CHAPTER I.2

Labour legislation in support of job creation [1]

1. Introduction

Does labour legislation support or frustrate job creation? This chapter reviews the scope and rationale for labour legislation and discusses the potential link between, on the one hand, a specific subset of legislation – Employment Protection Legislation (EPL) – and the efficiency of civil justice in enforcing such legislation, and, on the other hand, labour market outcomes (job finding and job separation rates). It uses available indicators of EPL and civil justice efficiency and both correlation and regression analysis. The chapter also looks at another subset of labour legislation – occupational safety and health (OSH) legislation – and how OSH can contribute to better jobs, productivity and growth.

The chapter discusses briefly how socio-economic and structural change (associated with technology, globalisation, population ageing, greening of the economy, equal opportunities…) is bringing about greater flexibility in employment contracts. This, together with the need to ensure that the provisions of labour legislation cover all workers, argues in favour of reviewing existing legislation which in some cases extends several centuries into the past.

The chapter attempts to answer the following questions: What is labour legislation and what is the purpose of national and EU level labour legislation? What is its relationship with alternative ways to regulate labour market interactions? To what extent does labour legislation differ across Member States and why? How much have contractual arrangements evolved, how varied are they and what challenges does this pose? How do EPL and OSH impact on labour market outcomes? What is the role of civil justice and law enforcement?

The current situation in the EU is one of high unemployment, with very high long-term unemployment and youth unemployment. Employment is increasing but slowly. Structural, chronically high unemployment rates and long-term unemployment represent a permanent and unacceptable loss of human capital: they discourage workers and lead to premature withdrawal from the labour market and to social exclusion.

Supply-side problems in general and labour legislation in particular are accused of being obstacles to job creation. Perceptions abound that labour legislation is 'too strict; too complex; not enforced; not in line with societal changes; not consistent, resulting in unequal treatment of workers and segmentation'. At the same time, labour legislation is seen as a key determinant of job creation as much as other institutional, public administration and product market conditions (Global Competitiveness Report and the Doing Business Report) [2]. Questions are often raised as to whether legislation or its enforcement should be reformed in support of job creation, and how labour legislation could be adjusted to respond to socio-economic and structural change.

Note that labour legislation covers many dimensions of work relationships and the work environment, making it difficult to assess its impact on job creation. It is also part of a broader institutional framework which includes Active Labour Market Policies (ALMP), access to Lifelong Learning (LLL) and social protection systems and must be seen in relation to those other institutional features. Indeed, countries which appear to have more flexible contractual arrangements may also have strong social protection and stricter activation policies. In other countries, labour legislation is more encompassing as it was developed to ensure protection of the worker when social protection was otherwise weak.

(1) By Ana Xavier, Alfonso Arpaia, Federico Lucidi, Lucile Castex-Chauve, Tim Van Rie, Fabiana Pierini and Robert Strauss.

(2) Labour legislation is put forward as a framework condition (World Competitiveness Report of the World Economic Forum at http://www.weforum.org/reports/global-competitiveness-report-2014-2015 and the Doing Business Report of the World Bank Group at http://www.doingbusiness.org/reports/global-reports/doing-business-2015) affecting the ability of individuals and countries to conduct business alongside other key conditions associated with the regulatory framework of a country (bureaucracy and red tape, transparency in contracts, restrictive and discriminatory rules for businesses, the independence and efficiency of the judicial system, energy) or physical and ICT infrastructure for example.

The analysis in this chapter is set in the context of the Europe 2020 Strategy ([3]), which is the EU's Strategy for promoting smart, sustainable and inclusive growth, and the European Semester, which is the EU economic governance framework. Over the years, structural reforms, including labour market reforms, have received increased attention, as they are important and necessary tools for unlocking the EU's growth potential.

The 2016 Annual Growth Survey (AGS) ([4]), which defines the annual priorities to help Member States return to higher growth levels in accordance with the Europe 2020 Strategy, proposes to pursue an integrated approach to economic policy built around three main pillars, all of which must act together – boosting investment, accelerating structural reforms (including labour market reforms) and pursuing responsible growth-friendly fiscal consolidation.

As indicated in the 2016 AGS and in the Joint Employment Report ([5]) underpinning the key employment messages contained in the AGS, labour market policies need to balance flexibility and security considerations. The AGS proposes that comprehensive reform efforts are needed to achieve both flexibility and security in the world of work. EPL should continue to be modernised and simplified to ensure effective protection of workers and the promotion of labour market transitions between different jobs and occupations. Measures should consider, at the same time, labour market segmentation, adequate wage developments, well-designed income support systems, and policies to ease transitions to new jobs, equip jobseekers with the right skills and better match them with vacancies, with the involvement of social partners. These are indeed an expression of the four components of flexicurity policies: a) employment legislation, b) ALMPs c) LLL and d) social protection ([6]).

As indicated in the 2016 AGS and the JER, in recent years, the increase in overall employment has been driven mainly by an increase in temporary contracts which is not unusual in the early stages of a recovery. The more general move towards more flexible labour markets should facilitate employment creation but should also enable transitions towards more permanent contracts. It should not result in more precarious jobs. Member States should also step up efforts to combat undeclared work. As proposed in the JER *'Reforms supporting well-functioning, dynamic and inclusive labour markets must continue. Member States should also continue, and in some cases step up, measures addressing the challenge of segmented labour markets, ensuring a proper balance between flexibility and security.'*

In this context, labour legislation can play an important role in supporting (or frustrating) job creation.

Section 2 of this chapter looks at the existing definition of legislation in general and labour legislation in particular. It presents a brief overview of the history of modern labour market legislation and the rationale for its development and existence, to provide some context for the analysis and to familiarise readers with the concepts. It provides an overview of the main characteristics of EU-level employment legislation. It also discusses other ways to regulate labour market interactions.

Section 3 looks at the notion of 'contract' and 'employment contract' and illustrates their variety and complexity. It discusses the potential influence of structural change in shaping the contract landscape. It assesses the impact on job quality and social protection of atypical or non-standard employment and civil contracts. It analyses some evidence of labour market segmentation.

Section 4 focuses on EPL as a subset of employment legislation. It examines the rationale for the existence of EPL and describes existing measures of EPL. It discusses the main differences across Member States and recent developments. It finishes with a discussion of EPL in relation to other labour market institutions.

Section 5 looks at the role of civil justice in the enforcement of labour law and EPL. It looks at the length of legal proceedings as an indicator of the efficiency of civil and commercial justice. It analyses some correlations between EPL indicators and indicators of efficiency of civil justice and at the role EPL plays in job finding and separation while controlling for the efficiency of civil justice. **Section 6** is an overview of recent changes in labour legislation in EU Member States. **Section 7** provides some policy conclusions.

Note that this chapter does not cover in detail the functioning of social dialogue and industrial relations and the laws governing them. Social dialogue and industrial relations are covered by chapter II.3 of this Review.

2. Labour legislation: scope and purpose

This section looks at the definition of labour legislation, its scope, its purpose and its relation with collective agreements. It provides a simple classification of legal systems across the EU. It shows the historical, cultural and political factors that lay behind the development of labour legislation in different Member States and some of the differences between them. The section ends by defining EU law and its characteristics, why it exists and the broad areas it covers.

2.1. Labour law and fields of application

In broad terms, 'Law' can be understood as a collection of principles, regulations and rules which a particular country, state, region, town or community recognises as regulating the actions of its members and which is enforced by the imposition of penalties. These principles, regulations and rules are established by some authority and are applicable to the community whether in the form of written legislation or in the form of custom and practice ([7]). They are recognised and enforced by judicial decision ([8]).

These principles, regulations and rules of conduct or action regulate different aspects of society, be it work interactions (e.g. employment contracts), commercial interactions (e.g. contracts for the provision of goods and services), private relationships between individuals (e.g. wedding contracts) or

([3]) http://ec.europa.eu/europe2020/index_en.htm.

([4]) http://ec.europa.eu/europe2020/pdf/2016/ags2016_annual_growth_survey.pdf.

([5]) http://ec.europa.eu/europe2020/pdf/2016/ags2016_draft_joint_employment_report_en.pdf.

([6]) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0359:FIN:EN:PDF.

([7]) This is the case of common law in the UK and much of the US for example, where the body of law is developed primarily from judicial decisions based on custom and precedent, unwritten in statute or code.

([8]) Various dictionaries.

the use of common services (e.g. garbage collection, water provision, public parks) ([9]). This set of rules is covered by a system of adjudication that assesses how these rules are applied in each individual case.

A system of law commonly presumes that: 1) the rules are commonly known and recognised by the community where they are applicable; 2) they are binding and there are penalties for breaking those rules which often increase in intensity with the severity and frequency of violation; 3) there is a controlling organisation/entity who is responsible for enforcing the law and imposing penalties when informed; and 4) there is a process of adjudication when there are disagreements regarding whether an offence has occurred and what penalty should be imposed (Ostrom, 2000, in McLeod, 2010).

This body of principles, regulations and rules is typically subdivided into groups of rules concerned with a particular subject such as commercial law or labour law. Labour law can be understood as regulating the relationships between workers, employers, trade unions and employers' associations, as well as the role of the state. It can pertain to an individual worker or to a group of workers. It can refer to contracts specifying the rights and obligations of workers and employers, minimum wages, working hours and overtime, dismissal, collective bargaining, social dialogue and industrial relations, health and safety, discrimination by age, gender, race, religion or disability, child labour and harassment.

The employment relationship is regulated by the employment or work contract, the collective agreements and the national and EU legislation. The employment contract is the basic element of labour law. 'The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.' (CJEU, Lawrie-Blum, 3/07/1986). The employment contract usually defines the rights and obligations of the worker and the employer i.e. what is expected from both the employer and employee. When imposing obligations on the two parties, it assumes compliance of both parties with the general law and labour law, i.e. the Labour Code if there is one, as the employment contract cannot contain provisions which would derogate from the law.

Many contract terms and conditions are covered by written legislation or by common law, including compensation, holidays and holiday pay, sick leave rights and pay, notice in the event of dismissal, the right to join a trade union, and the description of the job. The maximum number of hours worked in a given time period is also set by law in many countries, and legal acts regulate overtime and the related compensation. Most Member States have a statutory minimum wage ([10]). They also have legal acts regulating health and safety standards in the workplace.

Just as a specific body of law has evolved to regulate employment contracts and issues associated with employment, specific bodies such as employment courts have been created to rule on employment-related disputes in many countries (e.g. the United Kingdom and Italy). Such disputes may also be mediated by various bodies such as private mediation and arbitration.

2.2. Alternative ways of regulating labour market interactions: the role of collective agreements

As an alternative or complement to labour legislation, representatives of workers and employers (the social partners) can jointly regulate certain aspects of the labour market through collective agreements. Such agreements can be concluded between workers' representatives (typically trade unions) and a single employer at establishment or company level. Trade unions may also bargain with the representatives of several employers to set terms of employment in a given sector or at cross-industry level (multi-employer bargaining). While collective agreements can be very narrow in scope (e.g. wages in a given company or sector), they may also regulate certain aspects of the labour market that are outside the scope of labour law (for instance social security, health and safety or vocational education and training).

In principle, collective agreements apply to members of the signatory parties, with the membership (density rate) of the employers' organisation as the crucial factor determining the agreement's coverage. In some Member States the terms of a collective agreement may be extended to all the employers in a given domain (Visser, 2013). In addition, public authorities may regulate other aspects of collective bargaining outcomes, including: the validity of agreements beyond their expiry; the hierarchical ordering between collective agreements at different levels (which levels take precedence); or the conditions under which actors can derogate from an agreement (and its possible direction). These settings, as well as the 'capacity' of social partners differ widely across Member States (see chapter II.3 on social dialogue; EUROFOUND 2014; European Commission 2015, Chapters 1 and 2).

Collective agreements are usually concluded at the initiative of social partners on the basis of a shared problem diagnosis. The prospect of legislation, however, may act as an incentive or a trigger for social partners to enter negotiations. This applies particularly when both parties consider that the likely outcome of a legislative procedure will be less favourable to them, compared to a bargained solution between social partners ('bargaining in the shadow of the law').

In addition to bi-partite social dialogue between employers and workers' representatives, or unilateral involvement by the state, tri-partite 'concertation' involves public authorities at different levels, possibly resulting in social pacts regulating (certain aspects of) working conditions and labour relations (for more details, please refer to the social dialogue chapter).

Please note that this chapter does not cover in detail the functioning of social dialogue and industrial relations and the laws governing them. Social dialogue and industrial relations are covered by chapter II.3 of this Review.

([9]) As cited by McLeod, Ostrom (2000) has shown that many societies have developed efficient systems of rules and adjudication for example for regulating the use of common-pool resources, thereby avoiding the tragedy of the commons (Hardin (1968)).

([10]) Minimum wages in some countries without a statutory minimum such as Sweden are regulated by collective agreement.

2.3. A brief history of labour law

Some form of regulatory system covering the employment relationship has existed ever since people have worked for someone else ([11]). However, modern labour law has its roots in the late 18th and 19th century, when legal acts were adopted to address concerns associated with industrialisation. With the development of trade unions and the socio-economic and labour market changes that resulted from the two World Wars and technological change, labour legislation developed rapidly in the second half of the 20th century.

Modern labour law developed in parallel with the Industrial Revolution ([12]). With it, small-scale production changed to large-scale factories and workers' relationships with their employers moved from formal subordination and deference to a contract whereby people were free to choose who to work for. However, the freedom of contract that came with the Industrial Revolution did not change the worker's dependency on his employer and the relationship remained imbalanced. This is due to the fact that most of the wealth and decision-making power, and hence the thrust of existing legislation at the time, was concentrated on the side of employers (landlords, factory owners, merchants) ([13]).

