

# FIXED-TERM CONTRACTS IN LAW ON PAPER AND IN PRACTICE REMARKS TO THE FLEXICURITY DEBATE

BEÁTA NACSA

Department of Labour Law and Social Law  
Telephone number: (36-1) 411-6520  
E-mail: nacs@ajk.elte.hu

It is an increasingly popular idea both among intelligentsia and political actors that the reduction of employment rights of permanent workers, especially with regard to dismissal, would lead to a more dynamic labour market providing more jobs.<sup>1</sup> I am rather sceptical about the firmness of the foundation of this reasoning. In this paper I present my arguments in connection with the recent “flexicurity debate” arranged around the phenomenon of fixed-term contracts.

Fixed-term contract has been a central feature of employment practise in the past decades. The proportion of fixed-term contracts has started to grow already in the early 1990s in Western Europe, while in the Central European countries it is still a relatively new phenomenon.<sup>2</sup> By 2005, however, the fixed-term employment has been already *more widespread* in the new member states than in the old ones: in the EU-15 the proportion of fixed-term contract was 14 % while it was 15,6 % in the ten new member states. *Poland* experienced the most considerable increase of fixed-term employment between 1998 and 2005, where the proportion of fixed term employees grew from 11,9 % to 25,5 %. In *Spain* the level of fixed-term contracts remained outstandingly high in the observed period: above 30 % as a percentage of total employment. All over Europe, *young workers* are most affected by this precarious type of contract: 30,7% of employees under 30 had fixed-term contract in 2005 compared to 9,1% for employees above 30. In Spain, 54,6% of employees under 30 were on

---

<sup>1</sup> See for example “*Green Paper* on modernising labour law to meet the challenges of the 21st century.” COM(2006) 708 final. For further discussion see point 2.1. below.

<sup>2</sup> See *François Eyraud and Daniel Vaughan-Whitehead: Employment and Working Conditions in the Enlarged EU: Innovations and New Risks*. In: François Eyraud and Daniel Vaughan-Whitehead (eds.): *Evolving World of Work in the Enlarged EU. Progress and Vulnerability*. International Labour Office and European Commission. Geneva, 2007, p. 1-52, pp. 3-4.

fixed-term contract.<sup>3</sup> As far as specific types of fixed-term employment are concerned, the increase of *project-based contracts* and *agency contracts* are reported in the EU-15. In Sweden, since 1990 the number of employees employed for only the duration of a project has doubled.<sup>4</sup> The level of agency work is the highest in UK (5% of the total workforce in 2004), followed by Luxemburg, the Netherlands (both 2,5%) and France (2,1%).

In *Hungary*, according to the overall labour market indicators, the proportion of fixed term contracts is not outstandingly high. Although the number of fixed-term contracts is still relatively low overall, there is a high and increasing rate of fixed-term contracts among *new hires*, particularly new hires from unemployment. More than 30 % of newly hired workers are given only fixed-term contracts, while the ratio for new hires from unemployment is even higher: more than 50 %. Agency work is still not widespread in the Central European countries, which is true for Hungary, as well. Nonetheless, agency work is on the rise in Hungary<sup>5</sup>: in some companies almost half of the employees are employed through agencies, as will be demonstrated in the third part of this article in Case B.

This article explores the issue of fixed-term contracts from three angles: labour market indicators, regulation and employment practise of enterprises. In the first part of the paper, an account will be given based on *labour statistics*, on the incidence of fixed-term contracts in various social groups, and its relation to job stability, working time and wages. In the second part, the *regulation* of fixed-term employment will be discussed. In this part special attention will be given to the 99/70/EC Directive, the Hungarian regulations and also to those countries' legislation, which are burdened with an outstandingly high level of fixed-term contracts, namely to the Spanish and Polish legislation. In the third part, two *case studies* will be discussed to highlight specific aspects of fixed-term employment in the practise of enterprises. In Case A a fight over a modification of a collective agreement is discussed which limited the ratio of fixed-term contracts in 5 percent of the workforce. Case B provides an excellent example of innovative employment policy in the form of cooperation between

---

<sup>3</sup> See *Rafael Muños de Bustillo Llorente*: Spain: The Paradox of Job Security alongside High Employment Growth. In: François Eyraud and Daniel Vaughan-Whitehead (eds.): *Evolving World of Work in the Enlarged EU. Progress and Vulnerability*. International Labour Office and European Commission. Geneva, 2007, p. 437-479. pp. 441-42.

<sup>4</sup> See *Jenny Lundberg*: Sweden: From Permanent to temporary Employment Relationships. In: François Eyraud and Daniel Vaughan-Whitehead (eds.): *Evolving World of Work in the Enlarged EU. Progress and Vulnerability*. International Labour Office and European Commission. Geneva, 2007, p. 479-514. pp. 482.

<sup>5</sup> To address the problematique of the rising number of agency work, the modification of the Labour Code in 2001 regulated the legal institution of agency work in Part III. Chapter IX of the Labour Code [further on LC].

two employers and an agency which provided almost year-round employment for unskilled workers at two employers with different peak seasons. In the concluding fourth part fixed-term employment will be (re)examined in the context of flexicurity.

## 1. Fixed-term employment in the labour market<sup>6</sup>

As discussed in a comparative study by Cazes and Nesporova, employment contracts have typically been of indefinite duration in Central and Eastern Europe.<sup>7</sup> This holds for Hungary, too, as far as the totality of employment contracts is concerned. According to the Labour Force Survey<sup>8</sup> the vast majority (app. 3.2 million) of the employed population (app. 3.4 million) are employed under an employment contract of unlimited duration.

### 1.1. Growing proportion of fixed term contracts among new hires

Although the number of fixed-term contracts is still relatively low overall, there is a high and increasing rate of fixed-term contracts among *new hires*, particularly new hires from unemployment. More than 30 % of newly hired workers are employed with fixed-term contracts, while the ratio for new hires from unemployment is even higher: more than 50 %, despite the fact that in the workforce as a whole only about 6.7 % of employment contracts are fixed-term. Table 1 shows that the proportion of fixed-term contracts increased by less than 1% in relation to all contracts, but by more than 12% in relation to new contracts between 1997 – 2003.

---

<sup>6</sup> A previous version of this part of the paper has been published in *Nacsa, Beáta – Köllő, János*: Hungary: Employment Instability due to Fixed-Term Contracts. In: François Eyraud and Daniel Vaughan-Whitehead (eds.): *Evolving World of Work in the Enlarged EU. Progress and Vulnerability*. International Labour Office and European Commission. Geneva, 2007, p. 317-357. pp. 324-334.

<sup>7</sup> Cazes, Sandrine and Nesporova, Alena: Labour markets in Central and South-Eastern Europe: From transition to stabilization. In *Cazes, Sandrine and Nesporova, Alena: Flexicurity. A relevant approach in Central and Eastern Europe*. ILO, Geneva, 2007, p. 9-56, pp. 19-20.

<sup>8</sup> Labour Force Survey [later on: LFS] is a representative quarterly household survey conducted by the Central Statistical Office (CSO) since 1992. Data are collected about each member of the surveyed households and an 'activity questionnaire' is filled with those aged 15-74. The survey has a rotating panel structure with each quarter 1/6 of the sample dropped after spending 6 quarters in the survey, and replaced with a randomly chosen new cohort. The number of observations varied between 82 and 85 thousand in 1999-2001. Individuals can be identified across waves. The cases are weighted by the CSO to ensure representativity. All calculations in this paper used these weights.

*Table 1. Proportion of fixed-term contracts within all and new employment contracts, Hungary (%)*

Year of interview	All employees	New employees
1997	6.30	40.09
1998	6.43	39.47
1999	6.00	47.26
2000	6.99	48.70
2001	7.27	50.39
2002	6.96	52.80
2003	7.19	52.34

*Note:* New employees: hired within 3 months prior to the interview. LFS, N=517,200 quarterly employment spells.

We used the pooled LFS sample to study how the probability of being given a fixed-term contract was affected by worker and firm characteristics, overall and in the case of new hires.<sup>9</sup> Relatively high shares of fixed-term contracts among younger and elderly workers and those with only a primary education are observed in the pooled LFS data. There are also some groups – such as employed pensioners, parents engaged in childcare and unemployed people involved in public works – with a very high probability of having fixed-term contracts. More importantly, differences by occupation seem to be substantial. Workers in *elementary and traditional skilled blue-collar* occupations are much more likely to have a temporary job than drivers, tertiary-sector workers and white-collars.

Compared to the occupation-specific differences the sector-specific ones are smaller, with only construction, services and the public sector having significantly higher fixed-term contract shares than agriculture, the reference category.<sup>10</sup> The difference between state and private firms amounts to a mere 0.7% and the male–female difference is only 0.5%. The annual effects are also small and hint at a minor increase in the share of fixed-term contracts as the economy was hit by recession in 2001–2003. The major differences are those connected to *age* and *occupation*. To make the magnitudes perceptible we can calculate, for instance, that a primary degree holder employed as an industrial labourer

<sup>9</sup> The estimates are based on a sample of 517,000 quarterly employment spells pertaining to 149,000 workers aged 15–64. Type of contract was coded as a dummy, with 1 standing for all types of fixed-term contract.

<sup>10</sup> In the observed period, the main reason why fixed-term contracts are frequent in the public sector is that the unemployed engaged in public works were counted as employed by the local government.

somewhere in the countryside is 23% more likely to be employed with a fixed-term contract than a Budapest school teacher of similar age and gender. The mean predicted probability of fixed-term contracts falls from 26% at age 15 to 14% at age 20, 5% at age 40, and moves back to 12% by age 60. The proportion of *young people* employed on a fixed-term basis is on the rise, though according to the LFS ad hoc module on youth employment in 2004, 95% of young people preferred permanent contracts, considering fixed-term contracts to be too unstable. The results for *new contracts* hint at an extension of fixed-term contracts to older workers (age effects are weaker than in relation to contracts as a whole) and blue-collar occupations in general.

