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Ulrich Walwei\*

## Fixed-term Contracts in EC Countries

*Since the beginning of the 1980s, an increase in the number of fixed-term employment contracts has been apparent in a number of free-market-oriented economies.<sup>1</sup> This has been accompanied by amendments to the pertinent legislation. From the early to mid-1980s, a number of EC countries initiated legislation with the object of facilitating the conclusion of fixed-term contracts. How is this development to be assessed from an economic point of view?*

The debate on the legal regulation of fixed-term contracts is probably the most prominent example of a general discussion on deregulation and flexibilization of the labour market. The deregulation of labour regulations is intended to contribute towards restoring flexibility to the employment system and thus also to improving the functioning of the labour markets, and aims at increasing the capacity and willingness to adapt of labour-market participants within a changing general economic setting. Although this has already been under discussion for a long time, there is a lack of well-founded economic analyses of the effects of individual measures to promote the flexibility of the employment system.

There are many parallels between the deregulation and flexibilization debate and the discussion on the harmonizing of social standards in the European Community. In the future Single European Market, differing regulations in the member countries could prove to be a non-tariff barrier and consequently influence the mobility of companies. A harmonization of social standards (e.g. of the law governing fixed-term contracts) would thus also be a prerequisite for removing existing obstacles in the Single European Market. On the other hand, the labour regulations of a country will become relatively more important as a location factor due to the intensification of competition occasioned by the Single European Market. The significance for the competitive situation of individual countries of the opportunities available to them to achieve more flexibility with regard to employment is a question which needs to be analysed in greater depth.

The use of fixed-term contracts can be seen as an instrument of flexibilization. The scope available for making use of such contracts influences the numerical and functional flexibility of a company's personnel policy. Numerical flexibility refers to the quantitative adjustment of manpower levels, and functional flexibility to an improved qualitative use of the labour force. Companies need numerical flexibility in order to adapt personnel capacities to fluctuating production requirements. If fixed-term contracts are used for testing and selection purposes, this could have positive effects on functional flexibility (e.g. the recruiting of more productive manpower). On the other hand, fixed-term employment relationships can impair functional flexibility because the advantages of stable, long-term employment relationships (e.g. the identification of employees with the business's objectives) are not given.

### Characteristics of Fixed-term Contracts

The notion of the fixed-term employment contract is deemed to cover all legal relationships between dependent, gainfully employed persons and their employers in which a termination is agreed at the time the contract is concluded and, as a result, legal and collectively agreed provisions governing protection against dismissal become inoperative. The termination of the contract depends on objective aspects, e.g. the arrival

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<sup>1</sup> Cf. European Foundation for the Improvement of Living and Working Conditions: *New Forms of Work: Labour Law and Social Security Aspects in the European Community*, Dublin 1988.

<sup>2</sup> Cf. U. Cramer: *Zur Stabilität von Beschäftigung: Erste Ergebnisse der IAB-Stichprobe aus der Beschäftigtenstatistik*, in: *Mitteilungen zur Arbeit und Beschäftigung*, Issue 2, 1986, pp. 243-256.

at a certain point in time, the performance of an agreed amount of work or the occurrence of a certain event.

In principle, fixed-term contracts must not be equated with short-term employment, nor unlimited contracts with long-term employment. On the one hand, an investigation carried out by Cramer on the stability of employment shows that, of the employment relationships begun in 1984 (all employment subject to social insurance contributions, whether fixed-term or unlimited), more than half terminated before the end of one year, and so were of short duration.<sup>2</sup> On the other hand, fixed-term contracts are not necessarily of a short-term nature. In individual cases, time limitation agreements can (provided that these are legally permissible) refer to a period of several years. In addition, in many cases, fixed-term contracts are

converted into unlimited employment relationships after expiry of the term.

