

## Fixed-term individual employment agreements



BY COSTEL GÎLCĂ  
senior associate,  
Țuca Zbârcea & Asociații  
E-mail: costel.gilca@tuca.ro

THE FALL OF COMMUNISM HAS BROUGHT significant changes in employment relations in Romania. On the one hand, changes were triggered by the transition from a centralised economy, in which the state was the only employer, to a market economy with private employers. On the other hand, employment relations were altered pursuant to Romania's accession to the European Union, with the relevant European directives being transposed into the local legal system.

Romania has transposed European Directive No 1999/70/EC, concerning the framework agreement on fixed-term work concluded by the European Trade Union Confederation, Union of Industrial and Employers' Confederations of Europe and European Centre of Enterprises with Public Participation.

### LEGISLATION

A new Labour Code was enacted in 2003 in Romania, imposing a rule that each employee should be hired under a written individual employment agreement. The employment agreement should be concluded for an unlimited term, except for in several circumstances expressly indicated by the Code, where the agreement may be for a fixed term.

The circumstances in which a fixed-term employment agreement may be concluded are:

- i) replacement of an employee in case of suspension of their employment agreement, except for when that employee participates in a strike;

- ii) a temporary increase in the employer's activity;
- iii) for the performance of seasonal activities;
- iv) for the purpose of temporarily favouring certain categories of unemployed persons, according to the law;
- v) the employment of a person who, within five years of the employment date, will meet the conditions for age-limit retirement;
- vi) the occupation of an eligible position within a trade union, employers' association or non-governmental organisation, during the term of office; or
- vii) the employment of retired persons who, under the law, may retain both their pension and their salary.

The conclusion of an individual employment agreement for a fixed term outside these circumstances triggers the nullity of the clause and such agreement shall be deemed as having been concluded for an unlimited term.

The individual employment agreement for a fixed term may only be concluded in written form, and in the absence thereof it shall be presumed that the agreement was concluded for an unlimited term.

### VIEW OF THE COURTS

The Romanian courts have decided that the relevant issue in determining the term is the permanent or seasonal nature of the position and not the will of the parties reflected by the conclusion of an agreement. Therefore, even if the parties concluded a fixed-term agreement, if the position for which the agreement was concluded is permanent, it is possible that the courts will deem the respective position to be permanent, and therefore, require the conclusion of an unlimited-term agreement.

### DURATION AND RENEWAL

The maximum term for which an individual employment agreement may be

concluded is, according to the provisions of the Labour Code, 24 months.

Upon the expiry of the term for which the agreement was concluded, or upon the expiry of the maximum 24-month period, if the position is still vacant, an unlimited-term individual employment agreement shall be concluded, except for the following situations, in which a new fixed-term agreement may be concluded:

- a) if the fixed-term individual employment agreement is concluded in order to temporarily replace an absent employee;
- b) if the new fixed-term agreement is to be concluded with a view to performing certain urgent exceptional works;
- c) if a new fixed-term agreement is required for objective reasons expressly provided by special laws;
- ci) if a new fixed-term agreement is required for objective reasons, as enclosed in the collective employment agreement concluded at country level and/or at the level of industry, for the purpose of performing works, projects or programmes;
- d) if the fixed-term agreement was terminated at the employee's request or at the employer's request, due to the employee's serious or repeated misconduct.

Upon the expiry of the term for which the agreement was concluded, the employer is obliged to inform the employee engaged under a fixed-term agreement of any current or future vacancies that the employer has, or expects to become available.

As regards employment conditions in Romania, the Labour Code provides that employees engaged under fixed-term agreements shall not be treated less favourably than equivalent permanent employees. Therefore, fixed-term employees have the same rights and obligations as those under regular employment agreements.