As a result, during the late 18th and most of the 19th century, many basic principles of modern labour law were developed to improve aspects of working conditions in large factories through legislation. Labour legislation also eventually developed to deal with the challenges associated with new employment relationships and as a means to mitigate the inherent imbalance and the potential conflict that could arise between the two sides of the employment relationship.

The first examples of modern labour law are found in England and related to child labour. While the use of child labour has been commonplace in history, the industrialisation of manufacturing in the 18th and 19th centuries saw a rapid increase in child employment ([14]). A serious outbreak of fever in 1784 in cotton mills near Manchester raised public awareness of the difficult conditions children worked under. A number of legal acts ([15]) followed which prohibited child labour under 9 years of age, limited the employment of children under 18 years of age, limited working hours to 12 a day, abolished night work and provided for inspectors to enforce the law. They also covered the provision of a basic level of education for all apprentices and adequate accommodation and clothing. Further steps involved the restriction in the working hours of women and children in factories to 10 hours per day. Several legal acts defining minimum health and safety standards at work (e.g. ventilation, signalling) were adopted throughout the 19th and early 20th century in England followed by other industrialised countries.

Note though that while legislation was passed in association with concerns over working conditions of workers and notably children and women, the Combination Act of 1799 outlawed trade unions and was not repealed until 1874, with some elements not fully repealed until 1974. This shows that the development of modern labour legislation in Britain as well as in much of Europe that started with the Industrial Revolution went well into the 20th century and is still ongoing.

In France, and in the aftermath of the French Revolution, legislation in 1841 prevented children's employment in factories before 8 years of age and prohibited night labour for any child under 13. This was extended to employment of girls under 21 in 1874, and in 1892 legislation specific to women's employment was introduced which is still in force, following some amendments in 1900. The working day was limited to 12 hours for adults in 1848 (reduced to 11 hours in 1900) with subsequent laws defining the coverage and exemptions including any work for the government in the interests of national defence or security. The 1892 Act established a free day a week, in addition to eight annual holidays. A 1906 Law established Sunday rest, though allowing substitution of another day in certain industries and certain circumstances. Night labour was prohibited for workers under 18, and only exceptionally permitted for girls and women over 18 in specified trades. In mines and underground quarries employment of women and girls is prohibited except at surface works. Inspection services were also created. Throughout the 19th and 20th century France legalised trade unions, regulated paid leave and limited the working week to 40 hours.

Germany passed a number of labour laws throughout the 19th century, including those pertaining to health insurance, old age and disability insurance. A law of 1903 regulated child labour in industrial establishments, prohibited employment underground of female workers and limited the hours of women and young workers in many occupations, although already in 1891 the Imperial government could limit the working hours of workers in industries where excessive length of the working day was seen as endangering their health. The 1891 legislation introduced Sunday rest, annual holidays and church festivals with exceptions. Children could not be employed by their parents or guardians before the age of 10 years or by other employers before the age of 12 years and could not be employed at all in several occupations; and not between the hours of 8 p.m. and 8 a.m. Full compliance with the requirements for school attendance and with appropriate rest periods had to be respected. In term time,

([11]) For example a form of employment law operated 4000 years ago when minimum wage laws and liability rules were included in the Code of Hammurabi in 2000 BC (MacLeod, 2010). During feudal times in England, for example, significant and sometimes opposite labour laws followed the Black Death ending with the so-called Truck Acts in 1464, that required that workers be paid in cash and not kind. In 1772 slavery was abolished in England and subsequent Acts enforced prohibition throughout the British Empire. Other countries followed suit.

([12]) For reference see Lewis (1976), A. C. L. Davies (2004); https://en.wikipedia.org/wiki/History_of_labour_law; https://en.wikipedia.org/wiki/Labour_law.

([13]) As in Adam Smith (1776) 'It is not, however, difficult to foresee which of the two parties (…) have the advantage in the dispute, and force the other into a compliance with their terms. The masters, being fewer in number, can combine much more easily; and the law, besides, authorises, or at least does not prohibit their combinations, while it prohibits those of the workmen. We have no acts of parliament against combining to lower the price of work; but many against combining to raise it. (…). A landlord, a farmer, a master manufacturer, a merchant, though they did not employ a single workman, could generally live a year or two upon the stocks which they have already acquired. Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment. In the long run the workman may be as necessary to his master as his master is to him; but the necessity is not so immediate.'

([14]) The works of Charles Dickens paint an accurate, if horrifying, picture of England in the 18th-19th centuries.

([15]) Such as the 1802 Factory Act.

employment of children was limited to 3 hours a day. Night work between 8.30 p.m. and 5.30 a.m. was forbidden and overtime could be allowed under certain conditions to meet unforeseen pressure or for work on perishable goods. The law provided for meal times and a 4-week maternity leave extendable to 6 weeks.

Other events accelerated the development of labour legislation. These included the two World Wars and for some countries the availability of natural resources. Wars required the contribution of every available person and resource. As most men were away on military service, women took over traditional 'men's jobs' in factories and on the land. This drove the movement for equal rights for women both in society (e.g. the right to vote) and in the labour market (e.g. equal pay).

The 1919 Treaty of Versailles attempted to address the aggressive economic competition between nations, identified as one of the causes of the First World War and which also had detrimental effects for workers. The solution to ensure social justice for workers was to establish minimum labour standards in binding international law. The Treaty created the International Labour Organisation (ILO) whose role was to draw up common standards between countries. These minimum common standards include freedom of association, adequate wages, a maximum 48-hour week, minimum rest periods, equal pay for women, abolition of child labour and fair treatment of migrant workers.

The 1944 ILO Declaration of Philadelphia puts forward a number of fundamental principles: that 'labour is not a commodity', that 'freedom of expression and association are essential to sustained progress', that 'poverty anywhere constitutes a danger to prosperity everywhere' and the principle of ensuring 'a just share of the fruits of progress to all'. This was followed by a number of conventions and the 1998 Declaration on Fundamental Principles and Rights at Work which established that all States, by virtue of their membership of the ILO, should aim to apply the conventions on freedom of association, protection of the right to organise and collective bargaining, the abolition of forced labour, discrimination in employment and occupation, minimum age and the worst forms of child labour.

2.4. Why does labour law exist?

All countries in the world have a more or less comprehensive system of labour law, created and adapted to their individual circumstances. Labour legislation covers a vast area in order to protect workers at the place of work and to protect workers and society from the costs and risks associated with work and work dismissal / job separation. It includes protection against the loss of earnings, financial distress, ill-health as well as erosion of skills and work experience, i.e. human capital, that come with job loss especially in a context of limited income protection in case of unemployment. It may also ensure a protective working environment against accidents and disability as well as protection of the broader environment.

The employment relationship is based on an inherent inequality between the two parties. The worker depends economically on the employer. The worker has to conform to the employer in terms of the content of tasks, organisation of work, workplace rules, hiring and firing. In return he/she has rights (under the law) which mitigate the risks of arbitrary behaviour and introduce procedural requirements, minimum standards or the principle of reasonable justification for decisions of the employer. This is recognised in law as the 'legal permanent subordination' of the employee to the employer and is balanced by a number of (mutual) obligations.

While there is a comprehensive rationale for the development of labour law (see below), Posner (2003) argues that employment law, especially the common law, has evolved over time to address particular problems that appeared repeatedly before the courts, rather than as a solution to the problem of efficiently organising economic activity. Nevertheless, Collins (2011) argues that 'An investigation of the idea of labour law calls for a theory (...) which should justify the existence and weight of such typical rules and principles of labour law as minimum wages, safety regulations, maximum hours of work, the outlawing of discrimination against particular groups, and the recognition of a trade union for the purposes of collective bargaining. Labour law requires a theory of why such mandatory constraints should exist.'

Two such theories of labour law have been put forward (Collins, 2011). One is associated with the principles of social justice. The existence of labour legislation is related to society's goals of fairness and ensuring a fairer distribution of wealth, power and goods. According to the ILO ([16]), 'Social Justice is based on equality of rights for all peoples and the possibility for all human beings without discrimination to benefit from economic and social progress everywhere. Promoting social justice is about more than increasing income and creating jobs. It is also about rights, dignity and voice for working women and men as well as economic, social and political empowerment.' On the basis of social justice ([17]), the ILO member countries have agreed and adopted a number of principles in their Declarations and Conventions. In this case, labour law intervenes in the labour market to protect and improve the position of poorer and weaker members of society. Such a theory supports the practice of collective bargaining and explains the imposition of basic labour standards such as a minimum wage.

The other theory relates to efficiency-improving or welfare maximisation considerations. Labour legislation exists to address market failures caused by transaction costs and asymmetric information, potential coercion and opportunism by employers given the potential incompleteness of contracts, and the wish to promote efficiency and competitiveness through a well-coordinated and flexible division of labour. From this perspective, labour law exists to address problems associated with contracts of employment. A perfectly competitive market

([16]) http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_151740.pdf.

([17]) The ILO's Constitution says, 'Universal and lasting peace can be established only if it is based upon social justice.' These words were echoed by the ILO's first Director-General, Albert Thomas, who argued that 'Economic and social questions are indissolubly linked and economic reconstruction can only be sound and enduring if it is based on social justice.'

requires three main pre-conditions: 1) Free movement; 2) Perfect information among buyers and sellers; and 3) no one seller or buyer can influence the market price. However, labour markets have a number of market imperfections, including:

- **Labour immobility** (both occupational and geographical) due to skills mismatch, loss of skills, barriers to entry, language barriers, family reasons, differences in prices and housing costs.

- **Disincentives to find and take paid work associated with the so-called Poverty Trap and the Unemployment Trap**. Low wage earners often find that the effective marginal tax rate for earning extra pay is high and poorest groups might actually face higher tax rates than the rich. Loss of benefits, additional tax and social security costs as well as high costs of child care and commuting may mean that moving into work actually involves a loss of household income.

- **Discrimination in the labour market** based on race, gender, age, sexual orientation and other non-alterable features. Such discriminatory behaviour is due to information failure or to deliberately under-valuing or failing to appreciate the contribution made by certain groups. Employers are unable to directly observe the productive ability of individuals and therefore observable characteristics such as gender or race are used as proxies built on deeply held irrational prejudices.

- **Monopsony power of employers**, where a dominant employer in an industry or a local area might use their 'buying power' to drive wages below a level that might exist in a more competitive market.

- **Skills gaps in the labour market due to inadequate incentives for the acquisition of skills**. Workers and employers may not fully understand the costs and benefits of training; workers may feel that they are under-rewarded for training; people on low incomes cannot afford the cost of acquiring new skills. Employers may also feel that training is not worth the risks – trained employees leave, giving a free ride to their next employer and there are costs involved with re-hiring and re-training.

Market failure therefore provides a rationale for governments to intervene in the operation of labour markets through labour legislation.

These two justifications – efficiency and social justice – have been used to explain the normative foundations of labour law. Criticisms of these theories – that fairness can be pursued by alternative taxation and welfare measures and that labour legislation would constrain other efficiency goals – has led to a third theoretical justification based on rights, i.e. that labour law in market economies is justified by some more 'forceful' type of rights (Collins, 2011).

Articles 23 and 24 of 'The Universal Declaration of Human Rights' ([18]) include a number of provisions regarding the world of work – the right to work; free choice of employment; favourable conditions of work; protection against unemployment; no discrimination; equal pay for equal work; just and favourable remuneration supplemented if necessary by social protection; the right to form and join trade unions; the right to leisure and reasonable limitation of working hours and periodic holiday with pay – while Articles 5-9, 20 and 22 refer more generally to no slavery, no discrimination, equal protection under the law, freedom of association and the right to social security.

Labour rights, however, are not as fundamental as liberty, security and subsistence; they are not universal (applicable to every human being for the very fact they are human) or timeless but apply primarily to those in employment or employment-like relationships. Equally, the amount of pay or the extent of holidays depends on what each society can afford. The world of labour (forms of work, systems of production) is changing and labour rights should adapt to these circumstances. Nevertheless, a theory that is non-universal, time bound, less absolute and less morally compelling but which still forcefully addresses these criticisms may be of interest.

'A theory of justice' by John Rawls (1972) provides a basis for a theory of rights that supports the existence and coverage of labour legislation. Rawls argues that reasonable people under the veil of ignorance (not knowing what one will become or the goals one may have and whether they will be achieved) will accept certain principles (of justice or fairness) which consider the prospects of the worst off in case they become one. Two principles underlie the protection of some individual rights and some broad criteria for welfare distribution and protection of those more vulnerable: the liberty principle and the difference principle ([19]).

In the field of work, this would mean that under the veil of ignorance individuals do not know whether they will be workers or employers or unemployed but know that one spends a large part of their time at work and that work provides essential income. Therefore, the two general principles of justice have to hold for an individual to agree to participate in the world of work which involves constraints and a hierarchical structure that exercises power and

([18]) These two main articles were then developed into four articles of the UN Covenant of Economic, Social and Cultural Rights.

([19]) The two principles are 1) that 'Each person has the same indefeasible claim to a fully adequate scheme of **equal basic liberties**, which scheme is compatible with the same scheme of liberties for all' (liberty principle); 2) that 'Social and economic inequalities are to satisfy two conditions: a) They are to be attached to offices and positions open to all under conditions of **fair equality of opportunity**; b) They are to be to the greatest **benefit of the least-advantaged members of society** (the difference principle).' Rawlsian citizens are not only free and equal; they are also reasonable and rational: they hold a capacity of a sense of justice and have the capacity to pursue and revise their own view of what is valuable in human life. So Rawls defines so-called primary goods as those that are essential for developing and exercising the two moral powers, and useful for pursuing a wide range of specific conceptions of the good life. Primary goods are of five types: a) The basic rights and liberties; b) Freedom of movement, and free choice among a wide range of occupations; c) The powers of offices and positions of responsibility; d) Income and wealth; and e) The social bases of self-respect: the recognition by social institutions that gives citizens a sense of self-worth and the confidence to carry out their plans.

coordination ([20]). That can explain why legal rules in the field of employment developed ([21]).

