

Directive 1999/70/EC of 28 June 1999 concerning the framework agreements on fixed-term work concluded by ETUC, UNICE and CEEP

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Overview

- 1) Origins of this Social Partner Agreement*
- 2) Fixed-Term Work in the EU today*
- 3) Key clauses of the Directive*
- 4) Equal Treatment with comparable permanent workers*
- 5) Requirement for Member States to take measures to prevent abuse arising from the use of successive fixed-term contracts*

1. ORGINS OF THE DIRECTIVE

The Directive gives effect to a Social Partner Framework Agreement on fixed-term work

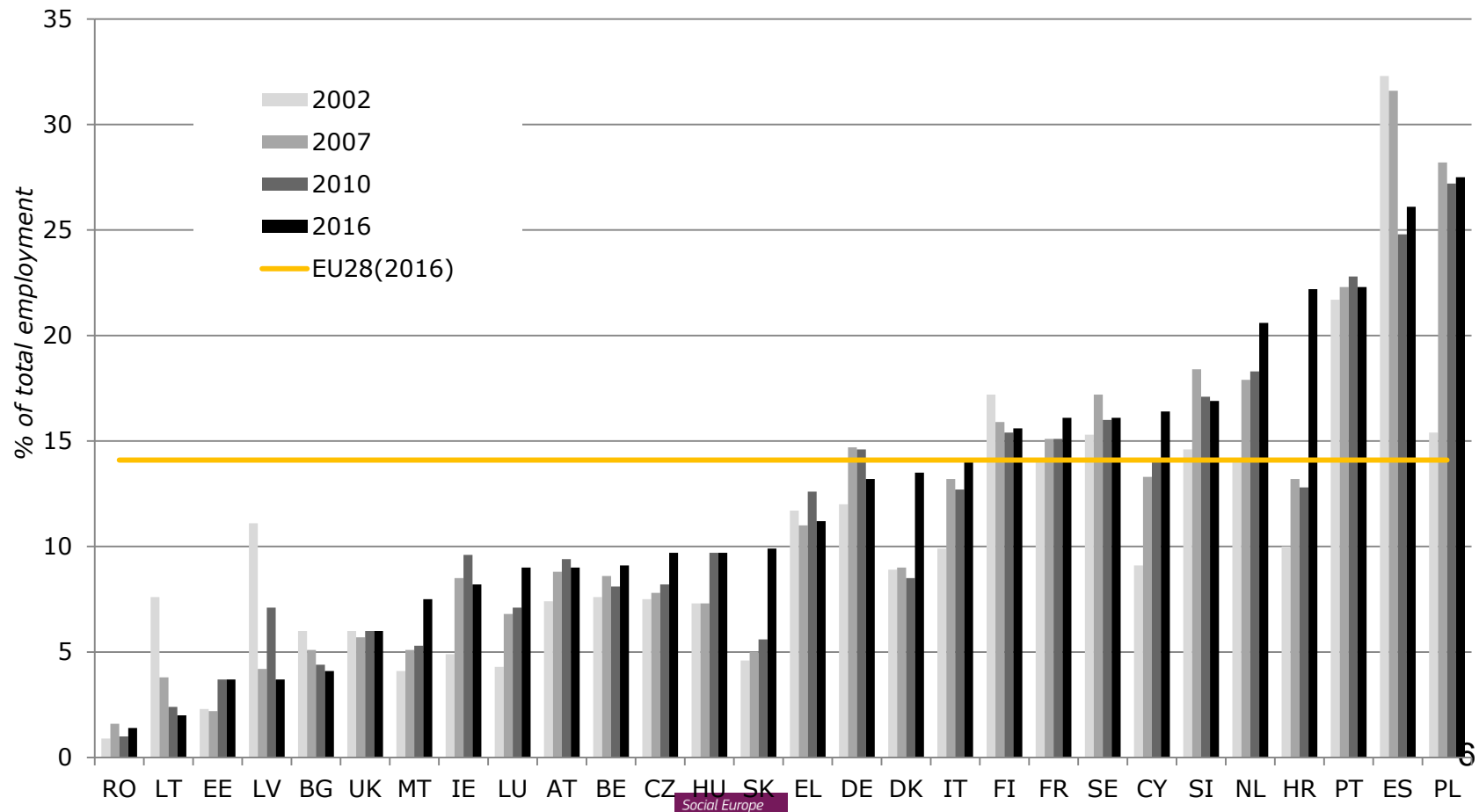
- *Article 155 TFEU(2) provides that agreements concluded by the social partners at Union level may, upon joint request, be implemented via a Council decision on a proposal from the Commission*
- *Council Directive in effect gives legal force to framework agreement concluded by ETUC, UNICE and CEEP*
- *Directive is an implementing "shell"; detailed provisions in framework agreement in annex*