The legal treatment of fixed-term contracts varies greatly from one country to another. Theoretically, the spectrum ranges from freedom from restriction (i.e., unlimited scope for concluding fixed-term contracts) to prohibition of any limitation of the employment period. In between there are differing gradations of restrictions applying. Restrictions on the use of fixed-term contracts generally arise in three respects in free market economies (see Table 1):

□ the requirement that fixed-term contracts should be objectively justified, i.e. they are only permissible under certain circumstances (e.g. temporary assistance or deputizing);

**Table 1**  
**Legal Regulation of Fixed-term Employment Contracts in European Community Countries**

Member country	Permissibility of fixed-term contracts	Restrictions on permissibility of fixed-term contracts		
		Objective justification (certain purposes only)	Possibility of renewing fixed-term contracts upon expiry	Temporal limitation
Belgium	Yes (with restrictions)	Not required	No (renewals normally unlimited)	Maximum 2 years
Denmark	Yes (without restrictions)	Not required	Yes (no restriction)	No provision
France	Yes (with restrictions)	Required	Yes (one renewal possible)	Maximum 18 months
Greece	Yes (with restrictions)	Required	Yes (two renewals possible, then unlimited)	No provision
United Kingdom	Yes (without restrictions)	Not required	Yes (no restriction)	No provision
Ireland	Yes (without restrictions)	Not required	Yes (no restriction)	No provision
Italy	Yes (with restrictions)	Required	No (renewals normally unlimited)	Maximum 2 years (3 months for public employees, 6 months for seasonal work)
Luxembourg	Yes (with restrictions)	Required	Yes (two renewals possible, however, with a total term not exceeding 2 years)	Maximum 2 years
The Netherlands	Yes (without essential restrictions)	Not required	Yes (if the local employment authorities approve)	No provision
Portugal	Yes (with restrictions)	Not required (unless term is less than 6 months)	Yes (one renewal for 3 years)	Maximum 3 years
Spain	Yes (with restrictions)	Not required	Yes (one renewal for 3 years)	Maximum 3 years
Federal Republic of Germany	Yes (with restrictions)	Not required (unless term exceeds 18 months)	No (unlimited on renewal unless objective justification provided)	18 months (also longer with objective justification)

Source: European Industrial Relations Review, 12/1988, pp. 20 ff., and 12/1989, pp. 13 f.

□ restrictions on the permissibility of repeatedly concluding fixed-term contracts with the same employee (so-called "chain employment contracts");

□ the stipulation of a maximum term for fixed-term contracts.

The regulations as they occur in practice, then, govern the relative level of freedom in setting employment periods, or the relative level of restriction on the permissibility of fixed-term contracts.

### Regulations in the EC Countries

The EC comparison in Table 1 shows that fixed-term employment contracts are, in principle, permissible. Limitation is not prohibited in any of the member countries. There is freedom of contractual limitation (i.e., unlimited scope for concluding fixed-term contracts) in Denmark, the United Kingdom, Ireland and, with certain reservations, in the Netherlands. Relatively generous restrictions in respect of freedom of limitation (i.e., no requirement for objective justification, but specified maximum limits as well as restrictions on the permissibility of chain employment contracts) are to be found in Belgium, Spain and Portugal. There are more far-reaching restrictions within the European Community in France, Luxembourg and, surprisingly, also in the Southern countries of the EC (Greece, Italy), of which it is said that they generally have a low social protection level. Therefore, in respect of the permissibility of fixed-term contracts, one can under no circumstances speak of a North-South differential. However, it must be assumed that, in spite of the regulations in place in these countries, illegal activities are widespread.