2.5. Differences across Member States

There are wide differences in the rules and procedures regarding labour relations across the EU. These differences reflect different legal and institutional traditions. In countries with civil law traditions a substantial part of contractual labour relations are regulated by law – written legislation, while in common law countries it relies on private contracts and litigation. In the latter countries, courts have more ample judicial discretion than in the former.

Legal systems can be broadly categorised according to their origins. Common-law systems developed in the United Kingdom are also found primarily in former British colonies ([22]). Broadly speaking, common law relies more heavily on judicial precedent than legislation to set legal standards, and legal proceedings are adversarial. Civil law, with variants from France, Germany and Scandinavia places greater emphasis on statutory laws. Dispute settlement under civil law tends to be inquisitorial rather than adversarial. Legal systems based on the French civil-law system are found in much of Western Europe (e.g. Italy and Spain), Africa and South America. Japan, Korea and many former centrally-planned countries have legal systems based on the German model (Venn 2009). Djankov et al. (2003) identify five types of legal systems in Europe, namely: the common law system (e.g. the United Kingdom); the French system; the Scandinavian system; the German system; and former socialist systems.

Apart from different legal systems, legislation and notably EPL vary in function of the development of social protection systems. Where unemployment insurance and/or benefits were weak, countries decided that the firm had a greater duty to continue to employ a worker and/or provide greater compensation when dismissing him/her. If contributions to unemployment insurance from firms and workers and/or general taxation also paid by firms and workers provided adequate replacement income in the case of job loss, the firms tended to be held less liable to assure income. Thus, typically those countries with well-developed and 'generous' unemployment benefit schemes had lower levels (less costly to the firm) of EPL. The choice of firm-funded or more collectively-funded replacement income following job loss is also linked with whether countries see firms as essentially serving narrow shareholder interests or part of a wider scheme where they need more broadly to serve stakeholder interests which include their workers.

2.6. Labour regulation and legislation at EU level

Labour law is one of the areas where there are considerable differences among the EU countries, with higher levels of protection of workers in some Member States than in others. At the same time, businesses from the various EU countries compete freely in the Single Market for goods and services, regardless of these different labour standards. Consequently, as higher labour protection might entail higher costs for businesses, companies in Member States with high levels of worker protection could find themselves at a competitive disadvantage vis-à-vis businesses from EU countries with lower labour law standards.

In this context, companies and national authorities may be tempted to compete on the basis of a lowering of their labour standards, rather than on factors such as productivity and efficiency, or the quality and innovation of their goods and services. If this occurs, other firms and countries in the Single Market may be prompted to follow suit, triggering a downward spiral in standards that is often referred to as a 'race to the bottom'. If price competition in the Single Market for goods and services provided an incentive to adopt inadequately low labour standards, this would not be compatible with the EU's mission to have a social market economy.

The EU plays a role in preventing such a race to the bottom, by establishing a level playing field in the form of common labour standards applicable to all businesses operating in the Single Market. The extent to which the EU should play this role, harmonising aspects of labour law and thus preventing distortions of competition or providing minimum labour standards, has been debated since the early years of the European Economic Community (EEC). Since the late 1980s, there has also been a widespread view that the Single Market should be accompanied by a platform of minimum EU-wide social rights. In practice, the approach taken has been to adopt EU legislation that sets minimum standards in a number of important areas, while promoting an overall improvement in working conditions and avoiding social dumping across the EU.

The EU has explicit objectives in the field of labour law and working conditions. These objectives, and the means of achieving them, are set out in a specific 'social policy' title of the Treaties (Articles 151 to 161 of the Treaty on the Functioning of the European Union, TFEU). The Treaty thus sets an objective of upward development of living and working conditions, to be achieved in part by measures designed to encourage cooperation between Member States, and in part by adopting minimum requirements for gradual implementation, while taking account of national differences and the need to keep the EU as a whole competitive (Article 151). This objective is underpinned by the workers' rights set out in EU law. Article 153 of the TFEU sets out in detail the fields in which the Union may

([20]) In terms of the primary goods above: a) resembles the principle of freedom of association; b) resembles the principle of right to work; c) resembles the good governance in the workplace; d) resembles the right to fair remuneration; and e) resembles the principle of fair treatment in the workplace. One limitation of this theory is that in its inherently individualistic approach derived from liberal political theory, it does not necessarily defend collective rights.

([21]) Others, like Robert Nozick (1974), have criticised Rawls in relation to the Second Principle (difference principle). Nozick argues that people who have or produce certain things have rights over them and believes that unjustly taking someone's holdings violates their rights even if for distribution. In this context, he argues that only a 'minimal state' (see also John Locke) devoted to the enforcement of contracts and protecting people against crimes like assault, robbery or fraud can be morally justified. Nozick appears to have reconsidered his views later in life indicating that such a system could eventually lead to the vast majority of resources being pooled in the hands of the extremely skilled, or, through gifts and inheritance, in the hands of the extremely skilled friends and children. Nozick's entitlement theory comprises three main principles: 1) **a principle of justice in acquisition** – this principle deals with the initial acquisition of holdings. It is an account of how people first come to own common property, what types of things can be held, and so forth; 2) **A principle of justice in transfer** – this principle explains how one person can acquire holdings from another, including voluntary exchange and gifts; and 3) **A principle of rectification of injustice** – how to deal with holdings that are unjustly acquired or transferred, whether and how much victims can be compensated, how to deal with long past transgressions or injustices carried out by a government, and so on.

([22]) Canada has a dual legal system. While in most provinces and territories private law (i.e. matters having to do with property and civil law) is derived from the common law tradition (English legal system), in Québec private law is derived from the civil law tradition (French legal system).

act with a view to achieving its social policy objectives:

- improvement of the working environment to protect workers' health and safety;
- working conditions;
- protection of workers when their employment contract is terminated;
- information and consultation of workers;
- representation and collective defence of the interests of workers and employers, including co-determination (this refers basically to workers' participation, beyond information and consultation);
- conditions of employment for third-country (that is, non-EU) nationals legally residing in the EU;
- equality between men and women with regard to labour market opportunities and treatment at work.

Labour law directives are subject to several special conditions set out in Article 153 of the TFEU. **First**, they may **set only minimum requirements for gradual implementation. They do not prevent countries from maintaining or introducing more stringent protective measures for workers, as long as these are compatible with the Treaties.** Indeed, directives typically state that they do not rule out legislative, regulatory or administrative provisions, or collective agreements, that are more favourable to workers, and that a directive's implementation cannot justify a reduction in the general level of protection for workers in the fields that the directive covers.

This means that directives do not impose a uniform labour law across the EU in the areas that they cover. They lay down a safety net of minimum requirements that EU countries have to comply with, in a way that suits their particular national legal and industrial relations structures and practices. They are in principle free to exceed these basic requirements if they wish. In practice, directives may require no changes at all to national labour law, as countries' existing provisions may be more stringent than the directive's minimum standards. As an example, the 2001 framework directive on employee information and consultation required no, or virtually no, change to existing provisions in around a quarter of EU countries, minor changes in around half of the countries, and major changes in only the remaining quarter.

The **second** distinctive feature of labour law directives is that **national authorities may entrust 'management and labour'– that is, workers, employers and their representatives at various levels – at their joint request, with the implementation of these directives**. In such cases, collective agreements between trade unions and employers would contain the provisions required by the directives. Governments must always be able to guarantee the results required by the directive.

This provision reflects the fact that in some EU countries the social partners play a primary or significant role in regulating workplace matters, with legislation taking a secondary place. In practice, the option of leaving the implementation of directives wholly to collective agreements is not often used in such countries, not least because it is rare for such agreements to cover 100% of the workers and employers to which a directive's requirements apply. However, collective agreements have played the leading role in implementing various information and consultation directives in countries such as Belgium, Denmark and Italy. And in various cases, social partners can jointly define the policy orientations through an agreement, the coverage of which is then extended by the legislator through legislation.

Third, all directives on labour and working conditions issues must avoid imposing administrative, financial and legal constraints in a way that would hold back the creation and development of small and medium-sized enterprises (SMEs). For example, the framework information and consultation directive seeks to avoid placing constraints on SMEs by applying its requirements only to undertakings with at least 50 employees or establishments with at least 20 employees (the choice is left to individual countries).

Articles 154 and 155 of the TFEU refer to industrial relations and social dialogue. Article 154 of the TFEU indicates that before submitting proposals in the social policy field, the Commission shall consult management and labour regarding the possible direction and content of the proposals. Article 155 of the TFEU stipulates that dialogue between management and labour at EU level may, if they so wish, lead to 'contractual relations', including agreements. In all cases, the partners can decide to implement the agreement 'in accordance with the procedures and practices specific to management and labour and the Member States' – in other words, the agreement will be implemented by the signatories' national member organisations, in ways consistent with the industrial relations systems in each Member State.

Where the agreement deals with employment or social matters which fall within the EU's competence, the social partners may ask the Commission to propose a decision (in practice, usually a directive) to be adopted by the Council, giving the agreement legal force across the EU. Table 1 below gives a non-exhaustive overview of EU labour law and instances where social dialogue has been important in defining EU-level legislation ([23]). See Table 7 in Annex 1 for a more detailed description of the same Directives.

([23]) In addition to the directives listed in Table 1 and Annex 1, two cross-industry EU social partner agreements on parental leave have been implemented by directives (Directive 2010/18/EU, repealing and replacing Directive 96/34/EC). An agreement by the social partners of the maritime transport sector on the Maritime Labour Convention was implemented by Directive 2009/13/EC. An agreement by the social partners of the hospital and healthcare sector on preventing sharp injuries was implemented by Directive 2010/32/EU.

Table 1: Short overview of EU labour law

Item	Directive Title
Working conditions – Individual rights	
Information on individual employment conditions	Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.
Health and safety in fixed-term and temporary employment	Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.
Young people at work	Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.
Posting of workers	Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
Posting of workers	Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (Text with EEA relevance).
Part time	Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC. Council Directive 98/23/EC of 7 April 1998 on the extension of Directive 97/81/EC on the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland. Note: based on EU social partner agreement.
Fixed-term work	Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by the ETUC, UNICE and CEEP. Note: based on EU social partner agreement.
Working time	Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.
Temporary agency work	Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.
Employer Insolvency	Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Text with EEA relevance).
Item	**Directive Title**
Working conditions – Sectorial	
Maritime transport	Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Ship owners' Associations (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST). Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Ship owners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC. Note: based on EU social partner agreement.
Civil aviation	Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by AEA, ETF, ECA, ERA and IACA (Text with EEA relevance). Note: based on EU social partner agreement.
Rail transport	Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. Note: based on EU social partner agreement.
Working conditions – Collective rights	
Collective redundancies	Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.
European Company Statute	Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).
European Company Statute	Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.
Transfer of undertakings	Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.
Information and Consultation of employees	Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.
European Cooperative Society (SCE)	Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).
European Cooperative Society (SCE)	Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.
Cross-Border Mergers	Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies. (Text with EEA relevance)
European Works Council	Directive 2009/38 of the European Parliament and of the Council of 6 May 2009 on the establishment of a European works council or a procedure in a community-scale group of undertakings for the purposes of informing and consulting employees.

3. CONTRACTUAL RELATIONSHIPS AND SEGMENTATION

This section analyses the distinction between an employment contract and a commercial contract for the provision of goods and services. It reviews some existing typology of new forms of employment and employment contracts to illustrate the existing variety in terms of flexibility, autonomy and protection and how labour markets have become more complex in that regard. The overview presented will necessarily be a simplified version of reality as the variety of contracts is indeed very large as can be attested when one searches official websites of relevant ministries/departments in Europe. The section discusses the role of socio-economic and structural change (technology, globalisation, population ageing, greening of the economy, equal opportunities) in shaping the contract landscape. It also examines the possible negative implications in terms of job quality and social protection associated with some atypical or non-standard employment and civil contracts. It provides some evidence of existing labour market segmentation.

3.1. What is a contract and what is an employment/ labour contract

A contract attributes rights and responsibilities between parties to a bargain. A labour contract is different from a commercial contract. An employment contract (one of the basic dimensions of labour law) is a type of contract which sets the rights and duties of the employer and the employee. It usually includes amongst other things provisions on working hours, compensation, holidays entitlement, sick leave rights, notice period, redundancy notice and a description of the job.

A contract of employment establishes a relationship with an employee: in exchange for a promise to carry out certain tasks, the employer agrees to pay the employee. The employment contract therefore involves the provision of services, under the direction of another person, in exchange of remuneration ([24]). As put forward by the European Court of Justice 'The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.' (CJEU, Lawrie-Blum, 3/07/1986). This arguably contrasts with a 'contract for the supply of services' (commercial contract) which regulates a firm's relationship with an outside contractor selling services. In a sales contract, the seller agrees to supply a particular good or service from the set of all possible goods and services, and in exchange the buyer agrees to pay a sum of money (Simon, 1951).

In the general literature, this implies a dividing line between a person who is 'employed' and someone who is 'self-employed' (without employer). An employment contract attributes rights (and obligations) to those who work for others, while a commercial contract assumes that **genuinely** self-employed people are responsible for their own affairs, and the work they do for others should not carry with it an obligation to look after these rights. The reality is, however, more complicated due to the increasing use of different forms of labour contracts which deviate from the traditional type but still involve one person doing work for another.

3.2. Types of contracts

In recent decades there has been an increase in new (atypical or non-standard) forms of employment and work contracts that go beyond the traditional / standard employment contract i.e. the full-time regular work on a permanent contract whereby an employee works for an employer on a full-time, regular and permanent basis. Forms of employment and contracts include not only the standard employee contract and the standard / genuine self-employed, but also atypical or non-standard work and contracts that go beyond the part-time, fixed-time or seasonal work to now include on-demand, on-call, casual or intermittent or agency work, project contracts, job-sharing, lending and pool arrangements, and crowdsourcing. The list is vast and depends on the specific Member State. In addition, civil law contracts have been increasingly used in some Member States to regulate the provision of what are in effect work services.

