



On fixed-term contracts

Part A: A short history on fixed-term contracts at the EPO

Part B: Arguments in favour from management and counter-arguments from Staff Reps

Part C: Why fixed-term contracts are a serious cause for concern

Part D: Feedback from colleagues and what we hope to achieve in the WG

This series of publications is intended to provide a comprehensive background on the topic of fixed-term contracts at the EPO, and to serve as a reference for links to relevant publications and documentation. The current publication, part A, deals with the history and outlines the various forms of fixed-term contracts that have been used at the EPO.

Background: *Since the introduction of fixed-term contracts, Staff Representation has fought to diminish the risk that a contract is not prolonged. Civil servants need stability to be able to carry out their tasks with full independence, and this is even more valid for the intellectually challenging tasks that the staff of the EPO perform. Job security is crucial for anyone who wants to settle down with their family and everybody should be given the opportunity to do so. Countless studies have shown how gruelling the effect of temporary contracts is. **Planning life or even just the next few years is practically impossible if your contract is due to expire.***

*The modalities and mechanisms for the extension/conversion of fixed-term contracts are listed as a priority in the [2020 social dialogue agenda](#). In our view, a review of the whole new employment framework with an initial focus on, *inter alia*, setting transparent time limits and criteria regarding the extension/conversion of fixed-term contracts is crucial for our colleagues who are suffering from the effects of job instability. Of course, our preferred solution would be the complete abolishment of fixed-term contracts.*

*The President confirmed to us that he welcomed any suggestions and feedback on this topic, and that a dedicated working group would be set up in the near future. To this end, in July 2020 we started an [information campaign](#). Our aim was to set up a communication channel (including regular MS Teams meetings) between staff representation and colleagues on fixed-term contracts to allow for an exchange of concerns, issues, and ideas. We still welcome and encourage you to **get in touch** with us ([Rhiannon](#) or [Fausto](#) in The Hague, [Cosimo](#) or [Dominik](#) in Munich, [Carmen](#) in Vienna). We want to provide compelling and persuasive arguments to the administration such that an improvement in job security can be achieved, and your input is invaluable in helping us reach this goal.*

Part A:

A short history of fixed-term contracts at the EPO

From one generation of EPO staff to the next, work conditions have often worsened. Recent years have certainly not been an exception: fundamental changes have been introduced to the employment framework with the introduction of fixed-term contracts for all new recruits.

One leitmotiv of recent reforms is that risks related to uncertain future developments have been outsourced from the Organisation to the individual employee. The introduction of fixed-term contracts for all in **2018**, for which extensions or conversions depend on “business needs”, or even a “strong business case”, is the most recent of a number of such reforms that are at the expense of staff. This dependency on “business needs” refers, among other things, to the number of incoming patent applications and the development of technical fields. The fixed-term contract also renders these colleagues ineligible for home leave or home loans; the former appearing completely unjustified when these colleagues are in the same situation as the rest of the staff, often far from their families and friends; and the latter being particularly detrimental when considering the current state of the housing market in the places of employment of the EPO.

*Trend:
Risk outsourced to
individual employees*

Other examples of highly detrimental reforms are the new career system (NCS), introduced in **2015**, and the new pension scheme (NPS), introduced in **2009**. The NCS introduced slower career progression and much more restrictive rules for the recognition of previous work experience, leaving some colleagues with many years of experience completely unrecognised. In addition, automatic steps were abolished, allegedly to improve long-term financial sustainability. The NPS was established to reduce the financial liabilities of the Office, by launching the salary savings plan (SSP), a defined-contribution scheme, to replace a portion of the defined benefit scheme. The value of each individual SSP has a strong link to the performance of the stock market, such that the risk of poor performance is now borne by the staff.

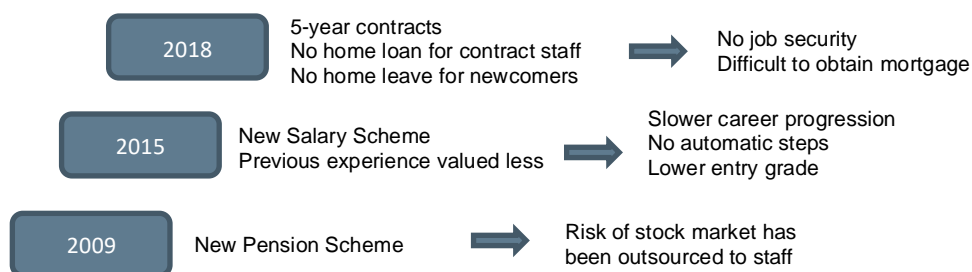


Figure 1: Reforms that have changed working conditions at the EPO in recent years

Development of fixed-term contracts

Before 2018 the EPO had three kinds of fixed-term contracts and the total number of staff with such contracts was limited to a maximum of 5% of the overall workforce.