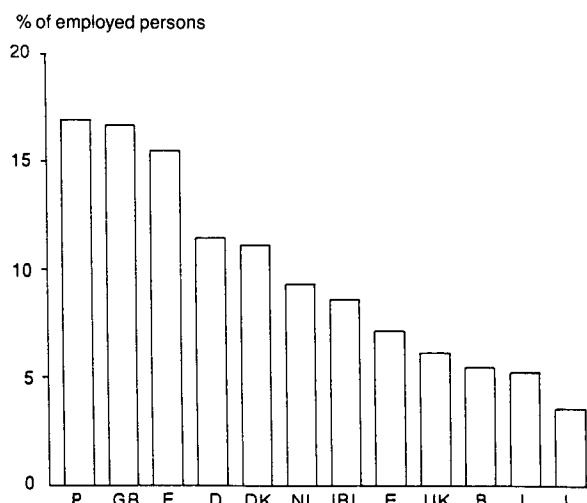
If the legal arrangements in the Federal Republic of Germany are looked at by way of comparison, how they are evaluated and classified depends on what point in time is chosen. Until 1985, i.e., prior to the passing of the Employment Promotion Act (Beschäftigungsförderungsgesetz [BeschFG] 1985/1990), the legal arrangements in the Federal Republic of Germany in respect of fixed-term contracts can be said to have been comparatively restrictive by international standards. Fixed-term contracts were, at that time, only permissible if protection against dismissal was not circumvented. There had to be objective justification unless the Termination of Employment Act was not applicable (e.g. when the period of employment was less than six months). Since the

passing of the BeschFG, objective justification in respect of fixed-term contracts can be dispensed with under certain circumstances specified in the Act (particularly in the case of a term of up to 18 months). However, repeated conclusion of fixed-term contracts (without objective justification) must still be avoided. Consequently, since the passing of the BeschFG in 1985, the Federal Republic of Germany must be classified rather as belonging to the group with less far-reaching restrictions on fixed-term employment.

There was a general trend in the EC in the 1980s towards greater freedom in this respect. As in the case of Germany, a number of European countries (e.g. Spain, France, Italy and Belgium) introduced measures to facilitate the legal admissibility of fixed-term contracts. A certain reversal of this trend has become evident in recent years. Luxembourg (1989) and France (1990) have restricted the possibilities for using fixed-term contracts. The reason given is that fixed-term contracts often serve as a substitute for unlimited employment and their misuse cannot be excluded.<sup>3</sup>

Although data are not available for all European Community countries on the dissemination of fixed-term contracts, it is generally presumed that this type of contract became increasingly significant in the 1980s. An indication of the relative significance of fixed-term contracts in European Community countries is supplied by the Employment Report of the EC Commission (see Figure 1):

**Figure 1**  
**Percentage of the Workforce Employed**  
**under Fixed-term Contracts in EC Countries**  
**(1987)**



Source: EC Commission: Employment in Europe, Brussels 1989, p. 74.

<sup>3</sup> On changes in the law, cf. M. Emerson: Regulation or Deregulation of the Labour Market: Policy regimes for the recruitment and dismissal of employees in the industrialised countries, in: European Economic Review, Vol. 32 (1988), No. 4, pp. 775-819; European Industrial Relations Review, No. 12, 1989, pp. 13 ff., and No. 9, 1990, pp. 27 f.

While in Portugal, Greece and Spain the percentage of the workforce engaged in fixed-term employment is shown as 15% for 1987, Belgium, Italy and Luxembourg with just over or under 5%, have the lowest values. According to this investigation, the Federal Republic of Germany, with 11-12%, lies in the upper middle range.<sup>4</sup>

Apparently, the employment situation is more significant as far as the dissemination of fixed-term contracts is concerned than the extent of legal restrictions in force in a country. Otherwise, the relatively high percentages of fixed-term contracts in the Southern countries of the EC can hardly be explained. For these countries have comparatively wide-reaching restrictions on the use of limited terms; at the same time, however, their unemployment levels are high. Many fixed-term employees in these countries occupy such positions because they could not find unlimited employment.<sup>5</sup> On the other hand, the research done on fixed-term employment also suggests that this type of contract is, in part, in conformity with employees' wishes. Fixed-term employment is frequently taken on as a subsidiary gainful activity by school pupils, students, housewives and pensioners.