To illustrate the point, French sites ([25]) give the following list of employment contracts: *Le contrat à durée déterminée « Senior » (CDD Senior); le contrat à durée déterminée (CDD); le contrat à durée déterminée à objet défini; le contrat d'accès à l'emploi (CAE-DOM); le contrat d'apprentissage; le contrat d'apprentissage aménagé (personne handicapée); le contrat de professionnalisation; le contrat de travail à durée indéterminée (CDI); le contrat de travail à temps partiel; le contrat de travail intermittent; le contrat de travail temporaire; le contrat unique d'insertion - contrat d'accompagnement dans l'emploi (CUI-CAE); le contrat unique d'insertion (CUI): dispositions générales; le contrat unique d'insertion - contrat initiative emploi (CUI - CIE); le contrat vendanges.* Belgian sites ([26]) give the following types of work contracts: *Le contrat de travail à durée indéterminée; le contrat de travail à durée déterminée; le contrat pour un travail nettement défini; le contrat de remplacement; le contrat d'intérim; une convention de premier emploi; le contrat de travail à temps partiel.* English sites ([27]) refer to: permanent full-time, permanent part-time, fixed-period, apprentice worker, agency workers, casual work, and 'zero-hours contracts'. This denotes the complexity of the world of work and the potential increasing difficulty in regulating / monitoring all forms of employment and contracts.

There are many different dimensions according to which one can classify / group the new forms of employment and new types of contracts (also called atypical or non-standard contracts) which differ from the standard employment relationship. Mandl (2014) on the basis of a study by the European Foundation for the Improvement of Living and Working Conditions classifies various new forms of employment according to three categories:

- employment relationships: these can involve either multiple employers for each employee, one employer and multiple employees or even multiple employer-multiple employee relationships;

([24]) The contract of employment will contain terms: a) that are regulated by law such as the minimum statutory notice period; b) terms which have been specifically mentioned, either in writing or orally and have been agreed by both employer and employee; c) implied terms i.e. aspects that are not in writing or agreed orally, but are obvious and need no writing such as stealing from employer or other workers and d) incorporated terms, things that have been put into contracts from specific work rules or collective agreements.

([25]) See e.g. http://travail-emploi.gouv.fr/droit-du-travail/contrats-et-carriere/contrats-de-travail/types-de-contrats/.

([26]) See e.g. http://www.belgium.be/fr/emploi/contrats_de_travail/ and http://www.emploi.belgique.be/defaultTab.aspx?id=42172.

([27]) See e.g. https://www.gov.uk/employment-contracts-and-conditions/overview and http://www.acas.org.uk/index.aspx?articleid=1577 and http://www.legalcontracts.co.uk/contracts/employment-contract/?loc=GB&pid=googleadwords-employ_gb-contractlq_c1&gclid=CK-4uY7Oh8gCFYhAGwodar4JFg.

- work patterns: provision of work on a discontinuous/intermittent basis or for very limited periods of time or non-conventional fixed terms;

- networking and cooperation: networking and cooperation agreements involving self-employed persons, especially freelancers.

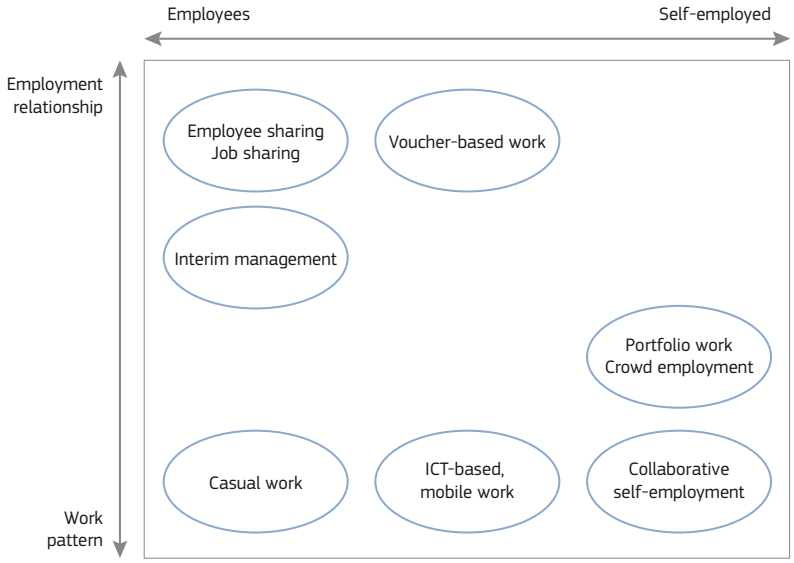
Different employment relationships, work patterns and networks can be found across virtually all sectors and occupations. They also involve non-conventional workplaces (various offices, office sharing, at home / own office,...) and are often supported by ICT tools (smartphones, tablets, computers...). Figure 1 shows some new forms of employment according to these categories.

Different non-standard forms of employment and employment contracts are associated with large differences in the flexibility of hiring and employment conditions as well as work security and access to benefits. New or atypical non-standard forms of employment and contracts provide more flexibility to the world of work, to both employers and workers, and may be welcomed as such. For workers, for example, life choices and work-life balance issues may make non-standard work desirable at certain points, for example in order to allow paid employment to be arranged around domestic work or participation in education. For employers, this can be a way towards a better skill match and to start cooperation while reducing costs.

Alternative forms of employment and contractual arrangements may nevertheless pose a cost to the individual and to society. Some of these new forms of employment and respective contracts may provide more limited or little coverage / access to social protection services (health care services, social assistance, pension rights...) as compared to the standard employment form and contract.

Wargon (2014) classifies contracts according to the type of work organisation and its autonomy and the sharing of risks (Figure 2). In addition to the previous dimensions, Figure 2 shows the existing complexity of employment forms and contracts in terms of work autonomy and in terms of risk sharing, ranging from the genuine self-employed person who bears the risks individually but has full autonomy over his/her work to the standard employee who is not autonomous in his/her work decisions but whose risks are shared. In the bottom-left corner one can find those who bear the risks individually but whose work decisions do depend on others.

Figure 1: New forms of employment according to employment relationshipsand work patterns



Source: Presentation by Irene Mandl at ELLN's 7th Annual Legal Seminar 'New Forms of Employment and Labour Law', November 2014, based on Eurofound research.

Figure 2: New forms of employment according to work organisation and risk sharing for France

WORK ORGANISATION	RISK IN THE WORK CARRIED OUT: INDIVIDUAL	SHARED	GROUP
INDEPENDENT	**SELF-EMPLOYED AUTO-ENTREPRENEUR** Commercial contract	**SALARIED EMPLOYEE-ENTREPRENEUR FIXED-FEE SERVICE PROVIDER** Long-term collaboration	**SALARIED MANAGER** Negotiation and individual agreement, case-by-case
MIXED	**SALARIED EMPLOYEE "APPEARS" as FREELANCER** Approach of expansion; outsourcing; VII	**PARTNER** Salaried or otherwise manager (e.g. branches of food retailer); franchisee; sales rep; accounting partners; brand sellers in shops	**QUASI-SUBORDINATE PROFESSIONAL** Essentially corporate work standards (technical independence)
GROUP	**"STOPGAP"** Hired for very short periods; individual subcontracting; "merchandisers"	**STAFF ON NON-FIXED SALARIES** Individual profit-sharing	**TYPICAL SALARIED EMPLOYEE** Protected subordination; Collective bargaining

Source: Presentation by Emmanuelle Wargon at the *Conseil d'Orientation pour l'Emploi*, January 2014.

According to Wargon (2014), Mandl (2014 and the results of the Eurofound study) and Deakin (2014), some of these new forms of employment notably those involving labour pool arrangements (like employee sharing, job sharing and interim management) may provide flexibility but also new types of risk sharing for workers and therefore may have a win-win potential for all parts of the employer-employee relationship. Some other forms (like casual work or crowd employment) raise serious concerns as they provide work uncertainty and lower protection of the workers involved (Holtgrewe, Kiron and Ramioul, 2015).

While the standard model of regular and more secure work can increase workers' loyalty and motivation and their innovation and productivity (Acharya, Bhagdi-Whaji and Subramanian, 2014; Kleinknecht, van Schaik and Zhou, 2014), alternative and especially more precarious forms of employment can lead to: underinvestment in training for non-regular workers (Bauernschuster et al., 2008) with costs to the individual and the foregone productivity for the country; increased fiscal costs to the State, as this provides tax credits and subsidies to make up for wage insecurity and insures income replacement of precarious workers (Adams and Deakin, 2014); reduced social mobility, if these precarious jobs become 'traps' as opposed to 'bridges' into more regular and secure work (Cahuc and Kramarz, 2004; Gash, 2008); physical and psychological health costs associated with insecurity and precariousness (Burchell, 2009); and growing inequality associated with all of the above (Standing, 2011).

Contemporary legal developments regarding contracts (see also Deakin (2014) who reviews a number of studies) support the perspective that alternatives to the standard employment form and contract are valid and legitimate in that some workers and employers may prefer the flexibility associated with these non-standard forms of employment and contracts (see more in the next sub-section). Nevertheless, the standard form remains valid and it is often seen as the benchmark relative to which other forms are compared and in fact often the starting point for the definition of labour law rules. Non-standard forms of employment and contracts often offer relative under-protection as compared to the standard form and therefore, more recently, the discussion has evolved towards providing for / allowing the transition from non-standard to the standard forms of employment.

At EU level recent work has aimed at increasing the regulation of atypical contractual forms, including measures to fight bogus self-employment or through implementing the EU Directives on part-time work, fixed-term work and temporary agency work which aim at ensuring decent working conditions and equal treatment to the increasing number of workers concerned by those contracts. These directives are based on a balanced approach which intends to prevent abuse while acknowledging the contribution of such flexible contracts to businesses' development.

3.3. The potential drivers of new forms of employment and respective contracts

This increasing variety of contracts is driven by the search for greater flexibility which is in turn associated with two main determinants. The first determinant is pressure to reduce costs, particularly hiring and firing costs ([28]). In this respect, the recent crisis may have played a role in increasing the development of more atypical contracts. A second important and more structural determinant refers to the underlying socio-economic change represented by technological innovation, globalisation, greening of the economy, demographic change and population ageing, greater gender equality and other non-discrimination and greater emphasis on individual rights. Such changes will bring new opportunities and challenges to the world of employment through new production processes, new products and markets and new working structures.

Technology, for example, changes the way goods are produced: see the dramatic changes it has brought to all sectors, from primary activities (agriculture, mining), to manufacturing such as textiles and the car industry and now more recently to communication and liberal professions. Technological change can help mitigate physical or psychosocial barriers to labour market participation of women, including in sectors previously closed to them by law, older workers, those with family responsibilities more generally and disabled workers (see ESDE 2014). It can allow for more flexible working arrangements (in terms of both time and place of work) for workers to perform tasks that best fit their abilities and preferences and for a better work life balance (shorter working days, working from home, flexitime work). However, technology also renders some production processes, tasks and professions obsolete and brings change to the way companies function.

Globalisation also brings along new job opportunities and creates new markets but it also implies adjustments to working times and what is normal and overtime. The greening of the economy while bringing along new job opportunities and new products may pose a gender challenge as women are less present in sectors and professions that involve engineering and technology. Population ageing calls for longer working lives but also the need to develop more flexible working arrangements that fit the abilities and preferences of older people. It also creates demand for a range of new goods and services associated with old-age support. In sum, the ICT 'revolution' combined with globalisation and the greening of the economy – i.e. the 'new economy'– has generated new activities, professions and sectors but has introduced the need for more flexibility in the world of work.

Innovation and changes in markets, as well as economic cycles, require more flexible ways of working and employment contracts to be more flexible than the permanent regular '9 to 5' contract, where tasks are performed in specific settings. Such employment contracts allow for more flexibility in labour markets so that companies can adjust hiring activities to new production processes and workers to explore employment opportunities which better meet their preferences. The economic crisis shows that companies using internal flexibility to adjust working patterns can temporarily help employers reduce costs but retain firm-specific knowledge and help workers to maintain their jobs and income and avoid human capital erosion associated with unemployment.

The important question, of course, is whether this wider range of contracts to allow for more flexibility may have come

([28]) This is sometimes put forward as an explanation in countries where employment protection legislation for regular permanent contracts was considered restrictive.

at the expense of job quality (Kovacs, 2012). Workers with more atypical contracts may experience not only lower income security, higher in-work poverty and reduced access to social protection (e.g. health insurance, unemployment and redundancy pay, and pension rights) but also fewer career prospects and reduced investment in LLL with negative consequences for their skills, employability and productivity. Equally, high job turnover involves searching and training costs for the employer and may reduce firm productivity and output.

In some countries the dividing line between employment and commercial contracts has become blurred to the extent that commercial and other contracts are effectively regulating labour market relations. Contracts such as zero-hours contracts ([29]) or civil contracts – 'civil law contracts' ([30]), have been developed to cover the provision of tasks and services to a company. Development of civil law contracts is notably driven by the circumvention of labour law application. Bogus self-employment has also increased in the EU. These are workers who do not have a contract of employment, and although formally self-employed, they remain economically dependent on a single client or employer.

Criteria used to distinguish between being a worker and being self-employed (or a service provider) are also used to determine who is covered by employment legislation. Different countries have taken more or less sophisticated approaches to this question. The Court of Justice of the European Union has also, in specific cases, provided for an autonomous definition of worker. However, there is no such definition applicable to all EU directives in the field of labour law.