## 1.2. Duration of fixed-term and open-ended contracts

The typically short duration of fixed-term contracts does not imply that the employment relationship comes to an end when the contract expires. In as many as 54.3% of the cases observed in the 1997–2003 panel tenure was longer than the established duration of the contract. This is the case, for instance, when a worker with a 1–3 month fixed-term contract has four months' tenure, suggesting that she or he had a previous contract with the same employer.<sup>11</sup>

A fixed-term contract spell was more likely to terminate than a permanent contract at any point in time by 6.7%, other things being equal. Compared to the mean termination probability of 2.6% this seems a considerable difference. The probability of being unemployed once the job was terminated amounted to 73%. Obviously, there is some endogeneity here: workers with high prior probability of being fired within a short time, or exposed to high risk of plant closures and seasonal downturns, are more likely to be offered fixed-term contracts than other workers. In this sense, *fixed-term contracts are a symptom rather than a cause of job instability*. Turning to the effects of other variables, with the exception of some marginal groups, such as public works participants and employed pensioners, we find relatively small between-group differences in terms of probabilities of termination of employment with the exception of age that has strong effects. Exit probabilities fell in 1997–99 and rose in 2000–2003.<sup>12</sup>

---

<sup>11</sup> Calculations based on our pooled LFS sample. For further reference see note 9 above.

<sup>12</sup> The probability of exit coming down from 10% to 5% between the ages of 15 and 20, falling further to a range of 1.5–2% characteristic of prime-age adults, and increasing to 2–4% in cohorts older than 50. Both education and industry effects appear to be relatively weak, with the between-group differences seldom exceeding 1%. Unskilled labourers and farmers have substantially higher risks of separation, about twice the sample average, while other blue-collar workers have an extra risk of about 0.7–0.8%. For more details see the *Nacsa – Köllő*, see note 6 above.

Consequently, fixed-term contracts can be associated with a higher risk of unemployment. Workers employed with fixed-term contracts were not only more likely to leave/lose their jobs but were also more likely to become *unemployed or inactive* once their jobs were terminated. The difference between them and their observationally equivalent counterparts was not very large, however. This probability was higher by 5.3% in the case of workers with fixed-term contracts compared to workers with permanent contracts. The coefficients for other variables suggest strong *age effects*, with the predicted conditional risk of becoming unemployed being about 80% with young job losers, 70% with prime-age adults, and close to 90% with elderly persons. Unskilled workers have significantly higher risks, as do private sector employees and those living in the countryside. With a few exceptions, the sector and occupation dummies are insignificant. The year effects suggest a marked rise in the unemployment risks (deteriorating re-employment probabilities) after 2000.<sup>13</sup>

### 1.3. High share of minimum and subminimum wage workers among fixed-term contract workers

Low wages and fixed-term contracts are highly correlated, as indicated by the coefficients on sub-minimum and minimum wages. The union-related variables also have significant impact: the risk of fixed-term contracts is lower by about 2% in *unionized firms*, and by 3% for union members. For the limiting factor of union representation see also Case A in the third part of the paper. After controlling for these variables, firm size and ownership have no significant impact. Temporary jobs more frequently occur in *high-unemployment regions*, all else being equal, suggesting that the pressure of unemployment plays a role in the spread of fixed-term contracts.

Table 2 presents data on wages and wage setting in open-ended contract and fixed-term contract jobs in April–June 2001, the only period covering wages since the start of the LFS (1992).<sup>14</sup> Monthly earnings were 24% lower in fixed-term contracts, of which 10% was accounted for by compositional differences. The same held for hourly earnings. There was a huge difference in the share of minimum wage workers (18.2%, falling to 12.2% after controlling for observables) and subminimum wages. This pattern may partly be explained by the

---

<sup>13</sup> Equations looking at the probability of becoming unemployed rather than non-employed yield similar results.

<sup>14</sup> In LFS Supplementary Survey April–June 2001, respondents working as employees or cooperative members (22,415 out of 30,485 workers employed by ILO-OECD standards) were asked to tell their last month's gross or net earnings. The gross value of net earnings was calculated by the CSO using tax tables. We used the gross figures as reported by the CSO and weighted the cases followed in a spell panel with their base period weights of April–June 2001. (The LFS does not collect wage data on a regular basis.)

considerable difference in the proportion covered by collective wage agreements (of any kind, as reported by the respondent). As shown in Neumann (2002), collective wage agreements may not have much impact on average earnings but they do reduce the incidence of low wages.<sup>15</sup> Furthermore, the lack of union control may make room for ‘under-the-counter’ payment practices wherein the employer combines a taxed minimum wage with informal cash payments. Where the latter practices are prevalent, the earnings differential between permanent contracts and temporary contracts should be regarded as an upper-bound estimate.

*Table 2. Wages and wage setting in jobs with open-ended and fixed-term contracts, April–June 2001, Hungary*

	Open-ended	Fixed-term	Difference	
			Raw	Controlled
Monthly gross wage (log)	11.11	10.87	-0.24	-0.14
Hourly gross wage (log)	5.95	5.74	-0.21	-0.11
Paid 95–105% of the minimum wage, %	14.3	32.5	18.2	12.2
Paid less than 95% of the minimum wage, %	3.0	7.1	4.1	2.8
Covered by collective wage agreement, %	21.8	9.1	-12.7	-6.9
LFS 2001 April–June, N=22,391				
‘Controlled’ shows legit marginal effects after controlling the equations for age, education, tenure, immigrant status, state ownership, unemployment experience, marital status and number of children.				

Workers in fixed-term jobs are paid lower wages at all educational levels and years of age, but their age/earnings profiles follow different paths at low and high levels of education. Generally, the age/earnings profiles predicted a *widening gap* between temporary workers and permanent contract workers at older ages. The open-ended contract / fixed-term contract gap begins to widen at about age 40–45 in case of higher education graduates, at about age 35–40 in case of a vocational or secondary education, and as early as age 25–30 in case of primary school education or lower. Wages are particularly low for *elderly unskilled workers* employed on temporary contracts.

<sup>15</sup> Neumann, László: Does decentralised collective bargaining have any effect on the labour market? *European Journal of Industrial Relations*. Vol. 8, No. 1. 2002. p. 11-33.

### 1.4. Are fixed-term contract jobs and workers negatively selected?

Any findings suggesting that fixed-term contract workers are paid lower wages and experience shorter employment spells than their open-ended contract counterparts are subject to the suspicion that the gap can be explained by differences in unobserved characteristics. A conjecture like this is hard to avoid. What we can show, nevertheless, is that fixed-term contract jobs are no less skill-intensive than open-ended contract jobs, and that fixed-term contract and open-ended contract workers do not differ in terms of fundamental measurable skills. We use data from the International Adult Literacy Survey (IALS) of 1998 (OECD 2000) containing 2482 observations of employed workers in Hungary. The fixed-term contract share in this dataset was 6.75%, practically equal to the LFS figure of 6.43% for that year.<sup>16</sup> The results are presented in Table 3.

Table 3. Workplace skill requirements and workers skills by type of contract, IALS 1998, Hungary

Dependent variable:	Effect of fixed-term contracts	
	Univariate OLS	Multivariate OLS
Number of literacy tasks required (0–13) <sup>a</sup>	1.204 (3.10)	0.804 (2.45)
Log of the worker's mean literacy score (0–500) <sup>b</sup>	–0.000 (0.05)	–0.016 (0.86)

*Notes:*

a) Controlled for 12 industry and 12 occupation dummies.

b) Controlled for gender, age, education, Roma ethnicity, low-educated father (ISCED 0 or 1), dummies for persons never attending movie, play or concert, never reading books, and never reading newspapers.

Sample: 2,482 employed workers

The results suggest that fixed-term contract jobs actually require *more reading/writing tasks* (by one task) than open-ended contract jobs. This remains true after controlling for sector and occupation. Workers employed in fixed-term contract jobs are just as highly skilled (in terms of literacy performance) as their open-ended contract counterparts. We do not find evidence in the only

<sup>16</sup> Two variables are used to approximate the skill content of work and the skills of the worker. The former is measured with an index showing how many of 13 different reading, writing and quantitative tasks are required in the workplace. The latter is approximated with the mean of the respondent's reading, writing and quantitative scores, which measure literacy skills on a scale of 0–500. In each case we run univariate regressions with an FTC dummy on the right hand, and a full model with appropriate controls.



relevant data set suggesting that the differences detected in the conditions of employment regarding wages, working-time patterns, training etc. could be explained by some sort of skill-based sorting. Case B in part three below supports this finding by demonstrating that agency workers and permanent workers are doing identical work at the workplace.

### 1.5. Patterns of working time and access to training of fixed-term workers

In Hungary the majority of employees (approximately 71%) work a normal daytime work schedule without shifts. According to case studies carried out in 2004, despite the modification of the Labour Code flexibilising working time arrangements, the demand for flexible use of manpower is usually met through overtime rather than different forms of working time frame.<sup>17</sup> As far as the length of working time is concerned, according to the data of Microcensus 2005, one third of managers and professionals and of employees in the service sector usually work longer hours than the generally applicable 40 hours working week.<sup>18</sup> According to LFS in 2004, 5.5% of workers worked overtime during the week preceding the survey, 10.1 hours on average. There was no major difference in length of overtime between blue- and white-collar workers.<sup>19</sup>

Table 4. looks at the differences between open-ended contract and fixed-term contract jobs in terms of working time using the 1997–2003 LFS panel. It seems that fixed-term contracts are more often associated with *unpredictable work schedules* than open-ended contracts, and this remains true after controlling for demographic, human-capital and contextual variables. The usual weekly working time of those with a predictable schedule does not vary widely across type of contract; nor does the proportion of those working long hours. By contrast, the proportion of *part-timers* is 2.5 times higher in *fixed-term contracts* than in permanent ones.

---

<sup>17</sup> László Neumann and Beáta Nacsá (2004), 'A rugalmas alkalmazkodást elősegítő szerződéstípusok, különös tekintettel a Munka Törvénykönyve 2001. évi módosításának hatásaira', *Munkaiügyi Szemle*, 5–6.

<sup>18</sup> Agricultural employees work even longer: half of them work more than 40 hours a week, but this is justified at the peak of the season, Central Statistical Office, Microcensus, 2005. 3. A foglalkoztatottak helyzete, Budapest 2006.