In general, the few data available point to an above-average percentage of women, young employees, part-time employees and those with low qualifications among fixed-term employees as a whole in the member countries of the European Community.<sup>6</sup>

### Legislation Initiated in the EC

So far, there can be no question of there being any standardized European social welfare regime or labour market convention with binding regulations for the member countries. Until the mid-1980s, the European Community was not granted far-reaching legislative powers in the fields of labour and social welfare law. Directives were only issued on a few such issues, e.g. on

equality of treatment for men and women, on health and safety at work, and on mass dismissals.

It was not until the announcement that a Single European Market was to be created by 1992 that impetus was given for a comprehensive EC social policy. In December 1989, at the EC Summit Conference in Strasbourg, a charter of basic social rights was adopted by the heads of state and of government (which was voted against by the United Kingdom). Thus, the prospect of social supporting measures in respect of the Single Market programme was raised. The "Community Charter on Fundamental Social Rights" serves as a basis for a gradual harmonization of national labour laws and social systems.<sup>7</sup> As a result of the Social Charter, each member country is to be obliged to observe certain minimum standards. For this purpose, an action programme for the application and translation into practice of the Social Charter was issued by the EC Commission at the end of 1989.<sup>8</sup>

The Social Charter adopted also contains regulations in respect of fixed-term employment. The conditions governing atypical forms of employment (fixed-term contracts, temporary work, part-time employment) are to be harmonized. This very generally formulated proposal has, in the meantime, been defined in a Draft Directive of the EC Commission. Atypical employees are to be granted the same rights in respect of further training, company benefits and co-determination as "normal employees". All unequal treatment of atypical employees in respect of social insurance and holiday pay, severance pay and long-service bonuses is to be eliminated. Fixed-term employment relationships are only to be permitted for a maximum period of three years. Employees who work less than eight hours per week will, however, not be affected by the Commission's proposal.<sup>9</sup>

The probability of these proposals being implemented in national legislation in the EC countries is difficult to assess. According to the present legal situation, this would require unanimous voting in the Council of Ministers. The United Kingdom, however, withheld its consent to the solemn declaration of the Social Charter in Strasbourg. Therefore, even though a charter of basic social rights exists, at this point in time the creation of a European social area remains uncertain.

<sup>4</sup> This proportion seems rather high, however, when compared to the findings of the study on fixed-term employment in the Federal Republic of Germany completed by the Wissenschaftszentrum Berlin (WZB) in 1989. On the basis of a representative survey of employees, Büchtemann and Höland (see footnote 12) found an average proportion of fixed-term contracts of 9%, including all types of workers, salaried staff, civil servants and dependent part-time employees, but not including apprentices or trainees, or young people doing their compulsory military or community service. The differences between their findings and those of the EC survey may result from problems in defining and delineating fixed-term employment.

<sup>5</sup> Cf. Commission of the European Communities: Employment in Europe, Directorate-General for Employment, Industrial Relations and Social Affairs, Brussels 1989.

<sup>6</sup> Cf. Survey of fixed-term contracts, in: European Industrial Relations Review, December 1988, Vol. 179, pp. 20-25.

<sup>7</sup> Cf. Commission of the European Communities: Community Charter of Fundamental Social Rights (Draft), Brussels, 2nd October 1989.

<sup>8</sup> Cf. Commission of the European Communities: Mitteilungen der Kommission über ihr Aktionsprogramm zur Anwendung der Gemeinschaftscharta der sozialen Grundrechte, Brussels, 29th November 1989.

<sup>9</sup> Cf. Commission of the European Communities: Special Forms of Employment, Brussels, 6th June 1990.