([29]) Zero-hours contracts are in use in the UK, Ireland and the Netherlands, in various forms. The key concept is that the employer does not guarantee any hours to the worker and that in principle the worker is not obliged to accept the work offered. While this type of contractual arrangement is not permitted in some Member States (e.g. Germany, Austria), they are not so different from flexible, low-hours or on-call contracts, where only a very low amount of hours is guaranteed to the worker and the rest is granted on a short-term basis at the behest of the employer.

([30]) Civil law contracts are in use in Poland and the Czech Republic. They are governed by the provisions of the Civil Code instead of the Labour Code, but are effectively employment contracts. There are estimated to be 1 million civil contracts in Poland.

In other words, on the one hand, the traditional 'male-breadwinner model' based on the full-time, permanent worker paying contributions which provide entitlement to social protection no longer matches all possible work relationships of today and tomorrow in view of the ongoing socio-economic and structural changes. On the other hand, non-standard work may be penalised with insecure employment and spells of (uncovered) unemployment, fewer hours of work and fewer social protection rights. This is a form of labour market segmentation. The next section indeed looks at certain forms of labour market segmentation.

In this context, the envisaged European Pillar of Social Rights initiative is ongoing and will take into account the changing realities of Europe's societies and the world of work. It will seek a fairer balance between flexibility and security on the labour markets and look to modernise and address the gaps in existing legislation with a view to promoting upwards convergence of employment and social performance.

3.4. Contract segmentation: recent developments

Labour market segmentation refers to the existence of sub- and non-competing groups of workers who are different not only in terms of their working conditions but also in terms of their labour market outcomes – different in their rewards (wages, promotion, career opportunities) and the risks they run – and who also face barriers to mobility between the groups (Dolado, 2015). Reich et al. (1973) defined labour market segmentation as the 'process whereby political-economic forces encourage the division of the labour market into separate sub-markets, distinguished by different labour market characteristics and behavioural rules. [...] Groups seem to operate in different labour markets with different working conditions, different promotional opportunities, different wages and different labour market institutions.'

Segmentation is usually analysed in terms of primary and secondary labour markets: the primary one has better terms and conditions of work, better-paid, higher-security jobs, higher status and career progression, and on-the-job training; the secondary one has lower-paid, lower-security jobs, no career structure, high turnover, and less on-the-job training. (Doeringer and Piore, 1971; Piore, 1968; Reich et al., 1973; Piore and Berger, 1980; Ryan 1981; Williamson, 1985; Bulow and Summers, 1986; Pinfield, 1995) ([31]). The literature also shows that women, young people and ethnic minority workers are more commonly found in the secondary market. In other words, there are 'good and bad jobs' along a scale of job quality (Piore, 1980) ([32]).

The separation or duality between different types of contracts with a focus on temporary vs. permanent contracts and self-employment is one of many forms of segmentation that have recently been discussed in the literature. This type of segmentation is partly associated with the growth in various atypical employment contracts (non-permanent, non-full-time contracts) whose conditions differ from those of a permanent full-time job, notably in terms of EPL. The development of atypical contracts is often attributed to the circumvention of existing restrictions on regular permanent contracts either because of a real need for flexibility or for cost-reduction related reasons.

Segmentation of labour markets can indeed be observed. It is reflected in a large use of temporary contracts and involuntary temporary contracts (Chart 1 and Chart 2), short employment spells alternated with unemployment spells, low transitions from temporary to permanent regular contracts (Chart 3 and Chart 4), high shares of involuntary part-time contracts (Chart 5), low levels of on-the-job training, etc. In addition, there has been a recent rise in 'economically dependent work' or involuntary self-employment (also called bogus or dependent self-employment) whereby workers do not have a contract of employment but provide goods

([31]) See e.g. http://www.sfb580.uni-jena.de/typo3/uploads/tx_publicationlist/heft-16.pdf for a discussion of different models of labour market segmentation.

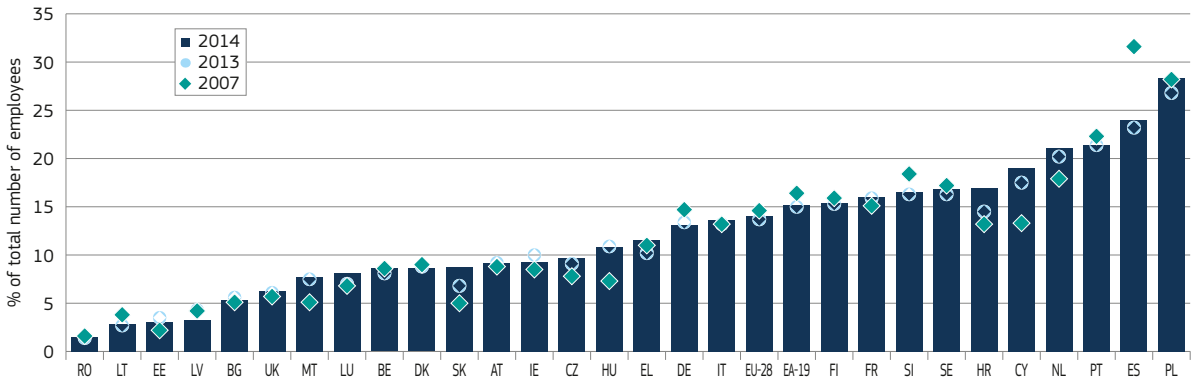
([32]) Segmentation also occurs within the primary market between 'subordinate' and 'independent' jobs, the latter allowing for more creativity, problem solving and self-initiative. With technological progress and the development of the knowledge society this division may become more significant. Additional gender segmentation can be observed between occupations in both the primary and secondary markets. Other types of segmentation include internal and external labour market segmentation and pre-market and in-market segmentation (Lutz and Sengenberger, 1974).

and services to a main or single client on whom they depend for activity and source of income.

In the EU, the percentage of those who have a temporary contract was 14% in 2014 slightly down from 14.6% in 2007. This share varies substantially across the EU from 1.5% in Romania to 28.3% in Poland (Chart 1). The evolution is not the same for all Member States. In half of the Member States the percentage of those in temporary contracts has decreased since 2007 while for the other half it has increased.

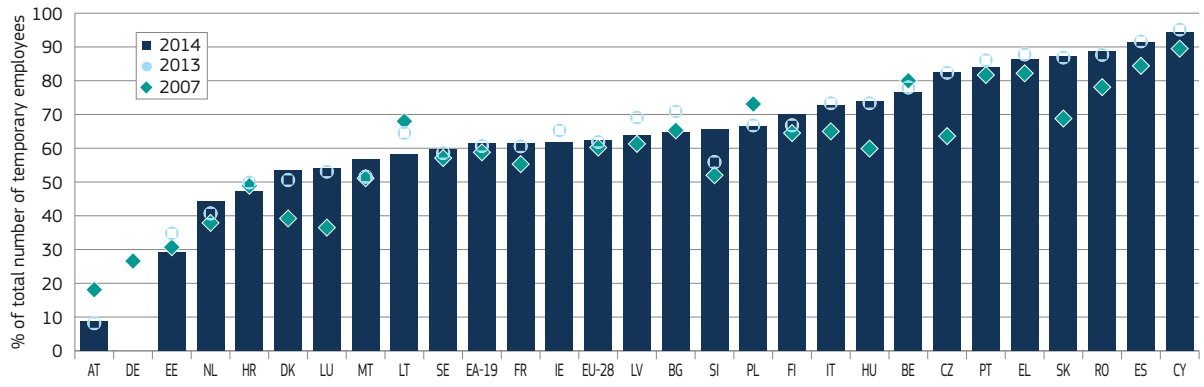
The percentage of those who have an involuntary temporary contract varies substantially across the EU from 8.8% in Austria to 94.3% in Cyprus (Chart 2). In many Member States the percentage of those in involuntary temporary contracts has increased since 2007 although it has declined in some.

Chart 1: The share of temporary employees in the total number of employees aged 15-64, 2007, 2013 and 2014



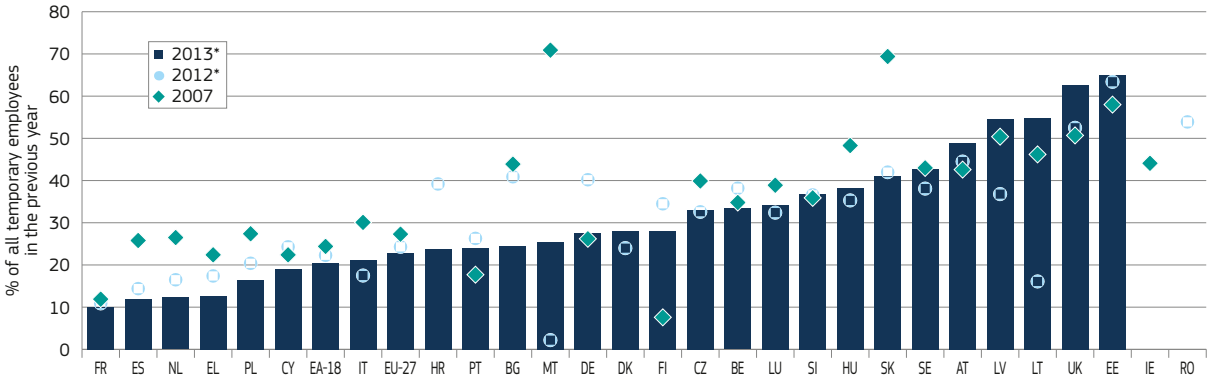
Source: Eurostat, LFS, lfsa_etpga.

Chart 2: Share of involuntary temporary employment in total temporary employment, 2007, 2013 and 2014



Source: Eurostat, LFS, lfsa_etgar.

Chart 3: Transitions from temporary employment to permanent employment: share of temporary employees in year t who transit to a permanent job in year t+1, 2007, 2012* and 2013*



Source: Eurostat, EU-SILC, ilc_lvhl32.

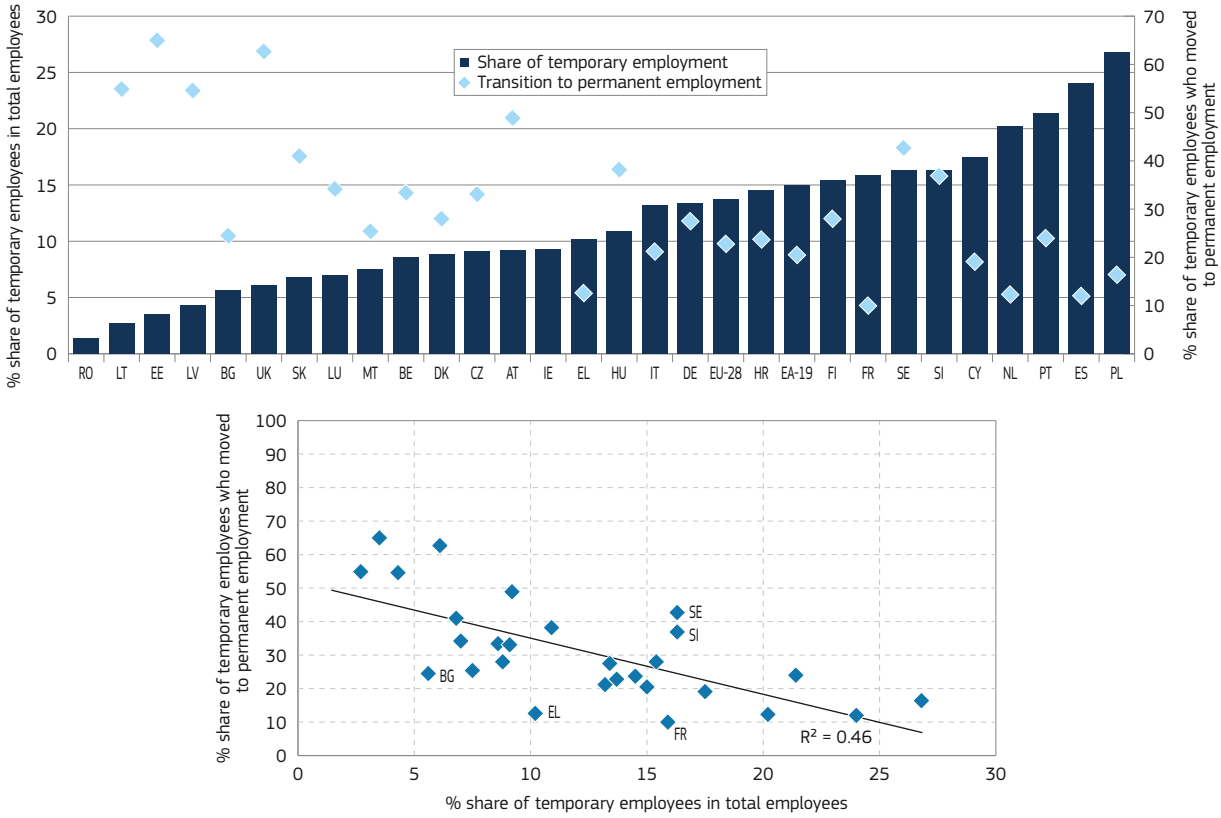
**Notes:* Data on transitions refers to 2013 for all Member States except for AT, BE, ES and FI for which data on transitions refers to 2014. For these countries, the comparison is made with 2013 while for all others 2012 is used; Data on transitions is not available for IE for 2012 or 2013 or 2014 and for RO for 2013 or 2014.

As important as the share of temporary employment is the opportunity for workers to move from temporary into permanent employment. Is temporary employment a stepping stone to permanent employment or a form of entrenchment? Looking at transitions from temporary to permanent employment, the annual transition rate varies considerably in the EU, from about 10% in France to more than 60% in Estonia (Chart 3). While transition rates overall have declined since 2007, they have increased in some countries.

In terms of whether countries with the highest shares of temporary employment have lower or higher rates of transition into permanent employment, the picture is mixed (Chart 4). Some countries (on the left) have lower shares of temporary employment and higher transition rates; some (on the right) have higher shares of temporary employment and lower transition rates, which indicates that temporary employment is more entrenched. Others have medium to fairly high shares of temporary employment and also higher transitions, suggesting that in these countries temporary contracts do lead to permanent ones.

