweden has recently sought to remedy this gap.
- The Commission will investigate why only fixed-term contracts, longer than nine months, are taken into account when calculating the thresholds for workers? representative bodies in Italy.

On a final point the Commission notes that it will carry out a further study on the Directive?s transposition in the new EU Member States. The findings of this report will be presented to the European Parliament and to the Council in the course of 2007.

## Fixed-term work: framework agreement concluded by UNICE, CEEP and the ETUC

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This Commission Staff Working Document reports on the transposition of Directive 1999/70/EC on fixed-term work in the EU-10. This report is the companion to [SEC\(2006\)1074](#), which reported on the implementation of the Directive by the 15 Member States which made up the European Union before 1 May 2004. The current document reports on the Directive's transposition and implementation by the so-called "EU 10", the ten Member States that acceded to the European Union on 1 May 2004. These ten countries were required to have transposed Directive 1999/70/EC into their national legislative frameworks in advance of their accession on 1 May 2004. As the research was conducted in 2005, i.e. prior to their accession, this report does not include implementation in Romania and Bulgaria. The Commission has arranged for a study to be conducted on the implementation of labour law Directives, including the fixed-term Directive, in those two Member States, the results of which are expected to be available in 2009.

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

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

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

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

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

principle of non-discrimination, which is central to the purpose of the Directive. The issue of a comparable permanent worker was identified in the report on implementation in the EU 15 (SEC (2006) 1074). A separate internal investigation on the arrangements for a comparator across the EU 25 will be conducted.

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

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

Fourthly, there are areas of concern around the measures introduced to prevent abuse of successive fixed-term contracts. Clause 5.1 of the Framework Agreement obliges Member States to introduce one or more of the three measures listed. Only two Member States (EE and PL) have taken advantage of the option to limit the number of successive contracts within the maximum period for entering into such contracts. Clause 5.2(b) places an obligation on Member States to define the conditions in which fixed-term contracts are regarded as successive or continuous, which is important for those Member States where measures to prevent abuse consist in a maximum number of renewals or a total maximum time.

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

Sixthly, there is a need to look more closely at sanctions and their application in some of the EU Member States. Whilst the starting point is that Member States have procedural autonomy and can choose appropriate sanctions or means of redress, under general principles of EU law there is a requirement that the sanctions chosen should be effective and verifiable. The report states that conversion into a contract of indefinite duration is not required where there are other effective measures in place to prevent and, where relevant, punish the use of successive fixed-term contracts. This is particularly important in that collusion between an employer and a fixed-term worker, who may choose to have a job rather than comply with the law, could lead to avoidance of the law where the sanctions for non-compliance are not clear.