### Impact on Transaction Costs

Is there any point at all in formulating national or even supranational regulations on fixed-term employment? Efficient legal regulations take over the function of a complete contract, i.e., they create the conditions which the majority of contractual parties would have created for themselves in the absence of transaction costs. The detrimental consequences of market imperfections (e.g. externalities, uncertainties in respect of information) would, therefore, be alleviated by efficient legislation. However, legislative regulations can also have the opposite effect. Inappropriate legal instruments could increase rather than lower transaction costs if the transaction costs resulting from the regulation are higher than those saved. In such a case, transactions which are in the interests of both contractual parties are impeded or even prevented. Thus, as far as the theory of transaction costs is concerned, a double task is involved in shaping the law.<sup>10</sup> On the one hand, legal regulations or a control mechanism must be found which, with respect to solving a specific problem, promise the lowest-cost method of coordinating individual decisions. On the other hand, legally generated transaction costs should interfere as little as possible with the optimization of individual decision-making.

What conclusions can be drawn from these theoretical deliberations regarding the regulation of fixed-term contracts? Two concepts for treating fixed-term contracts in labour legislation appear sub-optimal, namely complete freedom for fixed-term employment and its complete prohibition.

### Contractual Disparities

There are two reasons for restricting the freedom to enter fixed-term contracts. Firstly, asymmetrical costs of leaving employment and contractual disparities to the disadvantage of the employee are typical features of labour relations. There are a number of reasons for this which are connected with the peculiarities of the labour market and of employment relationships: broader operational freedoms for owners of real capital in the production process, a tendency towards higher termination costs for the employee (above all with a high risk of remaining unemployed), less flexibility of human capital compared to monetary and real capital, a higher "urgency of supply" on the employee's part, and his/her duty to comply with instructions at work.

Dispositional asymmetries as a result of the existing power differential can influence market conditions (the

character of the authority relationship) in a lasting way. If there is a distinct authority relationship between employer and employee, with unregulated employment conditions, there can be a danger of social dependency. The authority relationship is all the more pronounced the higher the cost of job loss (i.e., the higher the risk of remaining unemployed) is for the employee and the lower the replacement cost (i.e., the easier it is to replace an actual employee) for the employer. Such a situation could cause the employee to work harder than would conventionally be expected and than he/she is capable of sustaining in the long run, in order to avoid job loss.

In that respect, labour law can be seen as a control system to set against the pitfalls of contractual freedom. Effective protection against dismissal (by restricting the use of fixed-term contracts) therefore makes possible "fair" contractual conditions when the starting-points of the contracting parties differ.

### Cooperative Behaviour

Secondly, the stability of the employment relationship is a prerequisite for cooperation between the two parties involved. The willingness to cooperate of the contracting parties is jeopardized by the existence of information asymmetries. Information asymmetries can be said to exist if the contracting parties are differently informed on important aspects of performance and reciprocal performance under an agreement. The main area in which such an asymmetrical distribution of information arises in a working relationship is in the implicit (i.e., the contractually non-specified) components of that relationship.

On the one hand, there is a prevailing uncertainty on the part of employers regarding the working intensity of their employees. The point is that the employment contract does not actually regulate an exchange of the employee's labour power as such but actual work he/she is required to perform in fulfilment of the employer's right to use his/her working capacity in the production process. A further reason for incomplete information on the employer's part is the incomplete specification in the employment contract of the performance requirements made of the employee. On the other hand, whether the employer will perform on certain aspects (i.e., the allowance of opportunities for promotion or security of employment) is similarly uncertain at the outset.

The areas of uncertainty created by the incomplete employment contract make it possible for the contracting parties to use their respective information advantages and to behave, under certain circumstances, opportunistically (i.e., not to adhere to implicit agreements). Using a game-

<sup>10</sup> Cf. P. Behrens: Die ökonomischen Grundlagen des Rechts, Tübingen 1986, p. 109.

theory prisoner's dilemma model and examining repeated game situations, it can be shown that, when information asymmetries exist, the duration of interactions between the parties is of central significance in consolidating reciprocal cooperative behaviour.<sup>11</sup> If there are no, or only limited, possibilities of contractually stipulating implicit agreements, cooperative behaviour between the parties will only be achieved and maintained if the permanent existence of the relationship is ensured. Therefore, if one assumes a situation of this type, regulations are required to support the process of developing confidence and stabilizing expectations which contribute towards expanding the "shadow of the future" (Axelrod). However, it must not be possible to calculate the foreseeable end of the relationship (e.g. as a result of term limitation).