<sup>19</sup> See Central Statistical Office: Working time arrangements (2005): <http://portal.ksh.hu/pls/ksh/docs/hun/xftp/idoszaki/pdf/muszakrend05.pdf>. Last visited 1 September 2007.

Table 4. Working time in jobs with open-ended and fixed-term contracts, 1997–2003, Hungary

	Open-ended	Fixed-term	Difference	
			Raw	Controlled
Working time unpredictable (%)	5.6	9.3	3.7	3.3
Usual weekly working time (if predictable, hours)	40.7	39.6	-1.1	-0.8
(Coefficient of variation)	(.195)	(.234)		
Works less than 36 hours a week (%)	4.4	11.1	6.7	5.3
Works more than 40 hours a week (%)	15.8	15.4	-0.4	0.3

Notes:

Pooled LFS 1997–2003, N=517,136.

‘Controlled’ shows legit marginal effects after controlling the equations for the variables in Table 2.

Access to training is available primarily *to the employed*. Data from LFS is available on indicating probability of participation in (re)training (of any kind) in the four weeks prior to the LFS interview, by type of contract. It is apparent from the data of LFS 2003 when more detailed data gathering on retraining started,<sup>20</sup> that fixed-term contracts are associated with *less retraining* in the case of *young low-skilled* workers and *more retraining* in the case of *young high-skilled* workers. For older workers we find negligible differences by type of contract and generally much lower training participation rates. It seems that for high-skilled young people fixed-term contracts often mean a way of combining work and further studies (the retraining rates are as high as 30–40%), while for the low-skilled it unambiguously means the end of (or at least a break in) skills accumulation.

<sup>20</sup> Since participation in retraining heavily depends on age and education, particularly in Eastern Europe, we use a flexible functional form – with the participation dummy on the left hand and years in school, age and their interaction on the right-hand side – of a probit equation aimed at predicting the probability of retraining separately for FTCs and OECs. According to the International Adult Literacy Survey of 1994–98 only 19 per cent of the Czech, Hungarian, Polish and Slovenian adults attended a retraining course in the year preceding the interview as opposed to 38 per cent in 17 other participating countries. The respective data were 7 and 18 per cent for low-skilled adults (0–11 years in school) and 5 and 14 per cent for low-skilled people older than 35. (Köllő’s calculations using the IALS files. See note 6 above).

### 1.6. Future prospects of fixed-term employment

The future of fixed-term contracts can best be approximated by having a closer look at their incidence in *age groups, cohorts and years*. The fact that a relatively high fraction of young workers are employed on fixed-term contracts may indicate a pure age effect: all cohorts start with a high share of fixed-term contracts, and gradually move to permanent jobs as they grow older, no matter where we are in calendar time. Alternatively, the age patterns may follow from a calendar year effect: the labour market moves from permanent to temporary employment relationships by increasingly concluding fixed-term contracts with young labour market entrants. Table 5. helps to disentangle these scenarios in cohorts older than 16 and younger than 36.

*Table 5. Proportion Employed on Fixed-Term Contracts by Single Year of Age and Year, Hungary (%) (LFS)*

Age	1997	1998	1999	2000	2001	2002	2003
17	31	28	24	21	24	34	29
18	17	21	23	28	26	24	29
19	20	14	20	23	24	22	30
20	13	15	14	19	21	22	22
21	12	11	13	17	16	15	15
22	9	10	8	13	16	15	16
23	8	8	9	10	11	13	12
24	8	10	8	10	10	10	13
25	7	9	8	9	8	8	10
26	7	7	8	7	8	9	11
27	7	8	7	7	8	7	8
28	5	6	8	9	8	7	8
29	7	8	5	8	8	9	10
30	7	8	8	7	8	8	9
31	5	5	6	7	7	7	7
32	7	6	6	7	7	7	8
33	5	9	6	7	6	5	7
34	6	5	5	7	8	6	6
35	6	8	6	6	10	10	7

Table 5. shows the proportion employed with fixed-term contracts by single year of age and calendar years.<sup>21</sup> We observe, first of all, that the proportion of fixed-term contracts fell with age in all calendar years, and reached levels around 6–10% by about age 27. However, a comparison of the first and the last columns suggests a marked rise in fixed-term contract shares at age 18–25, and a minor increase in most cohorts older than that. At younger ages the fixed-term contract shares rose by 10–12%. As the birth cohorts aged, their fixed-term contract shares fell, but not as much as might be expected on the basis of the age/fixed-term contract profile of 1997, therefore *further rise of fixed-term contracts is predicted* for the future.

### **1.7. Summing up the different aspects of vulnerability of fixed-term workers**

Those employed on fixed-term contracts in Hungary tend to be young blue-collar workers or, to a lesser extent, elderly workers, irrespective of educational attainment. Gender, education, ownership and sector do not matter nearly as much as *age and occupation* in determining who is employed on fixed-term contracts. Temporary employment seems to be spreading among prime-age workers and nearly all blue-collar occupations. Workers employed on fixed-term contracts are more likely to work *irregular hours* and/or *do part-time work*. They earn lower wages, particularly at older ages and low levels of education. We found evidence that the *wage differential* is not explained by contract-specific skills differentials. Few of the fixed-term contract workers are covered by collective wage agreements. Among young educated workers temporary employment and further studies are often combined, while young unskilled workers in temporary jobs get virtually *no retraining*. Fixed-term contract workers are exposed to very high risks of job loss but do not face particular difficulties finding new jobs compared to their observationally similar counterparts losing permanent jobs. The age-cohort-year patterns of fixed-term contracts forecast further shifts from permanent to temporary employment in the coming years.

---

<sup>21</sup> Reading the table row by row shows how the FTC share changed at a given age. By reading the table column wise one can see how the cross-sectional age/FTC profile changed over calendar time. Finally, by moving south-east along a diagonal line can follow the path of a particular birth cohort. We have over 1500 observations in nearly every cell of the matrix, allowing reliable estimates, although smaller random-looking fluctuations do occur.

## 2. Regulations on fixed-term employment at international and national level

In fixed-term employment contracts the employer and the employee agrees on the duration of the employment contract, for which period the parties undertake the obligation to maintain the employment relationship. At the expiry date of the employment contract the employment relationship terminates automatically, without any legal declaration of the parties. In this chapter fixed-term contracts as an alternative to open-ended contracts will be investigated. This alternative relation is shaped by three major aspects: (1) under what conditions it is allowed for the employer to provide a fixed-term contract to the employee instead of open-ended contract, (2) under what conditions the contract is not qualified anymore as a fixed term contract but rather an open-ended one, (3) what are the expenses of terminating the fixed-term contract before the expiry date compared to terminating the open-ended contract by ordinary dismissal. These aspects will be examined in European level and national level regulations. Beyond the Hungarian regulations, the Spanish and Polish legislation has been selected for investigation due to the fact that the level of fixed-term employment is the highest in Europe in these two countries. As the European level employment policy is dominated by the debate on flexicurity, this issue also will be discussed to a certain extent.

### 2.1. Fixed-term employment in the context of flexicurity in Europe

In European context, the issue of fixed-term employment seems to be a part of the flexicurity debate. The European policy makers are concerned with the problematique of the intensifying competition at global level and the aging European workforce. For many, the term flexicurity sums up all those techniques which might heel the employment-related problems by providing enough flexibility to employers to improve competitiveness, and enough security to workers to maintain working and living conditions. Some countries, like Spain already experiences harsh *side effects* of promoting heavily particular type of atypical employment contracts, namely the fixed-term contracts. In Spain, as will be discussed below in more detail, opening wide the legal possibility of using fixed-term contracts increased to an outstandingly high level the portion of fixed-term workers, which is associated with an increasing level of work-related accidents and reduced level of retraining. There are also hints that the low fertility rate is also related to the uncertainty caused by fixed-term contracts.<sup>22</sup>

---

<sup>22</sup> See note 3 above.

The main European document regulating fixed-term employment is the *Council Directive 1999/70/EC* of 28 June 1999, which is based on the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.<sup>23</sup> The European social partners were invited by the Council Resolution of 9 February 1999 on the 1999 Employment Guidelines to negotiate agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security. The preamble of the framework agreement specifically stated that the social partners, in line with the *Luxembourg Employment Strategy of 1997*, aim to achieve a better balance between "flexibility in working time and security for workers".<sup>24</sup> After the failure of the Council to address the question of atypical work at the European level, the European social partners managed to reach agreement in this regard and concluded two major framework agreements, first, on part-time work and second, on fixed-term work in 1999. Both framework agreements were adapted in a form of a Directive, on the basis of the Article 139(2) of the Treaty of Rome. The two framework agreements are almost identical and concentrate only a few key questions which serve the two following aims of the social partners: to improve the quality of (part-time and fixed-term) work by ensuring the application of the principle of non-discrimination; and to define clearly the term of fixed-term and part-time employment in order to prevent abuse these precarious forms of work. To this end the social partners limited the scope of their agreement into the following subjects: definitions, equal treatment, prevention of abuse, information and implementation.<sup>25</sup>

In the flexicurity debate, which has still continued around the original key questions, an important stage was the report of the *Wim Kok Committee* (on its official name European Employment Task Force) in 2003 which called into attention the emergence of two-tier labour market: there is a considerable difference between the positions of the permanently employed core employees and those who are employed through some atypical arrangements, for example fixed-term contracts, not speaking about those who are forced to work in

---

<sup>23</sup> For an analysis on the Directive in the context of other international labour law instruments on atypical employment see *Czuglerné Iványi Judit*: Az atipikus munkaviszonyok jogi szabályozása a nemzetközi jogban. [The regulation of atypical employment in the international law] In: Czúcz Ottó és Szabó István (eds.): Munkaügyi igazgatás, munkaügyi bíráskodás. Ünnepi tanulmányok Radnay József 75. születésnapjára. [Later on: Radnay József-jubileum] Bíbor Kiadó, Miskolc 2002. p. 115-140. pp. 125-128. and *Horváth István*: A határozott idejű foglalkoztatás és a részmunkaidő. In Radnay József-jubileum. 2002. p. 197-208. pp. 197-203.