Involuntary part-time work indicates the existence of another type of segmentation (Chart 5). The share of part-time work varies substantially across the EU from less than 5% in Bulgaria to 50% in the Netherlands. However, the share of those working part-time on an involuntary basis is the reverse, suggesting that part-time work in the Netherlands or Germany is in large part

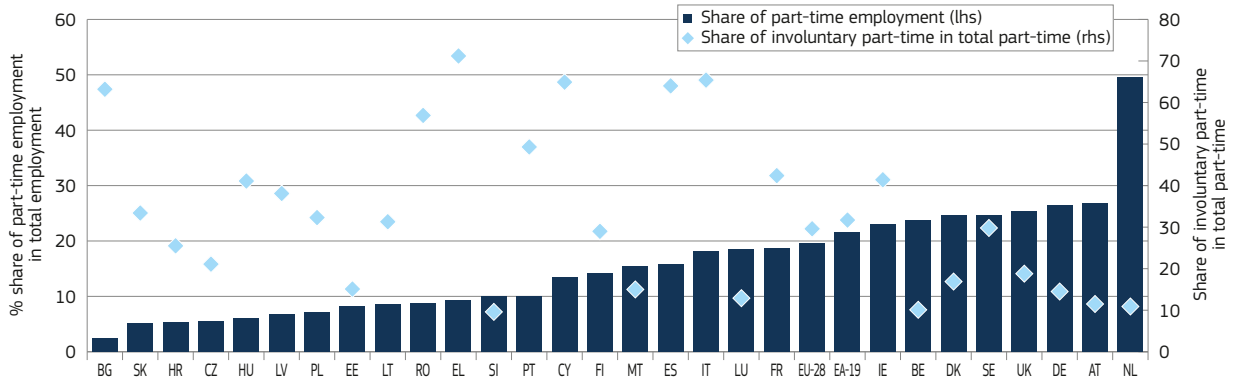
Chart 4: Share of temporary employees versus transitions from temporary to permanent employment, 2013*



Source: Eurostat, LFS and EU-SILC, lfsa_etpga and ilc_lvhl32.

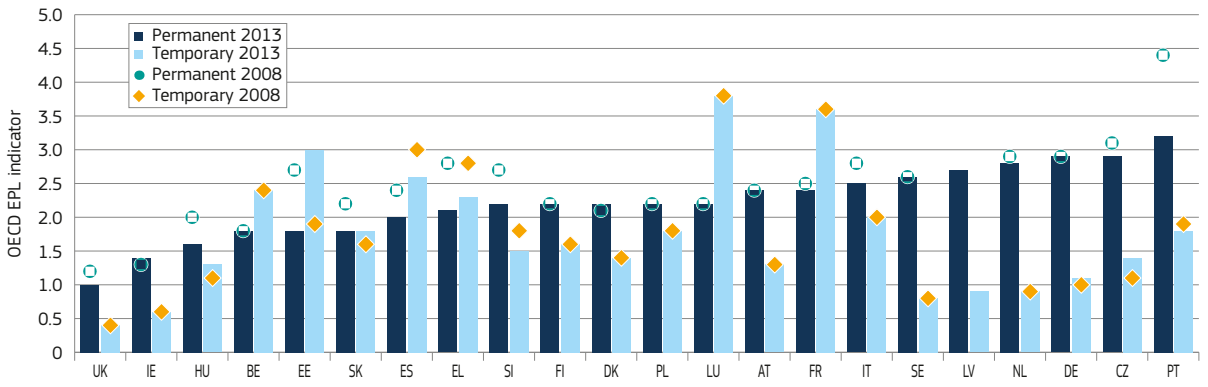
**Notes:* Data on transitions refers to 2013 for all Member States except for AT, BE, ES and FI for which data on transitions refers to 2014; Data on transitions is not available for IE for 2012 or 2013 or 2014 and 2014 and for RO for 2013 or 2014.

Chart 5: Share of part-time employment in total employment (lhs) and share of involuntary part-time in total part-time employment (rhs), 2014



Source: Eurostat, LFS, lfsa_eppga.

Chart 6: EPL index for permanent and temporary work contracts in 2013 and 2008



Source: OECD Employment Protection Database.

a personal choice while in other countries like Bulgaria, Portugal, Greece or Spain a large share of those working part-time would actually like to work more hours and have a full-time job.

Involuntary part-time has increased for the large majority of countries suggesting that the increase in part-time work is not only the result of individuals' choice for more flexible arrangements that allow for a better reconciliation between work and private life. Involuntary part-time can have implications for income and potentially increasing the risk of poverty or social exclusion.

High shares of self-employment may also indicate a degree of segmentation insofar as self-employment conceals partial abuses designed to mask dependent employment relationships and/or social security systems are not adapted to include the self-employed ([33]). In 2014, about 16% of all employed people in the EU were self-employed, with the highest shares in Greece (32%) and Romania (30%) and the lowest in Sweden (5%) and Luxembourg (6%). Nevertheless, less than one third of the EU's self-employed engaged other workers to work for them i.e. a vast majority were solo self-employed though the share varies across Member States. The highest share of employers among the self-employed is found in Hungary (49%), followed by Germany (45%), Austria (42%) and Denmark (42%). The Romanian (6%) share is by far the lowest, followed by the United Kingdom (17%), the Czech Republic (20%) and Greece (20%) (see chapter I.1 on self-employment and entrepreneurship).

([33]) Pedersini and Colletto 2010 http://www.eurofound.europa.eu/docs/comparative/tn0801018s/tn0801018s.pdf.

Increased labour market flexibility and segmentation are sometimes attributed to the design of labour legislation and notably EPL. It is argued that the need for flexibility combined with the design of EPL and the way it has been reformed partly explains increased segmentation. Nevertheless, the role played by EPL in shaping labour markets must be considered in the broader context of other labour market institutions (ALMPs, Unemployment Benefits, LLL).

EPL does differ between temporary and regular contracts in much of the EU and, despite recent developments, EPL for temporary contracts is still less strict than EPL for regular permanent contracts in the majority of countries (Chart 6). This may result in people in different contracts having different working conditions, different promotional opportunities, different wages and different labour market institutions. These forms of segmentation may potentially harm workers' working conditions and quality of jobs especially if temporary jobs are not a stepping stone to permanent jobs. Therefore the next section looks in more detail at EPL.

4. Employment Protection Legislation (EPL)

This section focuses on a particular aspect of labour legislation – EPL. It presents the commonly used definition and rationale for the existence of EPL and also presents existing measures of EPL. It discusses the main differences across Member States and presents recent developments. The section finishes with a discussion of EPL in relation to other labour market institutions.

4.1. Definition and rationale for EPL and challenges identified

EPL can be broadly defined as the subset of legal rules and procedures that define the limits to the ability of firms to hire and fire workers in private employment relationships. EPL features – an articulated set of institutions – are enshrined in the law and in collective and individual labour contracts. Protection against dismissal is recognised in ILO Conventions, the EU Charter of Fundamental Rights and EU labour law directives ([34]).

EPL sets a series of requirements to be respected by the employer when dismissing workers and defines the lawfulness of the dismissal. These requirements relate to individual dismissals for regular contracts, collective dismissals and fixed-term contracts (see Annex 2 for more detail).

EPL covers a range of aspects relating to individual dismissals from regular contracts such as probationary periods, notice periods and procedural requirements to be followed, reasons for dismissal, the role of judges, consequences of unfair dismissal including sanctions and payments and the design of severance payments i.e. payments to workers for early contract termination. Regarding

([34]) Informing and consulting employees is a fundamental right recognised by the Charter of Fundamental Rights of the EU (Art. 27). The protection against unjustified dismissal is a fundamental right recognised by the Charter of Fundamental Rights of the EU (Art. 30) and is subject to the ILO Termination of Employment Convention C 158. Art. 151 and 153 of the TFEU provide in particular that the Union shall have as its objectives the promotion of employment, improved working conditions, informing andconsulting workers and the protection of workers when their employment contract is terminated.

collective dismissals, EPL covers the definition of collective dismissal, the procedural requirements to be followed in case of collective redundancies, the criteria for selecting employees to be dismissed and the implications of unfair collective dismissals, including severance payments. EPL also includes regulatory constraints on the use of mainly fixed-term work contracts and temporary agency work.

Non-respect of these conditions usually renders the dismissal unlawful or invalid, with implications in terms of obligations for the employer and rights to compensation for the worker. EPL and the consequences associated with unlawful dismissal vary across countries, reflecting different legal and institutional traditions.

Specific EPL features are the outcome of different legal and institutional traditions. Countries with civil and common law traditions provide employment protection in different ways. In the former, employment protection tends to be regulated by law, while in the latter it relies more on contracts and private litigation. In common law countries, courts have more ample judicial discretion as opposed to civil law where procedural codes play a greater role. The role of jurisprudence is relevant in both as it may create a wedge between *de jure* and *de facto* protection through enforcement of the legislation and how courts handle labour disputes in practice.

EPL is designed to address the risks for workers associated with being made redundant. It aims to protect workers from arbitrary action by employers and to protect workers and society from the costs and risks associated with job dismissal (including loss of earnings, financial distress, ill-health but also erosion of skills and work experience, i.e. human capital, that come with job loss) especially in a context of limited protection against unemployment risks. EPL can be conducive to job stability, potentially increasing workers' motivation and firm-specific human capital and productivity.

The economic rationale is that since unemployment risks cannot be fully covered by the insurance market, risk-averse, liquidity-constrained employees may demand employment protection to reduce income volatility and employers may agree to provide such protection in exchange for less conflictual employment relations and lower wages (the so-called 'bonding argument'). With perfect information and competition, EPL would be voluntary and efficient, and there would be no need for minimum mandatory employment protection. With imperfect information, however, underprovision of employment protection may arise, which provides an economic justification for mandatory minimum EPL (see e.g. Blanchard and Tirole, 2003) ([35]). EPL may also be needed to address the externalities associated with the rupture of employment relationships ([36]).

EPL may also reflect wider social values. Dismissals motivated by discrimination (gender, race or sexual orientation) are considered illegal, while protection to employees is generally not provided when dismissals are justified by disciplinary issues.

An ongoing discussion (e.g. OECD, 2013 and OECD, 2014) is whether EPL, in some circumstances or in some combination or form, may restrict the ability of firms to adjust to structural changes such as technological change, or changes in consumer demand for the firm's products, or changes in the economic situation in general. Theory suggests that in some cases higher hiring and firing costs may reduce hiring and firing behaviour by companies and therefore the speed of adjustment of employment (job turnover) in case of shocks. In this case, EPL does not necessarily contribute to reducing unemployment or its duration and age composition. It may also affect the degree and type of innovation firms pursue. By reducing efficiency in the allocation of labour resources and innovation, it can have a negative effect on productivity and growth.

Theory suggests that differences in EPL for different types of contracts may generate a duality in the market by inducing firms to prefer the more flexible type of contract. This has potentially negative implications for employment transitions into permanent employment: motivation; human capital; productivity and growth (see e.g. Jansen et al., 2015). Young people as newcomers to the labour market may stay trapped in a sequence of temporary contracts, though well-designed temporary contracts can also be a first step towards permanent contracts. Low-skilled workers may also stay in a sequence of fixed contracts in the face of technological change and global production chains.

Research (see OECD, 2013 for a review) suggests that, in some circumstances or combination (including the interaction with other labour market institutions), EPL may reduce job flows, have a negative impact on employment of outsiders, encourage labour market segmentation and hinder productivity and growth.

4.2. Measuring EPL across Member States

Using the OECD indicators of EPL (and the OECD Employment Protection Legislation Index as explained in Box 1) ([37]), it can be seen that EPL regulations vary widely across the EU even within groups of countries reflecting similar socio-economic characteristics (Table 2; see Annex 2 for a detailed analysis of each of the EPL indicators). The biggest differences across Member States are for individual dismissals from regular contracts, not only in terms of stringency, but also in terms of instruments to protect workers against dismissal. The largest differences are in the definition of fair and unfair dismissal and related remedies.

In some countries, fair dismissal is not defined restrictively, and unfair dismissals are limited to cases which are not reasonably based on economic circumstances or on discrimination (e.g. Belgium, Czech Republic, Denmark, Greece, Hungary, Ireland, Italy, Poland, Slovakia, the United Kingdom). In the Anglo-Saxon countries there is no need to justify an economic dismissal as such. In other countries (e.g. Finland, France, Slovenia) dismissals are not justified if there is no effective and relevant reason, and further specific conditions apply in case of collective redundancy (e.g. Austria, Estonia, the Netherlands).

([35]) For example, when employers have incomplete knowledge about workers' ability, job applicants tend to ask for low job protection, to signal they are high-quality workers who do not expect to be easily dismissed (signalling problem). Similarly, firms tend to undersupply EPL, since offering a high degree of job security would attract the less qualified and motivated workers, difficult to fire once hired (adverse selection problem).

([36]) Workers who are laid off, if not quickly re-employed, may lose skill and motivation, thus becoming less re-employable. Employers, when deciding about lay-offs do not take into account the fact that their decision may have implications in terms of effective labour inputs' availability for the whole economy.

([37]) http://www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm.

The protection of workers in case of unfair dismissal differs across the EU. In case of unfair dismissal, a worker is usually entitled either to a monetary compensation on top of what is normally required for a fair dismissal or to be reinstated, and employers may also have to pay any foregone wages ('back pay'). In some cases reinstatement is not foreseen (e.g. Belgium, Finland) while in others reinstatement is the rule (e.g. Austria, Estonia, Luxembourg, Czech Republic). In some countries, firms may have to both reinstate a worker and provide 'back pay' (e.g. Italy, Portugal), if dismissals are based on discrimination. In others, instead of additional compensation only 'back pay' is required (e.g. Czech Republic, Ireland).