Consequently, protection against dismissal and avoidance of its circumvention also has the function of obliging the contracting parties to behave cooperatively and of decreasing the probability of opportunistic behaviour. As a result, employer and employee can each rely on the contractual fidelity of the other and will themselves be more prepared to adhere to agreements reached. Such arrangements, then, show the advantages of long-term employment relationships: willingness to finance company-specific human capital investments, security of employment as a prerequisite for in-company mobility (functional flexibility), acceptance of technological innovations, etc. This aspect provides a second justification for restriction of the use of fixed-term contracts. Complete freedom to enter such arrangements could, if mutual information asymmetries exist, lead to the cooperation desired by both contracting parties, and hence also the efficiency and productivity of the employment relationship, being placed in jeopardy.

Nor can a prohibition of fixed-term contracts be considered an optimum regulation. The conclusion of a fixed-term contract can be of advantage to both contracting parties: e.g. if a company needs a temporary employee during the holiday period to act as a substitute for a member of the permanent workforce and a student is looking for a job for the same period of time (during his/her vacation). A prohibition of limitations of this type would be unrealistic and not in conformity with the market. Consequently, an "optimum" regulation of fixed-term

contracts can only be established between the extreme concepts of "freedom of term-limitation" and "prohibition of term-limitation".

### Economic Effectiveness

The legal regulations currently existing on the limitation of the term of employment contracts, with their range of freedom or restriction for such arrangements, will be considered below from the point of view of their economic effectiveness:

□ Problems concerning legislation governing protection against dismissal should not be solved indirectly by means of amendments to the law on term-limitation. A liberalization of the law on fixed terms has the serious disadvantage that it impairs the effectiveness of protection against dismissal as a whole. However, if—as is frequently seen to be the case—only individual areas of protection against dismissal (e.g. certain social components) are regarded as problematical, reforms should begin directly in these spheres of regulation in order to prevent undesirable side-effects (such as the opportunity to use fixed-term contracts to circumvent protection from dismissal).

□ There are also economic reasons for avoiding a circumvention of protection against dismissal by means of fixed-term contracts. The stipulation of the need for objective reasons (e.g. temporary assistance, probationary period) for the limitation of employment periods thus appears plausible. However, objective reasons should be specified as precisely as possible by law and not, as in the Federal Republic of Germany (prior to 1985), be left to a complicated and intransparent court jurisdiction.<sup>12</sup> This would facilitate the use of fixed-term contracts and largely exclude circumvention of protection against dismissal. As a result, transaction costs due to legal uncertainty would be lowered.

□ In the reforms of the law governing fixed-term contracts, the problem of shifting the employment risk to the detriment of the employee has so far only been inadequately considered and taken up. Consideration could be given to supportive compensatory regulations with "precariousness bonuses" for employees and "precariousness costs" for companies. A regulation of this type would be in conformity with the market and would simultaneously at least partly compensate the fixed-term employees concerned for accepting a higher employment risk. For instance, the French law governing employment term limitation provides for the employer having to pay additional social security contributions amounting to 0.5% of the total wages and salaries when such contracts are used.

<sup>11</sup> Cf. R. Axelrod: *The Evolution of Cooperation*, New York 1984; U. Walwei: *Ökonomisch-rechtliche Analyse befristeter Arbeitsverhältnisse*, BeitrAB 139, Nuremberg 1990.

<sup>12</sup> Büchtemann and Höland (*Befristete Arbeitsverträge nach dem Beschäftigungsförderungsgesetz 1985*, Bonn 1989) provide some indication in their empirical study that the complexity and intransparency of case law on fixed-term contracts dealt with by the Federal Labour Court had led to a reticent approach towards such contracts by companies.