- Euro Contracts¹,
- Non-renewable contracts (NRC)², and
- five-year contracts for PDs and VPs;

In October 2017, the EPO management reflected on expanding the use of fixed-term contracts. The initial plan was to exclusively use fixed-term contracts³ (duration of some months up to five years) for all newcomers. Renewal of contracts was possible and newcomers would have been under contracts up until retirement. However, this did not find support by the Administrative Council. Staff representation was alarmed about the plans of a “precarisation⁴” of the EPO employment framework and its consequences on the working conditions of staff⁵ (see Figure).

In November 2017, a new proposal⁶ was presented including a maximum duration under contract of 15 years, after which the fixed-term contract would be converted into a permanent contract (under the discretion of the management). Also a ceiling on the proportion of staff under contract of 40% was introduced.

As this also found no support, management switched to “attack mode” and, in February 2018, brought forward a proposal⁷ for *de facto* abolishing the permanent nature of contracts of all current staff of the EPO⁸ (see Figure). This was quickly identified as a rather invidious but effective diversionary tactic. The ominous Article 53(1)(f) ServRegs proposal, which scared everyone and caused sleepless nights for many, was successful in drawing the attention and efforts away from protesting against the introduction of fixed-term contracts for all.

¹ EURO-contracts were introduced in 1992 in [CA/D 15/92](#). They had a maximum five-year term, exceptionally extendable by two years. The introduction of this type of contract was contested in front of the ILOAT (Judgement No. 1618 of 30.01.1997). They were introduced to respond “to a temporary staff shortage (...) for the purpose of carrying out occasional tasks (...) which justify limiting the term of the contract.”

² A non-renewable contract (NRC) is a contract for the performance of short-term duties or to replace other staff for a maximum term of three years. NRC were introduced in 2009 in [CA/D 6/09](#). They had a term of at least six months and at most three years. As of 1 April 2018, staff can no longer be recruited on NRCs.

³ Modernisation of the Employment Framework at the EPO, [CA/103/17](#) and [CA/103/17 Add. 1](#), 06.10.2017

⁴ From “To render precarious”, the process by which the number of people who live in [precarity](#) increases. Precarity is a precarious existence, lacking in [predictability](#), [job security](#), [material](#) or [psychological](#) welfare.

⁵ The precarization of the Employment Framework, Central Staff Committee, 09.11.2017, [link](#)

⁶ Modernisation of the EPO's employment framework: Orientation paper, [CA/121/17](#), 24.11.2017

⁷ For Consultation – Modernisation of the Employment Framework of the EPO (CA 3/18), [GCC/DOC 1/2018](#), 13.02.2018

⁸ Abolishing permanent employment for all staff, Central Staff Committee, [link](#), 12.02.18.

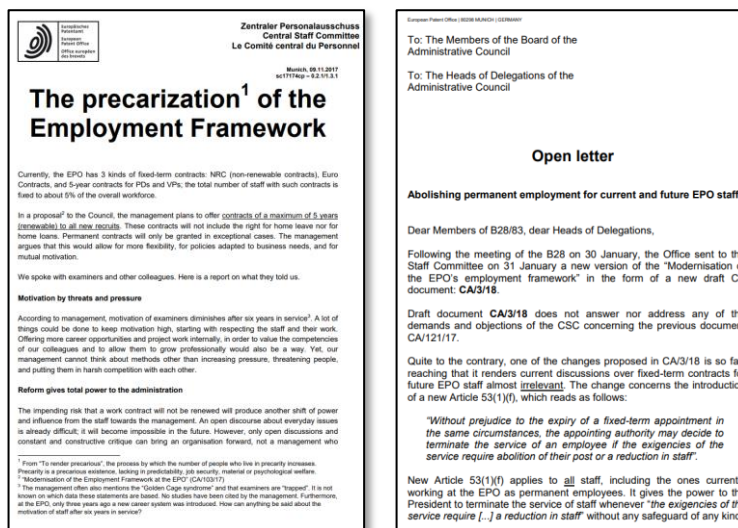


Figure 2: Publications on the new employment framework by the Central Staff Committee in 2017 and 2018