2 FIXED-TERM WORK IN THE EU TODAY



European
Commission

Temporary employment as a percentage of total employment (15-64 year olds) by Member State, 2002-2016 (Source: EU- LFS specific data extractions)



Personal scope: who is covered by Directive 1999/70/EC?

Clause 3(1)

"...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".

3 KEY CLAUSES OF THE FRAMEWORK AGREEMENT

Framework Agreement on Fixed-Term Work

2 key provisions:

- 1. Clause 4 -Principle of non-discrimination - fixed term workers not to be treated less favourably as regards "working conditions" than comparable full-time workers unless justified on objective grounds;*
- 2. Clause 5 requires Member States to take measures to prevent abuse of successive fixed-term contracts*

There is no requirement that fixed-term workers should be given a permanent contract

*Clause 6 requires only that employers **shall inform** workers about vacancies which become available in the undertaking... to ensure that they have the same opportunity to secure permanent positions as other workers.*

**CLAUSE 4 – NO LESS FAVOURABLE
TREATMENT OF FIXED-TERM
WORKERS**

Clause 4 – requires in respect of employment conditions no less favourable treatment than comparable permanent workers

In order for Clause 4 to apply:

- *"employment conditions" at issue;*
- *"Comparable permanent worker" ;*
- *Demonstrate less favourable treatment.*

Note that the Court has found that Clause 4 has "direct effect" : that is, it can be relied on directly in national law before national courts against public authorities acting as employers.

Clause 4 – less favourable treatment can be objectively justified (1)

"...by precise, specific factors, characterising the employment condition to which it relates, in the particular context in which it occurs and on the basis of objective, transparent criteria in order to ensure that unequal treatment in fact meets a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose".

Case C-307/05 Del Cerro Alonso, paras. 53-58

Clause 4 – less favourable treatment can be objectively justified (2)

Such specific factors may result from

"...the specific nature of the tasks for the performance of which the F-T contracts have been concluded, or from pursuit of a legitimate social-policy objective of a Member State".

**CLAUSE 5 – MEASURES TO PREVENT
ABUSE OF SUCCESSIVE FIXED-
TERM CONTRACTS**

Clause 5 – Member States must take one or more of following measures to prevent abuse of successive fixed-term contracts

- *Stipulating objective reasons justifying the renewal of such contracts or relationships;*
- *Setting a maximum total duration of successive fixed-term contracts or relationships;*
- *Setting the number of permitted renewals*

NB. Member States can choose if they want to apply a rule that an abusive succession of fixed-term contracts should be converted into a permanent contract - but Directive does not require this

Objective reasons for successive fixed-term contracts (1)

- *Should be set out in legislation or collective agreements;*
- *MS have discretion to take account of the needs of the specific sectors and/or categories of workers concerned;*
- *Objective reasons be found in the specific nature of the tasks carried out: precise and concrete circumstances characterising a given activity;*
- *Or from pursuit of a legitimate social policy objective of a Member State.*

Objective reasons for successive fixed-term contracts (2)

Court has not accepted:

- *Objective of maintaining flexibility from use of fixed-term contracts (Case C-238/14);*
- *Use of fixed-term contracts to cover needs which are fixed and permanent (Case C-16/15).*

Court has accepted :

- *Use of fixed-term contract to replace other employees who are momentarily unable to perform their tasks (Case C-586/10).*

QUESTIONS?