<sup>24</sup> Preamble of the framework agreement, first sentence. Annex Council Directive 1999/70/EC of 28 June 1999

<sup>25</sup> On the content of the framework agreement (and the Directive) refer to for example *Kiss György* (ed.): Az Európai Unió munkajoga. Osiris Kiadó, Budapest 2001. pp. 436-443.

black/gray economy,<sup>26</sup> or pushed out from the labour market permanently into economic inactivity.<sup>27</sup> In order to get closer these two segments, the report urged Member States to investigate, and where necessary, reduce the level of protection provided to permanent workers especially in regard of termination of employment.

The *Green Paper* on modernising labour law to meet the challenges of the 21st century<sup>28</sup> [further on: Green Paper] investigated the role of labour law in reaching the aim of flexicurity. The reasoning of the Green Paper was based on the data that all atypical forms of employment (fixed term contracts, part-time contracts, on-call contracts, zero-hour contracts, agency work, freelance contracts and self-employment) reached almost 40% of the EU – 25 workforce in 2005. The Green Paper again called for reducing the level of employment protection in the soft way of stating that “the level of flexibility provided under standard contracts may need to be examined to enhance their capacity to facilitate recruitment, retention and the scope for progression within the labour market.”<sup>29</sup>

There is some degree of mutual understanding in the need for some alteration in the employment and social policies in Europe. There has been a considerable difference, however, on the methods how it should be reached. In the shadow of the Green Paper, on 18 October 2007, the European social partners reached an agreement defining “*Key challenges facing European labour markets: A joint analysis of European social partners*” [further on: Key Challenges]<sup>30</sup>. In contrast to the Green Paper, this agreement stressed the need for providing adequate security for workers under all forms of contracts in order to tackle

---

<sup>26</sup> As for Hungary, illegal undeclared work is substantial, but showing a decreasing tendency. The most comprehensive surveys of the size of the informal economy estimate that between 15% and 20% of Hungary’s GDP is generated in the informal economy. See *Mária Lackó: ‘A “Shocking” Sector’, Budapest: TÁRKI and KTI-IE (March 2000).*

<sup>27</sup> In the Hungarian labour market the highest-in-Europe level inactivity remains the main challenge due to the withdrawal of the low educated workforce from the labour market into economic inactivity. See *János Köllő: A nemfoglalkoztatottak összetétele az ezredfordulón. Budapesti Munkagazdaságtani Füzetek BWP. 2005/2. Magyar Tudományos Akadémia Közgazdaságtudományi Intézet. Munkaerőpiaci Kutatások, Budapesti Corvinus Egyetem, Emberi Erőforrások Tanszék. According to the Central Statistical Office, in 2006 app. 400,000 inactive persons had no lawful income whatsoever.*

<sup>28</sup> COM(2006) 708 final

<sup>29</sup> See *ibid.* As will be discussed below, recent research findings disprove this standpoint.

<sup>30</sup> The Key Challenges, after providing macroeconomic data on European labour market, sums up the challenges European labour markets are facing to and formulates recommendations on employment and social policies for the Community and the member states. In the recommendations for the member states on industrial relations and labour law, no major policy shift is mentioned. See [http://www.etuc.org/IMG/pdf\\_Broch\\_key\\_challengeDEF-3.pdf](http://www.etuc.org/IMG/pdf_Broch_key_challengeDEF-3.pdf). Last visited on January 2, 2008.

segmented labour markets; and also called for enhancing legal certainty and transparency with regard to the scope, coverage and the enforcement of labour law; and to promote stable employment relationships and sustainable labour market practices. The agreement of the social partners emphasised the importance of sound macroeconomic policies and a favourable business environment as a precondition of the success of flexicurity policies. The agreement does not seem to be a breakthrough, rather a summary of the political debate we had so far. In regard of labour law, it is revealing that the agreement *does not* contain any statement regarding the need for reducing employment rights of workers, which is an important difference between this agreement and the Green Paper. In this regard the European social partners did not depart from their standpoint expressed in the Fixed-term Directive. The Directive emphasised that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers.<sup>31</sup> Against the recommendations of the Wim Kok Report and that of the Green Paper, in October 2007 the European social partners expressed their dedication to maintain *adequate security for all types of employment contracts*. The Wim Kok Report and the Green Paper promotes the equalisation of the position of core and peripheral workforce at the lower level of peripheral workforce through the reduction of legal protection of permanent workers. Contrary, the agreement on Key Challenges rather emphasises the optimal balance of flexibility and security for all types of contracts, and also, that adequate security must be provided for workers under all forms of contracts.<sup>32</sup> Being a political document, the Key Challenges leaves open several sensitive questions; nonetheless it seems inevitable that the major message of the *Green Paper has been refused by the social partners*.

## 2.2. Hungarian regulations

The regulations on fixed-term contracts in the Hungarian Labour Code are revolving around *four subjects*: (1) establishment of the maximum duration of a fixed-term contract; (2) determination of the consequence if the employee works further after the day of expiry with the knowledge of his/her immediate supervisor; (3) determination under what conditions the contract is not qualified anymore as a fixed term contract but rather an open-ended one; (4) specification of the methods of termination of the fixed-term contract. The regulation and judicial practice on fixed-term contracts has been discussed intensively in

---

<sup>31</sup> Preamble of the framework agreement, second sentence. Annex Council Directive 1999/70/EC of 28 June 1999

<sup>32</sup> Key challenges, Recommendations of labour law and industrial relations. p. 61.



the Hungarian literature in the past years.<sup>33</sup> The discussion in this paper, after a brief summary on the regulations, will be limited to the legal conditions *determining the employer's choice* when deciding between the establishment of fixed-term or open-ended contract.

The maximum duration of a fixed term contract is *five years*. Into this five-year-term all employment spells with the same employer are to be counted with the exception of those among that longer than 6 months passed between the termination of the previous and the starting date of the subsequent employment relationship.<sup>34</sup> The Labour Code does not limit the application of fixed-term contracts by designating the specific purpose of the fixed-term employment (e.g. employing the worker to replace another worker, or to the duration of a specific project), or does not limit the application of fixed-term employment into specific sectors or branches of economy.<sup>35</sup>

The Labour Code determines the employer's choice by establishing several rules to prevent the *misuse of the fixed-term contract*, in line with the one of the regulative purposes of the Directive, as was explained above. The establishment of the maximum duration of the fixed-term contract itself could be also considered as a barrier to the misuse of the fixed-term contract. If the worker is needed for longer than five years, then his/her employment is considered by law to be an open-ended contract, so the accumulation of tenure rights could not be prevented by the employer by establishing a fixed-term employment. The modification of the Labour Code of 2003 goes even further when establishing the rule that if the fixed-term contract was used without *justified needs* on the side of the employer and it is to violate the justified needs of the worker, the contract is considered to be an open-ended one.<sup>36</sup> This rule applies to cases not exceeding the maximum duration of five years of the fixed-term contracts. The burden of proof is on the worker, who must provide evidence on both parts of the conjunctive conditions: first of all, that there was no justified need for the establishment of the fixed-term relationship on the side of the employer and the establishment aimed the violation of the employee's rights. For me it seems that providing proof on the lack of justified needs on the side of the employer indicates at the same time that the employer has chosen the fixed-term contract

---

<sup>33</sup> Refer to *Bankó, Zoltán*: A határozott idejű munkajogviszonyokkal kapcsolatos magyar munkajogi szabályok és bírói gyakorlat az Európai Unió és tagállamai szabályozásának tükrében. In Radnay József-jubileum. 2002. p. 29-53.

<sup>34</sup> See 79. § (5) LC.

<sup>35</sup> For a comparison of the Hungarian and European regulations see *Prugberger, Tamás*: Európai és magyar összehasonlító munka- és közszolgálati jog. KJK Kerszöv, 2<sup>nd</sup> ed, 2001, p. 252-253, and also for an analysis on German regulations: Radnay József: A határozott időre szóló munkaviszonyok létesítése a német jogban. *Gazdaság és Jog* 2005. Vol. 2. p.12-15.

<sup>36</sup> See 79. § (4) LC. Came into force on 1 July 2003.

in order to circumvent legal obligations related to open-ended contracts, especially those on ordinary dismissal. Consequently, if the employee provides proper evidence on the first condition, than it automatically proves the second conjunctive condition, as well. In this sense the second condition, namely the intention to violate the justified needs of the worker, seems superfluous, redundant term in the legislative text. This redundant phrase in the legislative text creates, however, a danger that the future court practise might expect the employee to provide specific evidence on the violent intention of the employer which in many cases might turn out to be impossible. The realistic court interpretation could cure the risk resulted from the questionable text of this article of the Labour Code.

According to the published cases of the Supreme Court, insofar the court practise established an open-ended contract when the misuse of the fixed-term contract was obvious: for example when the fixed-term employment contract has been renewed 19 times within five years,<sup>37</sup> or when in non-daytime shifts all employees were on fixed-term contract, while in the daytime shift all employees were on open-ended contract.<sup>38</sup> In the latter case the court did not accept the employer's argument that fixed-term contracts were applied due to a need to replace workers absent for a longer period because no fact supported this reasoning.<sup>39</sup> The court pointed out furthermore, that if there is a constant need for non-daytime shifts because of the volume of orders, there is no legitimate economic reason to employ workers only through fixed-term contracts. This court practise was based on the previous legislation, namely the Article 4 of the Labour Code on prohibition of misuse of law, and on MK 6., which applied this general principle fixed-term contracts. Art. 79. (4) of LC, which came into force on 1 July 2003, puts a *considerable burden of proof on the employee* compared to the previous judicial practice. Since 2003, if the employee claims the unlawfulness of its fixed-term contract, it must prove that beyond the lack of justified and legitimate business reasons (corresponds to the previous court practise) the employer *aimed the violations his/her employment rights* by establishing a fixed-term contract. It was argued above, that in case of literal interpretation of this article by the judiciary the employees could face insurmountable difficulties when claiming the misuse of the fixed-term contract if the five-year legislative limit of fixed-term contracts has not been exhausted.

The regulation on the case when the employee works further after the day of expiry with the knowledge of his/her immediate supervisor also aims to prevent the misuse of the fixed-term contract in the following sense. If the employer

---

<sup>37</sup> See EBH 136/1999.