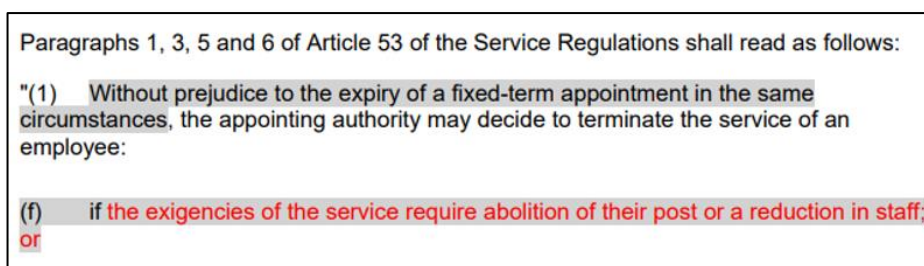


Figure 3: De-facto abolishment of permanent contracts for all staff. Proposal for new Article 53(1)(f) ServRegs⁷

In March 2018 the Administrative Council approved a revised proposal⁹ for introducing fixed-term contracts which did not include the new Article 53(1)(f) ServRegs. The proposal did not find a general consent: the delegations of Germany, Italy and Switzerland voted against the revised proposal¹⁰. The delegations from Ireland and Lichtenstein abstained.

As of 1 April 2018, fixed-term contracts for all newcomers have become the reality.

Currently, all newcomers are offered fixed-term contracts with the following terms (see CA/3/18⁹):

- For job groups 4 to 6: duration contract <= 5 years, total duration of consecutive fixed-term appointments <= 10 years (Article 8(2) ServRegs).
- Proportion of staff under fixed-term contracts up to 20% of the total posts⁹.

⁹ Modernisation of the EPO's employment framework, [CA/3/18](#), 23.02.2018

¹⁰ Draft minutes of the 155th meeting of the Administrative council, point 115, [link](#)

- Indemnity for loss of job¹¹, safeguard of maternity leave¹² and cases of incapacity¹³.
- On termination of a contract possibility to keep office's health insurance for 12 months (contributions are to be borne by the employee)¹⁴.
- No obligation for the EPO to convert a fixed-term contract to a permanent contract. After 10 years of service, the office may decide not to convert a contract into a permanent one because conditions such as needs of the service, satisfactory performance and quotas¹⁵ are not fulfilled.

Today, almost 250 colleagues are under fixed-term contracts.

As of the end of 2019 the number of staff under fixed-term contracts was 240, more than double the number at the end of 2017, when 105 staff had fixed-term contracts (see Figure).

Headcount	Function	31 Dec. 2017	31 Dec. 2018	31 Dec. 2019
Permanent staff	Examiners	4 237	4 204	4 143
	Patent procedure support	613	615	623
	Other	1 593	1 506	1 412
Total permanent staff		6 443	6 325	6 178
Language fixed-term contracts	Examiners	141	60	5
	Other	11	9	0
Total language fixed-term contracts		152	69	5
Normal fixed-term appointments	Examiners	0	12	93
	Patent procedure support	105	0	6
	Others		124	141
Total normal fixed-term contracts		105	136	240
Members of Boards of appeal		150	166	185
Total		6 859	6 696	6 608

Figure 4: Change in number of permanent and non-permanent staff. Source: Social Reports 2017, 2018 and 2019

¹¹ Article 53 ServRegs. One month's basic salary for the first five years of continuous service, 1.25 months' basic salary for the following five years of continuous service and 1.5 months' basic salary for any further years of continuous service, (ii) together with the household and dependant's allowance

¹² Article 61 ServRegs: Should a fixed-term appointment expire during the period of maternity leave it is automatically extended for the fixed duration necessary to bring the maternity leave to a maximum of ten weeks after the birth of the child

¹³ Article 62c ServRegs: Should incapacity be confirmed for a fixed-term employee upon termination of service the employee continues to receive a salary and full benefits under the social security scheme

¹⁴ Article 83(a) ServRegs

¹⁵ Article 11(4) ServRegs

We ask for more work stability for the colleagues on fixed-term contracts.

By asking for more work stability to our colleagues, we plead for the reinstatement of an EPO which takes care of its employees, a European Model Organisation, the patent office with the highest patent quality, an organisation which respects its social responsibility. By strengthening the rights of our colleagues on fixed-term contracts and those of our future colleagues, a spirit of solidarity and collegiality can be brought back, which in the past made the EPO such a great place to work for. We stand for an EPO that faces future challenges as a community where nobody is left behind, and one that provides a safe, healthy and pleasant working environment. After all, these are the main ingredients for an environment in which knowledgeable workers are able to produce the high quality work that the public expects from the EPO.

*Planning life or just the
next few years –
impossible if your contract
is about to expire.*