Severance payments also differ widely among countries. Severance payment entitlements may be enshrined in law (e.g. France, Hungary, Portugal, Slovenia) or bargained in collective agreements (e.g. Sweden and Denmark for blue collars). In some countries severance pay does not exist at all (e.g. Belgium, Finland and Sweden). In Austria, employees have access to defined-contribution individual severance accounts. Where severance payments exist, depending on the reason for dismissal (justified or not justified) and other conditions, their amount varies greatly among Member States.

Table 2: Strictness of employment protection, OECD, 2013

	Protection of permanent workers against individual and collective dismissals	Protection of permanent workers against (individual) dismissal	Specific requirements for collective dismissal	Regulation on temporary forms of employment
	EPRC	EPR	EPC	EPT
Austria	2.44	2.12	3.25	2.17
Belgium	2.95	2.08	5.13	2.42
Czech Republic	2.66	2.87	2.13	2.13
Denmark	2.32	2.10	2.88	1.79
Estonia	2.07	1.74	2.88	3.04
Finland	2.17	2.38	1.63	1.88
France	2.82	2.60	3.38	3.75
Germany	2.98	2.72	3.63	1.75
Greece	2.41	2.07	3.25	2.92
Hungary	2.07	1.45	3.63	2.00
Ireland	2.07	1.50	3.50	1.21
Italy	2.79	2.41	3.75	2.71
Luxembourg	2.74	2.28	3.88	3.83
Netherlands	2.94	2.84	3.19	1.17
Poland	2.39	2.20	2.88	2.33
Portugal	2.69	3.01	1.88	2.33
Slovak Republic	2.26	1.81	3.38	2.42
Slovenia	2.67	2.39	3.38	2.50
Spain	2.28	1.95	3.13	3.17
Sweden	2.52	2.52	2.50	1.17
United Kingdom	1.62	1.12	2.88	0.54
United States	1.17	0.49	2.88	0.33
Latvia	2.91	2.57	3.75	1.79
OECD un-weighted average	2.29	2.04	2.91	2.08

Source: OECD Employment Protection Database, 2013 update www.oecd.org/employment/protection

Note: Data refers to 1 Jan 2013 for OECD countries and Latvia, 1 Jan 2012 for other countries. Only version 3 indicators are reported. Data updated to 1 May 2013 for Slovenia and the UK is available at: http://www.oecd.org/els/emp/EPL-timeseries.xlsx

Table 3 presents a correlation analysis of the various indicators. Various EPL dimensions tend to be positively correlated, so that the countries with a higher degree of strictness of EPL in one aspect also tend to be restrictive in other aspects. In contrast, a negative correlation is observed between the tightness of the regulation for individual dismissals and that for collective dismissals. This reflects the fact that the EPL indicator for collective dismissals refers to additional requirements on top of those for individual dismissals. Thus, strict legislation on individual dismissals is compensated by looser regulation for collective ones. There is also generally a positive correlation between various sub-indices of the EPL for regular contracts.

The **World Bank Doing Business** database includes a set of other relevant qualitative and quantitative indicators. These indicators measure the regulation of employment, and more specifically how it relates to the hiring and firing of workers and the rigidity of working hours. As shown in Table 4, the indicators are grouped into 4 main areas and sub-areas (detailed indicators are presented in Annex 3). The first area measures the **Rigidity of employment** and covers 3 areas: difficulty of hiring, rigidity of hours and difficulty of redundancy, which are subsequently divided into several sub-areas. Another area relates to the **Redundancy cost** and measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary. The average value of notice requirements and severance payments applicable to a worker with 1 year of tenure, a worker with 5 years and a worker with 10 years is considered.

Box 1: The OECD Employment Protection Legislation Index

The OECD synthetic indicators of EPL (and the so-called OECD Employment Protection Legislation Index) measure the procedures and costs involved in dismissing individuals or groups of workers and the procedures involved in hiring workers on fixed-term or temporary work or agency contracts ([1]). The latest data covers legislation in force as of 2013 in the 22 European countries that are also members of the OECD ([2]). The OECD regularly compiles such indicators for most OECD countries, codifying 21 elements of legislation, covering all three main aspects of employment protection: protection of permanent workers against individual dismissal; regulation of temporary employment; specific additional requirements for collective dismissals. The methodology has also been refined to take into account more systematically the interpretation of legislation, collective bargaining agreements and case law ([3]).

OECD EPL indicators have to be interpreted with caution. First, not all changes in legislation on employment protection modify the EPL indicators. This may occur either because a change is insufficient to modify the scoring given to a particular indicator, or because specific aspects of the legislation are not considered in the calculation of the index (e.g. the length and the uncertainty of judicial procedures in the case of unfair dismissal, treatment of the self-employed). Moreover, aspects relating to EPL enforcement are also not fully captured by the indicators. EPL measures may not fully distinguish between temporary and permanent contracts, potentially ignoring the very real difference of no redundancy pay at the end of the temporary ones ([4]).

([1]) http://www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm.

([2]) 1 May 2013 for Slovenia and the United Kingdom.The EPL database does not include Bulgaria, Croatia, Lithuania, Malta, Cyprus and Romania and they are not OECD Members.

([3]) OECD, Employment Outlook 2013, Chapter 2.

([4]) A third common critique relates to the inevitable degree of subjectivity affecting the codification of national legal features into a composite index (Venn 2009). Since codification may at times provide misleading interpretation of national rules and procedures, or ignore relevant non-legislative data, the OECD index should be handled with care or possibly integrated with an up-to-date and more comprehensive EU-28 database.

Table 3: Correlation between OECD EPL components

Correlation among OECD EPL sub-indices 2000-2013

	Regular contracts	Temporary contracts	Additional requirements for collective dismissal
Regular contracts	1		
Temporary contracts	0.28	1	
Additional requirements for collective dismissal	-0.25	0.31	1

Correlation between sub-indices for EPL on regular contracts : 2000-2008

	Notice and Severance payments	Definition of justified/unfair dismissal	Length of trial period	Compensation following unfair dismissal	Possibility of reinstatement following unfair dismissal
Notice and Severance payments	1				
Definition of justified/unfair dismissal	0.23	1			
Length of trial period	0.34	0.31	1		
Compensation following unfair dismissal	0.04	0.67	-0.08	1	
Possibility of reinstatement following unfair dismissal	0.24	0.05	0.32	-0.10	1

Correlation between sub-indices for EPL on regular contracts : 2009-2013

	Notice and Severance payments	Definition of justified/unfair dismissal	Length of trial period	Compensation following unfair dismissal	Possibility of reinstatement following unfair dismissal
Notice and Severance payments	1				
Definition of justified/unfair dismissal	-0.019	1			
Length of trial period	0.12	0.22	1		
Compensation following unfair dismissal	-0.05	0.60	-0.09	1	
Possibility of reinstatement following unfair dismissal	0.12	-0.12	0.26	-0.02	1
Maximum time to claim unfair dismissal	-0.04	0.11	0	0.04	-0.49

Source: own calculations based on OECD data.

The World Bank Doing Business database also collects information on **Social protection schemes and benefits**, a third area of labour market regulation indicators, and more specifically data on the existence of unemployment protection schemes as well as data on whether employers are legally required to provide health insurance for employees with a permanent contract.

A fourth and final area pertains to **employment law cases** and assesses the mechanisms available to resolve them. More specifically, it collects data on what courts would be competent to hear such cases and whether they are specialised in resolving them. This will be analysed in a dedicated section further on.

In addition to the World Bank and using some of their indicators are three other international databases developed for measuring labour market regulation, competitiveness and efficiency. These are: the Labour Market Efficiency Index developed by the World Economic Forum (WEF LME); the Government Efficiency Index and its labour regulation components developed by the International Institute for Management Development (IMD); and the Fraser Institute Labor Market Regulations Index (Fraser LMR) (see Aleksynska and Cazes, 2014).

4.3. Recent developments in EPL

Chart 7 provides an overview of the evolution of EPL stringency in EU countries while Chart 14 in Annex 2 shows the dimensions of EPL for regular contracts across EU countries for 2008 and 2013. Two periods can be clearly identified in Chart 7. Before the 2008 crisis, the regulation of fixed-term contracts was loosened in a number of countries, most notably those with relatively rigid EPL for open-ended contracts, including Greece, Italy and Portugal, as well as Germany, the Netherlands and Slovakia. Conversely, EPL for fixed-term contracts became more stringent in some EU-12 Member States (Czech Republic, Hungary, Poland), albeit generally starting from a situation of high flexibility. In contrast, no major changes are observable in the tightness of EPL for open-ended contracts and collective dismissals (Chart 7 and Chart 14 in Annex 2).

After 2008, several countries carried out comprehensive and unprecedented reforms of their EPL for open-ended contracts and collective dismissals (Annex 2). To a large extent they provided for less stringent protection against dismissal for permanent workers by restricting reinstatement in the case of unfair dismissal, capping back-pay, reducing levels of severance pay and lengthening probationary periods. In some countries collective dismissal procedures were simplified and their cost reduced. Regulation of temporary contracts was adapted to discourage their excessive use, including through higher non-wage costs ([38]).

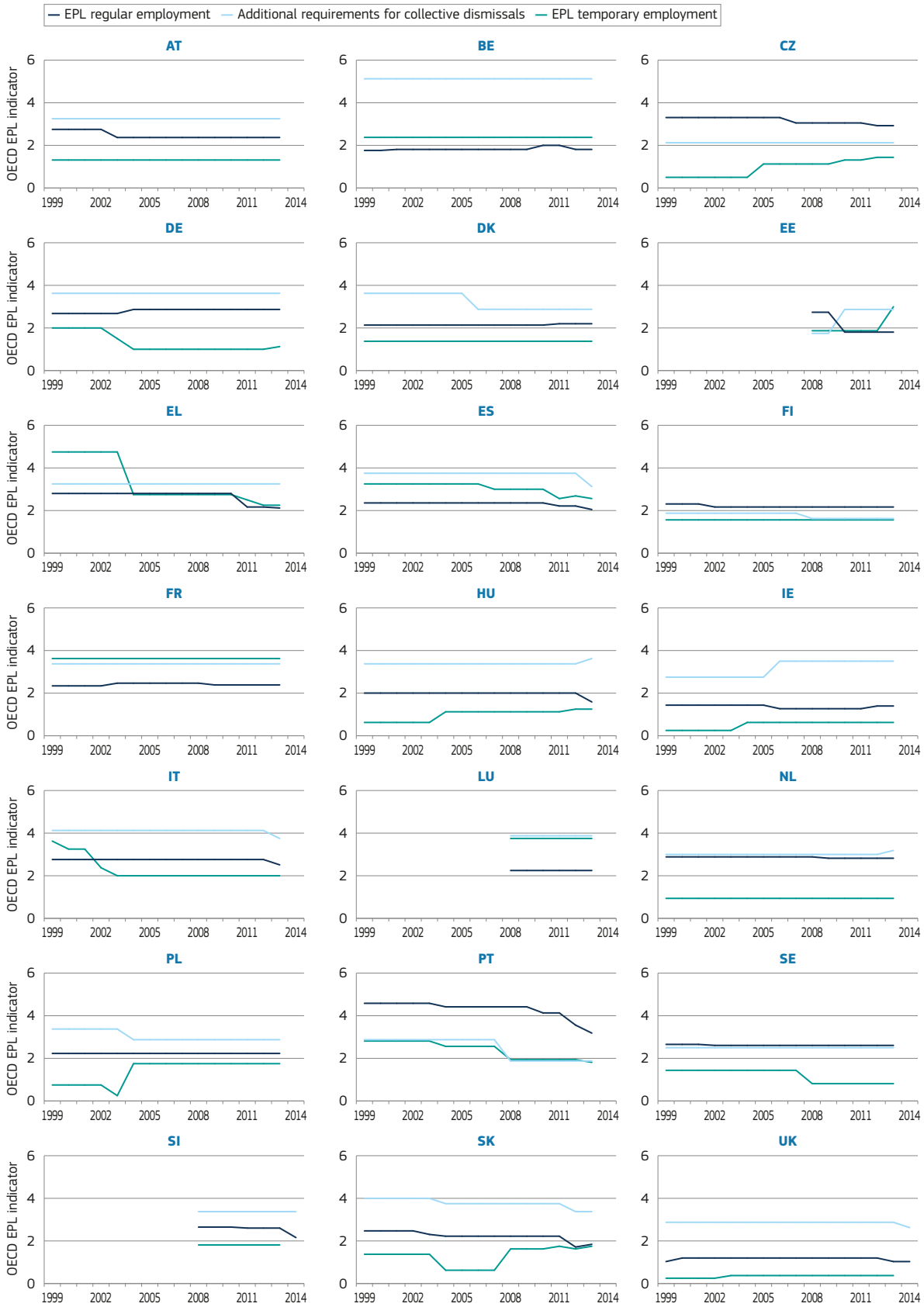
Table 4: World Bank Doing Business indicators: labour market regulation indicators

Rigidity of employment
Difficulty of hiring
Whether fixed-term contracts are prohibited for permanent tasks
Maximum duration of fixed-term contracts, including renewals
Minimum wage applicable to the worker assumed in the case study (USD/month)
Ratio of minimum wage to value added per worker
Rigidity of hours
Whether 50-hour workweeks are permitted for 2 months in a year due to an increase in workload
Allowed maximum length of the workweek in days and hours, including overtime
Premium for night work (% of hourly pay)
Premium for work on a weekly rest day (% of hourly pay)
Whether there are restrictions on night work and weekly holiday work
Paid annual vacation days for workers with 1 year of tenure, 5 years of tenure and 10 years of tenure
Difficulty of redundancy
Length of the maximum probationary period (in months) for permanent employees
Whether redundancy is allowed as grounds for termination
Whether third-party notification is required for termination of a redundant worker or group of workers
Whether third-party approval is required for termination of a redundant worker or a group of workers
Whether employer is obligated to reassign or retrain and to follow priority rules for redundancy and reemployment
Redundancy cost (weeks of salary)
Notice requirements, severance payments and penalties due to terminating a redundant worker, expressed in weeks of salary
Social protection schemes and benefits
Whether an unemployment protection scheme exists
Whether the law requires employers to provide health insurance for permanent employees
Labour disputes
Availability of courts or court sections specialising in labour disputes

Source: World Bank Doing Business database at http://www.doingbusiness.org/methodology/labor-market-regulation.