### Need for a Minimum Social Standard

With the completion of the Single European Market, national differences in labour and social legislation will play a more important role in the selection of locations. The relative attractiveness of a location does not depend on individual regulations but on a country's entire system of labour and social legislation. In such a system, competitive advantages in one area can be offset against competitive disadvantages in others. Provisions governing the limitation of employment terms should also be seen against this background. It may be, for example, that regulations in respect of working hours and the ensuing flexibility potential in a country comply with the wishes of the company; a resultant competitive advantage would, however, be offset if this country were to barely permit the use of atypical employment contracts.

Basically, however, it should be noted that the positive influence frequently claimed to flow from certain potential sources of flexibility for a country's competitiveness needs to be seen in a relative light. A high degree of flexibility need not be entirely positive in its effects, since companies not only have areas of potential flexibility but also others of forced rigidity. Rigidity mechanisms mean that flexibility processes are directed firmly along certain paths and channels.

Without a doubt, labour law regulations generate rigidities, reduce flexibility with regard to certain adjustment possibilities and, thus, reduce the adaptability of actors on the labour market. On the other hand, certain rigidities (restrictions of numeral flexibility) can be compensated for by other equivalent chances of adjustment (e.g. functional flexibility). Rigidities can provide, extend or improve room for adjustment. For instance, the positive effects of permanent employment relationships mentioned above take effect as a result of limitations in respect of protection from dismissal and the use of fixed-term employment contracts.

Since restrictions of flexibility not only entail costs but can also be accompanied by positive productivity effects, it is uncertain in advance which system of labour legislation will prove to be advantageous as a location factor under competitive conditions. From this point of view, then, there is no compelling reason for an advance harmonization of labour and social law.

### Social Dumping?

However, labour laws also need to be considered in their function as protective norms to the benefit of employees. The protective character of legal norms in the employment field provides a justification for European social legislation

since, in the absence of a truly European social policy, "social dumping" could not be precluded.<sup>13</sup> Their freedom to develop their own regulations provides countries (at least potentially) with the possibility of setting low social standards. By reducing social costs or slower realization of social progress countries could, in order to overcome difficult economic situations, therefore endeavour to gain competitive advantages at the expense of other countries with higher social standards. "Social dumping" of this type could result in company locations and investment being shifted elsewhere and jobs being lost. Corresponding reactions of countries fearing competitive disadvantages could set a dynamic process in motion which led to a general deterioration in social standards, and thus in living and working conditions in the member countries.

"Social dumping" is, however, unlikely to occur in all cases. The inference that Germany will, as a result of its comparatively high salary and social costs, lose market share to low-priced suppliers or that industry will migrate overlooks the following important fact: salary costs are only one factor in total production costs and can be balanced out with a correspondingly high productivity of labour, i.e., relatively low unit labour costs.

If, however, labour costs are an essential factor in the profitability of an enterprise, "social dumping" cannot be ruled out. Indeed, if free labour cost competition is brought about, certain protection standards at least in a number of particularly labour-intensive sectors such as shipping and road transport or the construction industry could come to be regarded as disposable.

The setting of minimum EC standards in the field of labour and social law must, therefore, involve two aspects in order to be impartial to both parties in the labour market. On the one hand, the requirement of companies for flexibility in the personnel policy sphere should be taken into account; on the other, however, flexibilization should be shaped in such a way that it is socially compatible and acceptable for the employees concerned. Discrimination of "atypically" employed compared to "normally employed" people must be avoided. The consequence of this for the regulation of fixed-term contracts is that their use would need to be linked with certain prerequisites (e.g. temporary employment, probation period). The possibility of statutory regulations in respect of protection against dismissal being circumvented could then be prevented, thus avoiding any discrimination against fixed-term employees.

<sup>13</sup> Cf. U. Walwei: Die soziale Dimension des Binnenmarktes, MatAB 6/1989.