<sup>38</sup> See BH 34/2003

<sup>39</sup> As in non-daytime shifts there were no workers on open-ended contracts, noone would be absent for a longer period, therefore there was no need for a replacement.

does not end de facto the employment contract at the time of the expiry date, an additional employment spell is created by law. As the duration agreed in the original contract was neglected by a mutual consent of the parties (the employee worked further with the knowledge of the immediate supervisor), it is legislation that establishes the new term of the relationship, otherwise the rights and duties agreed in the original contract are applicable to the new employment spell, as well.<sup>40</sup>

As far as the methods of termination of the fixed-term contract are concerned, ordinary dismissal by the employer is prohibited, all other forms of termination are allowed. As a specific method for terminating the fixed-term employment contract, it is also allowed for the employer to terminate the contract before the expiry date if the average wage for the remaining period, but maximum for one year is paid to the employee.<sup>41</sup> No similar possibility is allowed for the employee who is obliged to fulfil the originally agreed term.<sup>42</sup>

### 2.3. Legislations on fixed-term contracts in Spain and Poland

Among the EU member states, Spain and Poland could provide us some indication about the impact of legal regulations on the application of fixed-term contracts, due to the fact that these are the two countries in which the level of fixed-term employment is the *highest* among the member states.

Under the original regulation of Estatuto de los Trabajadores [further on: Estatuto] of 1980, fixed-term contracts could be used to replace a permanent worker who is absent for a longer period or to do some seasonal work duties. In 1984, it was thought that the high and increasing unemployment reaching the level of 21% could be reduced by lifting the limitations of fixed-term contracts.<sup>43</sup> The Spanish regulation left untouched the dismissal protection of open-ended contracts<sup>44</sup>, while three types of fixed-term contract were introduced by

---

<sup>40</sup> If the original term does not exceed 30 days, the contract will be re-established for the same period, if it exceeds 30 days, than the contract will be altered to an open-ended one. See 79. § (6) LC. Not applicable to the employment relationship based on election (primarily the employment of executives of companies) and on permission of labour office (primarily the employment of foreigners).

<sup>41</sup> See 88. § (2) LC

<sup>42</sup> If the employee does not meet this obligation, and terminates the employment relationship in an illegal way, he is obliged to pay average wage for the period equal to the otherwise applicable notice period, or, if it is shorter, for the remaining part of the fixed-term. See 101. § of LC. Compare this with the sanction established for the unlawful termination of employment by the employer, indicated by 100. § of LC.

<sup>43</sup> See note 3 above, pp. 441.

<sup>44</sup> The dismissal costs are determined by the seniority of the workers and by reasons of dismissal. Severance payment are 20 days of average wages per year of seniority (45 days in case of unfair dismissal), up to the maximum of 12 (in case of unfair dismissal 24) months

the Estatuto.<sup>45</sup> The employment practise embraced the new possibilities and by 1990 the ratio of temporary employees reached 30% of the total employment, though there was no real drop in the level of unemployment. As the detrimental effects of the exceeding use of fixed-term contracts became obvious (especially the increasing number of work accidents and decreasing level of retraining), the Estatuto was *modified four times* in order to rebalance the distorted composition of the workforce, with little success. In 1994, the general applicability of fixed-term contracts was abolished and limited to specific groups of employees, and at the same time, the costs of open-ended contracts were reduced by narrowing the scope of unfair dismissal.<sup>46</sup> In 1997, the employer's confederation agreed with the two major union confederations in the introduction of a new type of open-ended contract which involves reduced dismissal costs for most groups of employees.<sup>47</sup> The state heavily subsidised these types of contracts by providing rebates to social security contributions in the range of 40 to 60 per cent over a period of two years.<sup>48</sup> In 2001, the scope of this new type of open-ended contract was widened, and the fixed-term contract was burdened with some minor redundancy payment equal with 8 day's average salary.<sup>49</sup> Though the ratio of fixed-term contracts decreased from 39% to 33% in 2005 in the private sector, the overall figure has not changed because the usage of temporary contracts increased in the public sector from 15% to 24% at the same time. In May 2006 a programme was launched in order to transform fixed-term contracts into permanent ones, but again with limited success.<sup>50</sup> Fixed term contracts *continue to dominate* the Spanish labour market. In 2005 the 15,5 million Spanish workers had 17,1 million employment contracts, which indicates that some employees had two or more short term employment spells in a year. Altogether 91% of all new employment contracts were temporary contracts in 2005, which is already a development compared to 95,6% of 1996.<sup>51</sup>

---

average wages. See Jimeno, Jaun: Employment Policies in Spain (1975 – 2000): Lessons for Central European Countries Acceding to the European Union. In Funck, Bernard and Pizzati, Lodovico (eds.): *Labor, Employment, and Social Policies in the EU Enlargement Process. Changing Perspectives and Policy Options*. pp. 127, 123-140.

<sup>45</sup> The regulation of 1984 permitted fixed-term contracts (1) when required by the nature of work (temporary replacement, launching new activity, etc.) (2) on the ground on employment policy (temporary job-creation contracts), (3) promote entry into working life (work-experience and on-jon training contracts). *Antonio Martin Valverde: European Employment and Industrial Relations Glossary: Spain*. Sweet and Maxwell. 1991. p. 60-61.

<sup>46</sup> See note 44 above.

<sup>47</sup> 33 days average salary per year of seniority up to a maximum of 33 months of wages. See note 44 above.

<sup>48</sup> See note 44 above.

<sup>49</sup> See note 3 above.

<sup>50</sup> See note 3 above.

<sup>51</sup> See note 3 above.

Contemplating on the Spanish case, Muños de Bustillo emphasised the contrast between the workers' expectations (security is valued far before the wages) and the reality.<sup>52</sup> In Spain, not only the high proportion of fixed-term contracts matters, but also the relatively *short duration of the contracts*: half of them are concluded for less than 1 month. Furthermore, although the fixed-term contracts are concentrated in younger cohorts (61% in 20-24 cohort in 2005), the contingency does not drop neither in older generations (still app. 30% in 30-39 cohorts) nor with the level of education.<sup>53</sup> Fixed-term contracts are usually thought to be a port of entry into the labour market.<sup>54</sup> It is not true for Spain, where only 9% of the contracts are concluded as open-ended ones, and most people are jumping from one short term employment to the other one. Only those have a chance to remain employed after the termination of the fixed-term contract who reached the maximum duration of the fixed-term contract at the given employer.<sup>55</sup> It is also obvious, that there is a *serious misuse* of the fixed-term employment in Spain: Muños de Bustillo shows in a case study that in a firm all production workers were employed through fixed-term contracts.<sup>56</sup> This case supports the European social partners' conclusion expressed in the Key Challenges that labour enforcement must be improved in Europe.<sup>57</sup>

Inevitable, that the modification of labour legislation played a considerable role in the sudden increase of fixed-term contracts in Spain. In 1984 the Spanish legislator created a range of *low-value fixed-term contracts* along the well-protected, *high-value open-ended contract*. Within 5-6 years, the employers embraced this possibility and half of the total Spanish workforce became employed through fixed-term contracts. This scenario is against the expectations of the Spanish population which values stability the most in employment and generated several unwanted side effects, as discussed above. Since 1994 four modifications have been introduced in order to reduce the proportion of fixed-term employment. Nonetheless, the modifications left the original cause untouched: the considerable contrast between the low-value fixed-term contracts and the high-value open-ended contracts.

---

<sup>52</sup> In the Spanish Barometer of May 2005, to the question "Which of the following aspects of a job do you value most?" 74% replied stability, 50% wages. See note 3 above. p. 440.

<sup>53</sup> See note 3 above. p. 443.

<sup>54</sup> In Sweden for example a survey indicated that around 60% of agency workers end up getting an employment contract from the interim agency's customer company. Similar tendencies have been observed in the UK and in France, though at a lower level: in the UK it is below 50% and estimated at 30% in France. See note 1 and 3 above.

<sup>55</sup> See note 3 above. p. 444.

<sup>56</sup> See note 3 above. p. 471-473.

<sup>57</sup> See note 30 above.

In *Poland* also the *permissive regulation* is thought to be the main reason for the sudden increase of fixed-term contracts.<sup>58</sup> Between 2002 and 2004, there was *no limitation* on fixed-term contracts neither regarding the sum duration, nor regarding the number of renewals. On the date of Poland's accession to the EC came Art. 25 of the Labour Code into force ordering that the third fixed-term contract automatically *transforms* into an open-ended one. The increase of fixed-term contracts has not stopped in May 2004, but increased further despite the above mentioned limiting rule came into force.<sup>59</sup> According to the composition of the affected workforce, the ratio of fixed-term contracts drops by age and by higher level of education. In terms of economic sectors, the highest share of fixed-term contracts is observed in sectors with cyclical production (small farms, construction, hotel and restaurants) or in sectors with significant staff turnover, such as retail.<sup>60</sup>

#### **2.4. Summing up the conclusions on the regulation on fixed-term contracts**

The Hungarian regulation on fixed-term contracts is *liberal*, since beyond the maximum duration of the fixed-term contract and the prohibition against the misuse of the law, there is no limitation on the application of the fixed-term contracts. In this regard the Hungarian labour law is similar to the Spanish regulation; nonetheless, the employment practise in these two countries is fairly different. In Spain, after lifting the limitations on fixed-term contracts, the proportion of fixed-term contracts increased considerably, while in Hungary remained around the same level. The difference partly lies in the specific *characteristic of the Spanish labour market*, first of all, on the much higher proportion of small and medium size enterprises which are eager to exploit the liberal rules on fixed-term contracts. The difference also lies in labour regulations. In Spain there is a considerable difference in the strength of legal protection provided to fixed-term and open-ended contract workers.

In Hungary the labour legislation as a whole is considered to be *neo-liberal*, *the least restrictive in Central Europe*, which provides little and decreasing level of protection for workers with open-ended contracts.<sup>61</sup> Furthermore, fixed-term

---

<sup>58</sup> *Stéphane Portet and Karolina Sztandar-Sztanderska*: Poland: Vulnerability under pressure from Unemployment. In: François Eyraud and Daniel Vaughan-Whitehead (eds.): *Evolving World of Work in the Enlarged EU. Progress and Vulnerability*. International Labour Office and European Commission. p. 357-395. pp. 358-361.

<sup>59</sup> Between the second quarter of 2004 and the first quarter of 2006, the number of fixed-term contracts increased by 19,1% and the share of workers on fixed-term contracts increased by 12 %. See *ibid*.

<sup>60</sup> See *ibid*.

<sup>61</sup> *Cazes and Nesporova* used the methodology developed by OECD in order to measure and compare the strictness of different national labour regulations (EPL). The correlation of EPL and labour market performance data revealed that strictness of EPL has no statistically

contracts seem relatively well-protected compared to permanent ones if we observe the details of the legislation. If the employer establishes a fixed-term contract for a very short duration, e.g. for one month, it involves almost no risk. The longer the duration of the fixed-term, the more risk does the employer take, since the employer may terminate the relationship before the expire date only if he pays the average wages for the remaining period.<sup>62</sup> It is very risky to establish a relatively long fixed-term contract, if it cannot be foreseen how long the firm will need a particular employee because of the heavy financial burden.

In many cases an open-ended contract with a maximum duration of *probationary period* of three months is used instead of a short-duration fixed-term contract in practise. If the contract is terminated during the probationary period, there is no obligation to pay and to give reasons;<sup>63</sup> consequently, there is practically no room for litigation claiming unfair dismissal either. Following the completion of the probationary period, if the contract is terminated by ordinary dismissal during the first three years of tenure, no severance payment should be paid, and only 30 days' notice must be provided, of which half is paid without work.<sup>64</sup> Only the risk of an unfair dismissal claim makes seemingly more disadvantageous the application of a short-term open-ended contract compared to a fix-term contract. A comparison of risks and expenses involved by different forms of contracts reveals that the Hungarian legislation is balanced in the sense that there is *no harsh contrast between the legal protections* provided to different types of workers. The level of legal protection provided for fixed-term and open-ended workers are equally low,<sup>65</sup> therefore the legal regulation itself does not influence as much the human relation practise of enterprises in Hungary as we observed it in case of Spain.

As the data on Hungary shows, among new employment relationships almost one third is concluded for fixed-term. This tendency does not alter considerably the national level statistics in which the proportion of fixed-term contracts revolves around 6-7 % in the past decades, because it is a *relatively segmented group* of workers who are jumping from one fixed-term job to another one<sup>66</sup>, while the massive part of the population continues to be employed through open-ended contracts.

---

significant effect on the level of employment and unemployment. See note 7 above, pp. 35-41.

<sup>62</sup> See 88(2) § of LC.

<sup>63</sup> See 81. § of LC on probationary period.

<sup>64</sup> See 92. § of LC on notice period, and 95. § on severance pay.

<sup>65</sup> See note 61 above, pp. 37. Taking into account all possible legal consequences, the EPL index for temporary contracts seems to be higher than 0,4 and closer to the 2,1 EPL index for permanent contracts.

<sup>66</sup> As it was explained in part 1, blue-collar workers of no marketable skills in the countryside seem to be locked into the chain of low paid fixed-term jobs.

The Hungarian example provides evidence that if the legal protection for all types of workers is relatively low, the labour market is prevented from becoming distorted by overrepresented atypical work. It is also proved by the Hungarian labour market that the low level of legal protection does not improve the performance of the labour market, does not create jobs, does reduce neither inactivity, nor unemployment.<sup>67</sup>

### 3. Fixed-term contracts at enterprise level: case studies

In *Case A* a manufacturing multi-national employer initiated a modification of the collective agreement in order to raise the *limit on the proportion of fixed-term employees in its workforce* from 5% to 25%. The trade union strongly opposed this proposal, recognising the danger of losing permanent jobs and bonuses for extra hours. The local branch successfully resisted the employer's demand due to the support provided by its national confederation, and the data provided by the Western European trade union organisation operating in other plants of the same employer. This case highlights the *importance of trade union representation in safeguarding permanent jobs*. In *Case B* the employer, which opted for extensive use of temporary agency work, started to cooperate with another manufacturing firm with a different peak season in order to reduce the vulnerability of their agency workers. This case shows that *innovative and socially responsible employment practise*, and co-operation among enterprises and temporary work agencies may *seriously reduce the risks caused by temporary employment*, without putting any financial burden on employers.

#### **Case A: Negotiations at Automobile Supplier on the limits to fixed-term work**

The Automobile Supplier is a foreign-owned company, an affiliate of a multinational which has been operating in Hungary for more than a decade. Its main field of activity is the production of electronic control systems, mainly for cars, which is subject to unpredictable changes in demand. As for financing, all contracts are drawn up by the European office of the company, which supplies the Hungarian affiliate with a sum to cover costs + 1–2%. The plant is located in an industrial park, next to a small town of 15,000 inhabitants, in Fejér County. The neighbouring factories altogether employ about 6,000 workers. The Automobile Supplier transports its employees by bus from its own and two neighbouring counties, about 30 settlements in all. Recently, production has been fairly steady: a major product was introduced 1–2 years ago and will be sold presumably for the next 6–7 years. Production is organised according to the multinational company's production system, the just-in time model.

---

<sup>67</sup> For an overview on central Europe in this regard see note 61 above.



*Composition of the workforce*

The company employs 3250 workers: 65% are production workers, 25% non-production physical workers, and 10% white-collar workers. The proportion of male and female workers is 35% and 65%. Most jobs are unskilled jobs: standing jobs, along a conveyor. Among assembly workers only 5% can work in a sitting position. Most production workers are women. The average age of employees is 36–37 years. The employer seems to follow a policy of employing workers at an age at which low educated women are unlikely to have more children. The company has never experienced problems finding unskilled workers for the assembly line; there is, however, a shortage of certain types of skilled metal-workers. According to the trade union secretary, the educational level of those doing semi-skilled and unskilled jobs varies: some are functionally illiterate; some are skilled workers (hairdressers, cosmeticians, book-keepers, retail assistants, and so on). A smaller proportion has a college degree, especially among the younger ones. The growing proportion of fresh graduates observed in this workplace, corresponds to research results that college graduates increasingly must start their working life in very low level jobs.

*The process of hiring and firing workers*

A hiring session lasts for two weeks, which leads to the hiring of 20–30 new employees at a time. Written and practical tests are applied to measure the necessary skills for unskilled/semiskilled jobs. On-the-spot training lasts for about two weeks. The company has the policy of ending the employment contract by mutual consent in order to avoid possible unfair dismissal claims. If the company initiates the separation, they offer a severance payment and notice period which would be due in the case of ordinary dismissal. They followed this strategy even against the worker whose constant mistakes led to a situation in which the automobile factory had to stop production for some days because all parts supplied by the Automobile Supplier were defective. Violence in the workplace is an instant sacking offence, as is coming to work under the influence of drugs or alcohol. Other offences, especially first-time, lead only to disciplinary procedures. Two years ago, collective redundancies were carried out: 350–400 workers were dismissed, but when the new product was introduced, many were reemployed. There is no obligation in the collective agreement in this regard. Fluctuation rate is 1% per month.

*Workers' representation*

Forty per cent of the workers are trade union members. Two trade unions have representation: the larger one (with 860 members) is affiliated to an alternative trade union confederation; the smaller one (with 400 members) is affiliated to a

major union confederation. A works council also operates in the company, affiliated to the company's European Works Council. The trade union's personal contacts, obtained through the European Works Council meetings, helped the unions to protect the workers from a major and rather detrimental modification of the collective agreement, which case will be discussed later in more detail. Relations between employer and unions seem satisfactory. The hiring process also includes a lecture delivered by the union which creates a personal connection between union leaders and new hires. To resolve sensitive issues (such as absenteeism, temporary production halts, and so on) the management seeks the cooperation of the union, which it usually gets.

### *Remuneration*

Blue-collar workers are paid on hourly basis, white-collars on a monthly basis. Payment is calculated according to wage grade: the basic salary is determined on the basis of work title and seniority. It determines a fixed amount which is not to be modified by the employer in any direction. The company's collective agreement has not increased wage bonuses for shift work, overtime, weekend shifts, and so on, above the rate laid down in the Labour Code. In 2005, the average salary for production workers was gross HUF 93,000, HUF 103,000 including overtime,<sup>68</sup> HUF 113,000 for non-production workers, HUF 127,000 including overtime, and HUF 250,000–270,000 for white collars. Because the firm experiences serious absenteeism, a wage supplement (bonus for being-present) has been introduced, rewarding those workers who work the whole month HUF 15,000 a month.

The collective agreement also provides:

- meal vouchers – HUF 4500/EUR 16 (the maximum tax free sum);
- private health care fund contribution – HUF 5500/EUR 20 per month;
- vacation vouchers – to be distributed by the Works Council;
- allowances – for births and deaths;
- Women's Day present;
- seniority bonus after 5, 10, etc. years' service;
- recreation facilities (for example swimming, gym);
- company health care services, including massage, psychologist,
- screening.

---

<sup>68</sup> The data on average salary might indicate wage discrimination: male and female workers are rather segmented, and female workers working on the conveyor earn lower rates than male workers in non-production jobs.

*Collective agreement provisions*

The company has an open-ended collective contract; wage agreements are renewed on an annual basis. Workers enjoy the benefits of the collective agreement in the following regards:

- Stipulation of 40 hours' weekly working time and three-shift work schedule – which prevents the employer from introducing a flexible working time frame, not even for the two months permitted by the Labour Code. (For longer periods, the agreement of the union is required.)
- The proportion of fixed-term employees is limited to 5%.
- Regulation on disciplinary procedure.
- 40 minutes of breaks which form part of the daily 8 hours' working time: 2 x 10 minutes, and 1 x 20 minutes.
- Strict wage grades. Gives no room for individual bargaining and keeps the workers organised.
- A social package. (For details see above.)
- Overtime must be announced at least 48 hours in advance, which enables workers to organise care for smaller children.

*Negotiations on modifying the collective agreement*

During and immediately after the introduction of a new major product the company's labour needs rise significantly. The company cannot rely on inner flexibility because of the working time limitations of the Labour Code, the three shifts in the collective agreement and the limitation of fixed-term employees to 5%. Two years ago the company won an extra order during the summer which could not be met because the workers refused to interrupt their holidays. The owner investigated and found that it was the fault of the management: some managers had a 25% salary cut for six months. To improve its room for manoeuvre, the management formulated a proposal for modifying the collective agreement, requesting:

- A rising of the limit on fixed-term workers from 5% to 25%.
- The introduction of a new flexible working time frame.
- A shortening of the 48-hour notice period before overtime, and the right to initiate disciplinary measures against workers who do not comply.

The union successfully rejected all these demands. It received powerful assistance from its national confederation, including good legal advice on how to argue against a flexible working time frame. Also, the deputy president of the confederation participated in the negotiations. He suggested consulting the unions of other European affiliates on what kind of regulations they had on these issues. The union utilised the personal contacts gained through European Works Councils meetings and the international connections of the confederation. On the basis of the data provided by other unions, the union could argue that no European affiliate has such rules on working time organisation. The union also threatened a strike. Finally, the company gave up.

*Ad hoc agreement on the reduction of working time*

In 2005, however, the problem of flexible working time arose the other way around: the company wanted to halt production for an extra week. The original management plan was to send the workers on holiday for five working days. After the negotiations with the union, the agreement was as follows: they reduced the speed of the conveyor so the workers were employed one day more without producing more.<sup>69</sup> Those who had several vacation days left from the previous year were sent on holiday, but for those who had very few vacation days the management found other tasks in the factory for two working days; they also received two days paid standstill.<sup>70</sup>

*Summary: a typical multinational – atypical balance of power*

This case study involves a typical assembly plant of a multinational firm: it employs unskilled workers on assembly lines, paid just above the minimum wage for working hard in three shifts. Though the work provided by this firm is not sophisticated, and the wages are not high, still this type of employer plays an important role in the Hungarian labour market (which struggles with a low employment participation rate resulting mainly from the low economic activity of unskilled labour) by providing work and income for those lacking demanded skills. As production depends on unpredictable changes in demand, the employer has to use its workforce flexibly. The management's room for manoeuvre is very limited because the collective agreement stipulates a three-shift

---

<sup>69</sup> This supports the complaint of the workers, that the speed determined by the conveyor belt is unrealistically tense.

<sup>70</sup> The Labour Inspectorate investigated the agreement, and found it to be a good example of a workplace settlement. During the investigation, however, it was also found out that the previous year some workers had worked 16 hours on some days (two shifts in a row) and now the company is expecting to be fined because of it. The Company has already been fined by the Labour Inspectorate for exceeding the weekly working time limit (48 hours including overtime) and violating the prohibition on working on national holidays (1 May).

system, 40 hours a week working time, sets a limit on the use of fixed-term contracts at 5% of the workforce and requires 48 hours' notice before overtime, and so on. Under such conditions, the management can use the workforce flexibly only by paying overtime bonus for extra shifts or extra hours.

To widen its limited room for manoeuvre the management pushed for a modification of the collective agreement. The union, which enjoys strong support among the workers and has a charismatic leader, was able to protect the status quo and maintain the comparatively good position of the workers. Probably, the employer will recommence negotiations because the regulations of the collective agreement prevent the employer from introducing internal or external flexibility: for every extra work and for every alteration in the originally communicated working schedule the employer must pay bonuses, which lifts the wages of middle-aged women working hard all day long along the conveyor belt for a wage just above the national minimum wage.

This case highlights the *importance of trade union representation in safeguarding permanent jobs*, and reflects to the conditions under which the union is able to fulfil this role. In this company the power of the employer and the union is balanced. The union strength relies on the high unionisation of the workers and advice and other support of the national confederation. Nonetheless, the employer constantly threatens by relocating the factory abroad, which is not taken seriously by the union, since the wages are so low compared to the quality of the workforce that there is no sense to move further to the East, at least as far as European locations are concerned.

### **Case B: Reducing agency workers' vulnerability: working for two companies at different peak seasons<sup>71</sup>**

The subject of this case study is a major multinational competitor in the household appliances (consumer electronics) market. This study focuses on one manufacturing plant in Central Hungary, established in 1991.<sup>72</sup> Like other multinational companies, the management was attracted by the savings offered by a low-cost skilled workforce and the favourable tax regime offered by the local government, including tax holidays and duty-free zones. The plant manufactures high-tech consumer electronic devices for both export and the local market. During the 15 years of operation, the product profile has changed several times, according to changing consumer and market demand.

---

<sup>71</sup> Case study and original text prepared by Ágnes Fiedler.

<sup>72</sup> The company invested EUR 216 million in Hungary in 1989–2001.

*Fluctuations in productivity*

One of the main characteristics of consumer electronics is the seasonality of production: before Christmas the demand for consumer electronics rises to a considerable extent. In production terms this means working at full productivity for at least 5 months before the holiday. There is no other peak period like this during the year. From the human resources point of view, the periodic fluctuations in production are among the main problems. They have to find appropriate solutions to adapt to production, using flexible employment and working time. Though the company is eager to reduce the negative effects of seasonality, it still remains a big risk factor for the workers.

*Flexible use of manpower*

According to demand, the total number of workers fluctuates over the year between 76% and 130% of the average annual number. In 2005, the average total number of employees was approximately 1800 between January and July, and approximately 2900 from August to December. The number of employees with open-ended contracts remained more or less the same during the year, at approximately 1300 workers. They represent the 'core group', including administrative staff and workers indispensable to maintain productivity in the low season. When the company faced a change of profile, some open-ended contract workers were dismissed, as well. According to the changes in demand, the number of agency workers was around 500 in the first half of the year and 1600 in the second half of the year.

The main way of dealing with the seasonality of production is fixed-term employment. All the fixed-term workers are hired by a recruiting agency. The plant has been using temporary agency work since 1997. The number of temporary agency workers reflects production fluctuations. Contracts do not usually last for more than 6 months; the average duration is 3–4 months. These workers tend to be unskilled and the work requires no expertise; during the 3–4 months of employment there is little time to 'waste' on training. Many temporary agency workers return year after year; in the other half of the year they do other seasonal or rural jobs. If the management is satisfied with particular temporary agency workers, they might ask the recruiting agency to hire them again. In some cases, the company itself hires certain temporary agency workers and provides them with open-ended contracts. But the vast majority of fixed-term workers have to leave the plant after Christmas and wait for another possible assignment.

*Two companies sharing the same workforce at different peak seasons*

Fruitful cooperation has developed between two plants and a recruiting agency, thereby bringing some continuity into the lives of more than 100 temporary agency workers. The Consumer Electronics Firm tried to find another plant with seasonal production in the region with different peak seasons so that the flexibility demands could complement each other. The 'partner' plant is located 40 km away, and transport is fairly good (by Hungarian standards) between the two towns. The workers (approximately 120) are employed by the same recruiting agency: in the first six months of the year they work at a food manufacturing plant, and in the second half of the year they work at the consumer electronics assembly plant. This cooperation has been going on for two years and has received positive feedback, so the company is trying to find other partners to share the workforce with.

*Different aspects of workers' vulnerability*

The permanent workers have experienced many changes in production: back and forth from three-shift to four-shift work, annualisation and timeframes. The real difficulty is getting used to the strict routine of the assembly work itself; if adaptation is successful the changes between shifts and other work organisation issues do not represent such a problem. The annualisation efforts did not receive negative feedback from the workers; most would prefer to work every day of the week (even holidays) and have a longer leave period when they can take care of private matters. Young parents in particular experience the negative side of the rapidly changing shifts and work routine; especially in families where both parents work in the assembly plant. The most vulnerable group of workers is definitely temporary agency workers. They seem to do the same work at the same place like 'normal' employees but legally they are employees of another company. If the assembly plant does not need them any more, they can be easily sent away from one day to another, without any obligations and costs. They get paid by their legal employer (recruiting agency) and they are not entitled to receive bonuses or other premiums (discounts on the company's products, for example) like regular employees. The attitude of agency workers is not helped by this: working only for a couple of months and knowing beforehand they will be fired sooner or later is not motivating. Towards the end of their period of employment such workers often just stay at home rather than going to work. The management cannot really do anything about it: the workers are going to be dismissed anyway.

*Relative weakness of the union*

One union represents the workers' interests in the plant. The union does not belong to a union confederation at national level, and they do not represent the workers in the other plant of the company either. The first collective agreement covering all three factories of the employer was concluded in 1993.<sup>73</sup> Since 2002, however, when the company withdrew from this agreement, there has been only a plant-level collective agreement. The management and the union renegotiate the collective agreement every year when they set wage levels and discuss other important issues. During 2001–2002 relations between management and union reached rock bottom because the union refused to agree to the annualisation of working time (instead, the company introduced an eight-week timeframe which can be imposed by the management unilaterally – by way of comparison see Case A) and because the union did not agree to the growing proportion of temporary agency workers. Following the tensions in 2002 and due to some personal conflicts, the management tried to fire one of the union leaders. The union leader successfully sued for unfair dismissal and the court reinstated him.

*Do temporary agency workers undermine the position of workers with open-ended contracts?*

Temporary agency workers are in the lowest wage category and, because of their status, cannot pursue a higher wage. In fact, they help the management to keep wage levels very low: if they are satisfied with low wages, the other employees have to accept it as well. The use of temporary agency workers weakens the union: temporary agency workers theoretically have the right to join the union but in fact they do not do so because it is not worth for a couple of months. As the number of temporary agency workers keeps rising, the union is losing its strength: the proportion of union members among the employees is decreasing.

Despite the continuous problems, the union and management have moved away from playing a zero sum game and learnt to cooperate and respect the other's standpoint. Collective bargaining is continuing, the agreement is revised each year and the parties meet monthly in order to discuss the current issues, for example, number of overtime hours and scheduling holidays. There are still problem issues, but relations between the parties have improved considerably and both are optimistic about this tendency.

---

<sup>73</sup> Since then, the company has closed and relocated one plant.



*Summary: who bears the costs of flexibility?*

When production is seasonal in its nature, companies have to find suitable measures to accommodate annual fluctuations and adjust to changing market conditions. They combine various forms of non-conventional employment and the basic units of work are no longer the working day or week, but monthly / yearly timeframes. The assembly plant has found a way of achieving greater flexibility through temporary agency work, though there is also a negative side: the workers hired by a recruiting agency are much more vulnerable compared to permanent employees. These negative effects form the core of the union's concerns. Temporary agency work is a way of achieving flexibility, although it favours companies. The Company has made attempts to compensate the negative effects of temporary agency work: it shares the workforce with another seasonal business with a different peak period, so making the future more secure for these 120 workers. This can serve as a good example of how to find better flexible solutions, which reduces the risks taken by agency workers – who, after all, are doing the same work.<sup>74</sup>

#### **4. Concluding remarks: regulations on fixed-term contracts in the context of flexicurity**

In this paper the phenomenon of fixed-term contracts was investigated from the angle of labour market indicators, legislation and case studies, concentrating primarily on Hungary and Spain.

As we observed above in part 2, the composition of the Spanish workforce seems to be continuously distorted by the overrepresentation of temporary workers (app. 30% of the total workforce). By today, this distorted composition of the workforce is associated with an increasing level of work-related accidents, reduced level of retraining, and there are also hints that the low fertility rate is also related to the uncertainty caused by fixed-term contracts. As far as labour law is concerned, the Spanish regulation on fixed-term contracts is rather liberal and the permissive modification of the Estatuto in 1984 made fixed-term contracts extremely widespread. We have found that one of the prime reasons of this phenomenon is the harsh contrast between the protection provided for temporary and permanent contract workers in Spain. We have also observed above, that despite four consequent modifications of the labour regulations, the outstandingly high proportion of fixed-term contracts has not reduced considerably (the few per cent reduction in the private sphere was masked by few per cent increase of public sphere). These modifications re-

---

<sup>74</sup> In this regard please refer to the point 1.4 above demonstrating that fixed-term work is no less skill-intensive than permanent work.

stricted the applicability of fixed-term contracts, reduced somewhat the protection provided to permanent workers, therefore lessened to a certain extent the harsh contrast between the legal position of temporary and permanent workers.

The Spanish case demonstrates that creating a range of low-value atypical contracts along the well-protected high-value permanent contract induces employment practise that creates a segmented labour market of core and peripheral workforce. It seems, that the inner contrast of labour regulations itself matters: the contrast between the two possibly applicable set of laws determines the decisions of employers regarding the duration of the employment relationship. The Spanish case also highlights that if once a segmented labour market came about, the modification of labour regulation is not enough to cure it.

Hungary presents a different case. Labour market indicators, as discussed above in part 1., revealed that the proportion of fixed-term contracts remained in the past years around 6-7 %, nonetheless it is app. 30% among new hires, and app. 50% among new hires from unemployment. Though the ratio of fixed-term employment is continuously increasing among newly established contracts, it still does not affect the majority of the working population which remains to be employed through permanent contracts. It was also discussed, that fixed-term contracts are a symptome, rather than a cause of job instability<sup>75</sup> and are more frequent in regions under high pressure from unemployment / inactivity. Usually young, blue-collar workers living in the countryside fall into the trap of a chain of temporary work, without a hope of getting a higher value job in their lifetime. Temporary workers are more exposed to unpredictable working time and paid less by app. 10 % compared to permanent workers. It was also demonstrated that low educated fixed-term workers have no access to (re)training, though their work is not less skill-intensive than the work of permanent workers, which finding was supported by Case B., as well. As far as legislation is concerned, the Hungarian labour legislation provides a rather low and decreasing level of legal protection for workers in international comparison.<sup>76</sup> Contrasting the data on labour market performance and the results of the analysis on strictness of labour regulations, the case of Hungary proves that the low and decreasing level of legal protection does not improve the performance of the labour market, does not create jobs, does not reduce inactivity and/or unemployment. As the level of legal protection of workers is low generally in Hungary, at least no distortion occurred in the composition of the working force, as it was observed in case of Spain.

---

<sup>75</sup> As it was pointed out above in the first part of this paper, workers with high prior probability of being fired within a short time, or exposed to high risk of plant closures and seasonal downturns, are more likely to be offered fixed-term contracts than other workers. It is the economic uncertainty that is translated into employment law terms when the employer chooses a fixed-term contract instead of a permanent one.

<sup>76</sup> See note 61 above.

From a legal point of view the main debate is whether “flexicurity” could / should be translated into employment law in the way of reducing employment protection of permanent workers, as it was urged, among other documents, in the Green Paper. This standpoint favours *external flexibility to internal flexibility*. As Dore formulated it, “external” and “internal” makes a crucial difference. External flexibility is about the pursuit of allocative efficiency, internal flexibility is „about the pursuit of productive efficiency, through good organization, clever innovation and conscientious work.”<sup>77</sup> The two far ends of the employment policy have been associated with two different “mindsets” by Dore: *market mindset and organization mindset*. Market mindset seeks to promote mobility and market-relations, and organization mindset which values organizational stability and personal security.<sup>78</sup> When analysing results of case studies, Muños de Bustillo, came to a similar conclusion: for many sectors there is always an option between the *high road of high-value jobs* (competitiveness resulted from high productivity of skilled and satisfied workforce) and the *low road of low value jobs* (competitiveness resulted from low-wages, little labour protection and bad working conditions).<sup>79</sup>

In the Wim Kok Report and the Green Paper it is the external flexibility and the market mindset which takes over the internal flexibility and the organization mindset. I do not support the interpretation of flexicurity on the basis of external flexibility and market mindset. If the flexicurity means external flexibility accompanied by some active and passive labour market policies, than the recently enjoyed, *statute-based and enforceable employment rights* of the workers would be traded for *some (undefined) labour market policies* without any entitlement to services based on those policies. The case of Spain shows that in Europe it is not a successful option (leading to a distorted labour market and social problems) and the case of Hungary shows that it is not the true option (does not fulfil the targeted results).

I rather agree with the point raised by the European social partners in Key Challenges that appropriate protection should be provided to all types of contracts. I am of the opinion that it is not necessary, evermore, it is harmful, to decide between external and internal flexibility at European level. Overemphasising the external flexibility based on the market mindset at European level would reduce further the room for manoeuvre of those, who are to choose the high-road of high-value jobs and the competitiveness resulted from high productivity of skilled and satisfied workforce.

---

<sup>77</sup> Ronald Dore: *New Forms and Meanings of Work in an Increasingly Globalized World*. ILO Social Policy Lectures, Tokyo 2003, International Institute For Labour Studies, p. 38.

<sup>78</sup> This mindset is also supported by the managerial thinking concerned solely on maximizing shareholder value, by the decreasing degree of political influence of trade unions, by the overwhelming neo-liberal tradition in economics, and also by the social demand for greater freedom of choice. See *ibid.* p. 33-35.

<sup>79</sup> See note 3 above. p. 473-474.

## SUMMARY

**Fixed-term Contracts in Law on Paper and in Practice  
Remarks to the Flexicurity Debate**

BEÁTA NACSA

Both in professional and political circles it is an ever spreading view that the efficacy of European labour markets may be improved by decreasing the rights of employees having open-ended contracts. The Spanish example contradicts this reasoning, where the support of outer flexibility resulted in the distortion of employment structure and proportionately in more than 30% of fixed-term contracts. An increase in the number of accidents occurring at the workplace and a decrease of training courses are derived from a rise in fixed-term employment. The example of Hungary defies this view from a legal perspective, where comparing to international standards even the most liberal regulation did not promote the improvement of labour market parameters.

In my opinion the presently forming interpretation of flexicurity, namely to combine the reduction in the rights of open-ended employees with measures taken at the labour market is impracticable, as only existing enforceable rights would be substituted with labour market benefits and facilities (not enforceable).

The presently forming interpretation of flexicurity is based on outer flexibility and a market perspective. I am convinced that it is not right and competitiveness is not improved by placing outer flexibility before inner flexibility, and to make decisions at a European level that enterprises should exclusively resort to outer flexibility rather than making use of innovations, interest systems or other inner organisational instruments when trying to adapt to the changing economic circumstances.

## RESÜMEE

**Befristetes Arbeitsverhältnis in der rechtlichen Regelung  
und in der Praxis  
Anmerkungen zum Flexicurity-Dilemma**

BEÁTA NACSA

Sowohl in fachlichen, als auch in politischen Kreisen ist die Ansicht immer verbreiteter, dass die Leistung der europäischen Arbeitsmärkte auf dem Wege der Einschränkung der Rechte der befristet eingestellten Arbeitnehmer gewährleistet werden kann. Diese Argumentierung wird von gesellschaftlicher Seite her durch das Beispiel Spaniens widerlegt, wo die Unterstützung der externen Flexibilität zu einer Verzerrung der Beschäftigungsstruktur und zu einem Anteil der befristeten Beschäftigung von mehr als 30% geführt hat. Die Erhöhung der Zahl der Arbeitsunfälle und der Rückgang der Zahl der Schulungen werden auf die befristete Beschäftigung zurückgeführt. Von juristischer Seite her wird dieser Standpunkt durch das Beispiel Ungarns widerlegt, wo auch die im internationalen Vergleich liberalste europäische Regelung nicht zu einer Verbesserung der Indizes des Arbeitsmarktes geführt hat.

Meiner Ansicht nach ist die sich gerade formende Interpretation von „Flexicurity“, wonach die Einschränkung der Arbeitnehmerrechte mit Maßnahmen auf dem Arbeitsmarkt gepaart werden müsse, kein möglicher Weg. Damit würden wir nämlich die bestehenden, erzwingbaren Rechte des Einzelnen mit der (nicht erzwingbaren) Möglichkeit der Inanspruchnahme von Zuwendungen und Dienstleistungen lediglich auf dem Arbeitsmarkt ersetzen.

Die sich gerade formende Interpretation von „Flexicurity“ basiert auf der externen Flexibilität und der Marktanschauung. Ich bin überzeugt davon, dass es nicht richtig ist und die Wettbewerbsfähigkeit nicht verbessert, wenn wir die externe Flexibilität vor die interne setzen und auf europäischer Ebene darüber entscheiden, dass sich die Unternehmen anstelle der Innovation, der Interessensysteme und sonstiger interner Mittel mit Organisationsanschauung ausschließlich auf dem Wege der externen Flexibilität an die sich ändernden wirtschaftlichen Bedingungen anpassen.