([38]) For a first *ex ante* analysis of the potential effects of such reforms, see 'Labour Market Developments in Europe 2012', European Economy 5/2012, European Commission, 2012. In addition, Table 2 in the Statistical Annex provides an overview of EPL reforms adopted between 2008 and 2013, based on the European Commission LABREF database.

Chart 7: Evolution of OECD EPL indicators in EU countries



Source: OECD Employment Protection Database.

Reforms of EPL were intense in 2012 and 2013, especially in countries with both large accumulated macro-economic imbalances and stringent legislation before the crisis, including Croatia, Spain, Portugal, France, Italy and Slovenia. Belgium passed the single status law, essentially harmonising notice periods between blue and white collar workers and redefining unfair dismissals. Dismissal costs and the burden of collective dismissals were reduced in the United Kingdom.

In 2014 and 2015, while some Member States focused on the implementation of past reforms, new measures were adopted in Croatia, Italy and the Netherlands. With the adoption of the new Labour Act in August 2014, Croatia completed the labour law reform already started in 2013 by facilitating the use of some non-standard work contracts and simplifying dismissal procedures. In December 2014, Italy adopted the Jobs Act, a comprehensive labour market reform revising dismissal rules for open-ended contracts, simplifying and reducing non-standard contractual forms and increasing internal flexibility within firms, among other things. In April 2015, Lithuania presented a draft labour law reviewing dismissal protection rules. In August 2014, the Netherlands introduced a cap on severance payments or damages for unfair dismissal and increased protection for temporary workers.

While a number of countries have reinforced regulations on fixed-term contracts, and more specifically on the use of temporary agency work (e.g. Slovenia, France, Denmark, Slovakia, Italy), others have facilitated access to fixed-term contracts (e.g. Spain, Czech Republic) and temporary agency work (e.g. Greece, Lithuania, Spain) or increased their duration or renewal possibilities (e.g. Croatia, Portugal, Italy) with a view to fostering job creation.

The result of the reforms carried out in the post-crisis period (up to 2013) is that EPL of open-ended contracts either remained constant or markedly decreased in the majority of EU countries. The reduction in the EPL indicator appears to be particularly strong for Portugal but reductions are also visible for Estonia, Greece, Spain, Hungary, Italy, Slovakia, Slovenia and the United Kingdom.

The radar charts in Annex 2 provide information about procedural inconvenience employers encounter if they intend to dismiss a worker (notification and notice period), trial period, notice and severance payments (for tenures up to 4 years and 20 years), definition of unfair dismissals and their consequences (monetary compensation and reinstatement). The main points can be summarised as follows:

- Major reforms reducing protection for individual dismissals were implemented in Spain, Estonia, Greece, Hungary and Italy after 2008. Individual dismissals are now less expensive in Southern countries due to longer probationary periods, more certain dismissal procedures, shorter notice and lower severance payments.

- In some of these countries, individual dismissals remain stricter than the EU average due to a stricter Difficulty of Dismissal (Estonia, Spain, Italy).

- On several non-monetary dimensions (consequences of unfair dismissals and difficulty of dismissals), regulation of individual dismissals tends to be stricter in Austria, Germany, Czech Republic, Finland and France. Ireland and the United Kingdom have in all respects the most flexible regulation of individual dismissals.

These developments suggest a different regulatory tendency from that observed in the previous decade. Between 2000 and 2008 EPL for individual regular contracts and collective dismissals was broadly stable in most EU Member States and the regulation of fixed-term contracts was relaxed in a number of countries. In contrast, since 2008 reform efforts have largely concentrated on reducing the stringency of job protection legislation for permanent contracts and/or increasing the protection of temporary workers. If reforms prior to 2008 had indeed contributed to the increase of labour market dualism between highly protected permanent workers and lowly protected temporary workers, the recent trend towards reducing the gap may lead to a reduction in segmentation especially in Southern European labour markets.

Before 2008 the regulation of individual dismissals was generally consistent, whereby the strictness of the regulation was reflected in all aspects of the legislation (Table 3). However, since 2008 this correlation has become weaker. The EPL reforms enacted since 2008 have focussed on country-specific features of the legislation that appeared particularly onerous. In Italy, where severance payments for fair dismissal do not exist, the 2012 and 2014 reforms loosened the procedural requirements for individual dismissal and reduced their uncertainty; in contrast, in Spain and Portugal firing costs were relatively high and the reforms reduced the notice period and the severance payments (Dolado, 2015) ([39]).

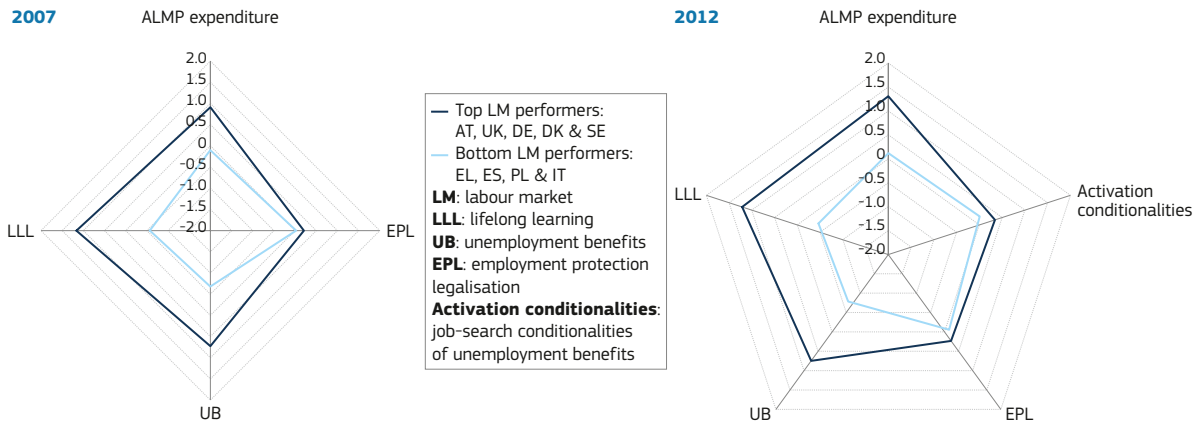
4.4. EPL in a broader context: other labour market institutions

Note that employment protection refers to only one dimension of the complex set of factors that influence labour market flexibility and EPL is itself only a part of labour legislation. As highlighted in other reports (ESDE 2014) the impact of EPL and EPL reforms have to be seen in conjunction with other elements of labour legislation and labour institutions as well as the effective application of labour legislation. In addition, labour market reforms (including EPL) can complement other reforms such as on product markets and together can play a substantial role in supporting job creation.

Common labour market institutions include Active Labour Market Policies (ALMPs) such as employment subsidies, Unemployment Benefits (UB), Lifelong Learning (LLL) and Employment Protection Legislation (EPL). Chart 8 presents all those institutions together and matches them with labour market outcomes. The analysis suggests that many instruments are not only interrelated but sometimes more effective when combined with other policy instruments (e.g. think of combining UB and ALMPs). Indeed countries with the combined highest investment in activation, training and effective unemployment benefits were those that fared better in the crisis. Flexicurity is an important tool for achieving such performance, by building on four key components to be improved and combined, in order to achieve better labour market outcomes: a) employment legislation, b) ALMPs, c) LLL and d) social protection.

([39]) The distinction between monetary and non-monetary aspects of the EPL is important for the effects of EPL on hiring decisions. See discussion on tax and non-tax components of EPL.

Chart 8: Labour market institutions index, average for the top and bottom labour market performers, 2012



Sources: ESDE 2014. LMP and UB spending data from Eurostat LMP database, Lifelong learning data from Eurostat (trng_lfs_02), data on opinions of managers (part of LLL component) is from IMD WCY executive survey and IMD World Competitiveness yearbook 2012, eligibility requirements and job-search conditionalities for unemployment benefits are from Venn (2012) and EPL index is from the OECD database.

Notes: The top and bottom LM performers are ranked according to their transitions from temporary to permanent contracts and exits from STU to employment with only large countries used in both groups. The labour market institutions index is a composite Z-score index of EPL (permanent contracts and gap between permanent and temporary contracts v3), ALMP (expenditure in % of GDP and activation/job search conditionalities), lifelong learning (participation rates of total population and opinions of managers about skills from IMD WCY executive survey) and unemployment benefits (expenditure per person wanting to work in PPS, eligibility criteria and coverage). 2008 EPL values were used for 2007 due to availability of data. The EPL values were all turned into negative values so that the lowest EPL gap and lowest EPL value for permanent contracts had the highest Z-score. The eligibility requirements (part of UB indicator) and job-search conditionalities for unemployment benefits have only 2012 data available in both years. The UB spending for 2012 uses 2011 values, expect for EL and the UK for whom 2010 values are used. The mean value in 2012 for each indicator is that of the 2007 scores in order to be able to compare the 2012 scores with those of 2007. For 2012 ALMP expenditure 2011 values used for CY, ES, IE, LU, MT and PL, and 2010 values used for EL and the UK. For EPL in 2007 for EE, LU and SI, 2008 values were used.

5. THE ROLE OF CIVIL JUSTICE AND OTHER LITIGATION

This section looks at the effectiveness and efficiency of civil justice in ensuring the enforcement of labour law and *de facto* EPL. It looks at length of trials as an indicator of the efficiency of civil and commercial justice. It then tries to establish some correlations between EPL indicators and indicators of efficiency of civil justice. Using regression analysis it looks at the role EPL plays in job finding and separation (dismissal) controlling for the efficiency of civil justice.

The role of civil and administrative courts, labour courts and other judicial entities in settling civil and commercial disputes and employment law disputes in particular is an important aspect of the enforcement of legislation. Judicial effectiveness and efficiency can have an important role in ensuring the *de facto* flexibility and protection provided by labour law and contractual arrangements. They can contribute to job creation.

Specific EPL features are the outcome of different legal and institutional traditions. Countries with civil and common law traditions provide employment protection in different ways. In the former, EPL tends to be regulated by law, while in the latter it relies more on contracts and private litigations. In common law countries, courts have ample judicial discretion as opposed to civil law where procedural codes play a greater role. The role of jurisprudence is relevant in both as it may create a wedge between de jure and de facto protection through enforcement of the legislation and how in practice tribunals handle labour disputes. Moreover, EPL is an articulated set of institutions enshrined not only in law but also in collective and individual labour contracts.

5.1. The efficiency of civil justice and the enforcement of EPL

The efficiency of civil courts is highly heterogeneous across Europe. As the 2015 EU Justice Scoreboard ([40]) and its accompanying CEPEJ study ([41]) show, the disposition time ([42]) of a litigious civil or commercial lawsuit in first instance varied between 53 days in Luxembourg and 750 days in Malta in 2013 (Chart 9).

Similarly, the World Bank 'time for enforcing contracts' indicator swung between 300 days in Lithuania and 1 580 days in Greece in 2014 ([43]) (Doing Business dataset; see Annex 4 for more detailed information on these indicators). Lorenzani and Lucidi (2014) present an analysis of the determinants of different trial lengths in Europe, including legal origin and structural characteristics of the legal systems.

Such heterogeneity has an impact on the resolution of employment law cases. In countries where EPL is strict and resolving such a case is lengthy, employers will *de facto* face higher uncertainty and costs than those foreseen in legislation.

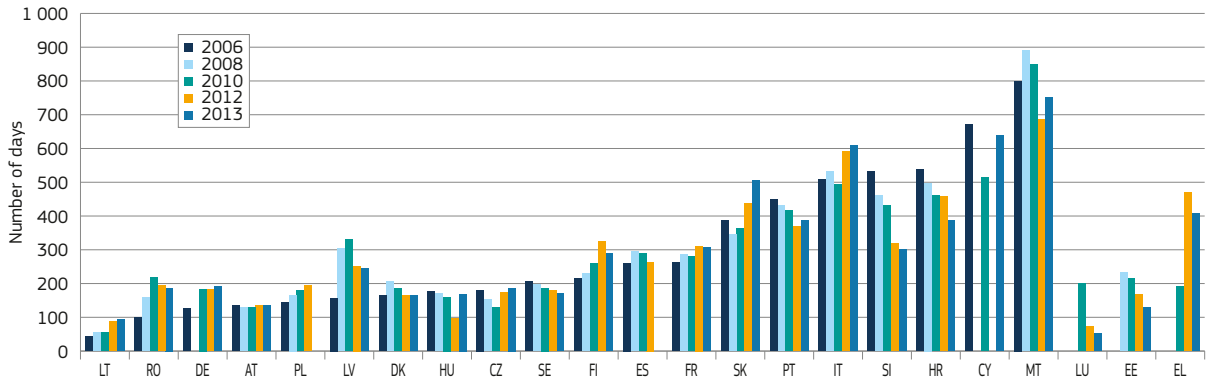
([40]) COM(2015) 116 final.

([41]) 2015 Study on the functioning of judicial systems in the EU Member States, carried out by the CEPEJ Secretariat for the Commission. Available at http://ec.europa.eu/justice/effective-justice/index_en.htm.

([42]) The disposition time is an estimated indicator of average trial length in days. It is measured as the ratio between the number of pending cases at the end of a period and the number of resolved cases during the period, multiplied by 365. It is a proxy measure of the overall length of the proceedings.

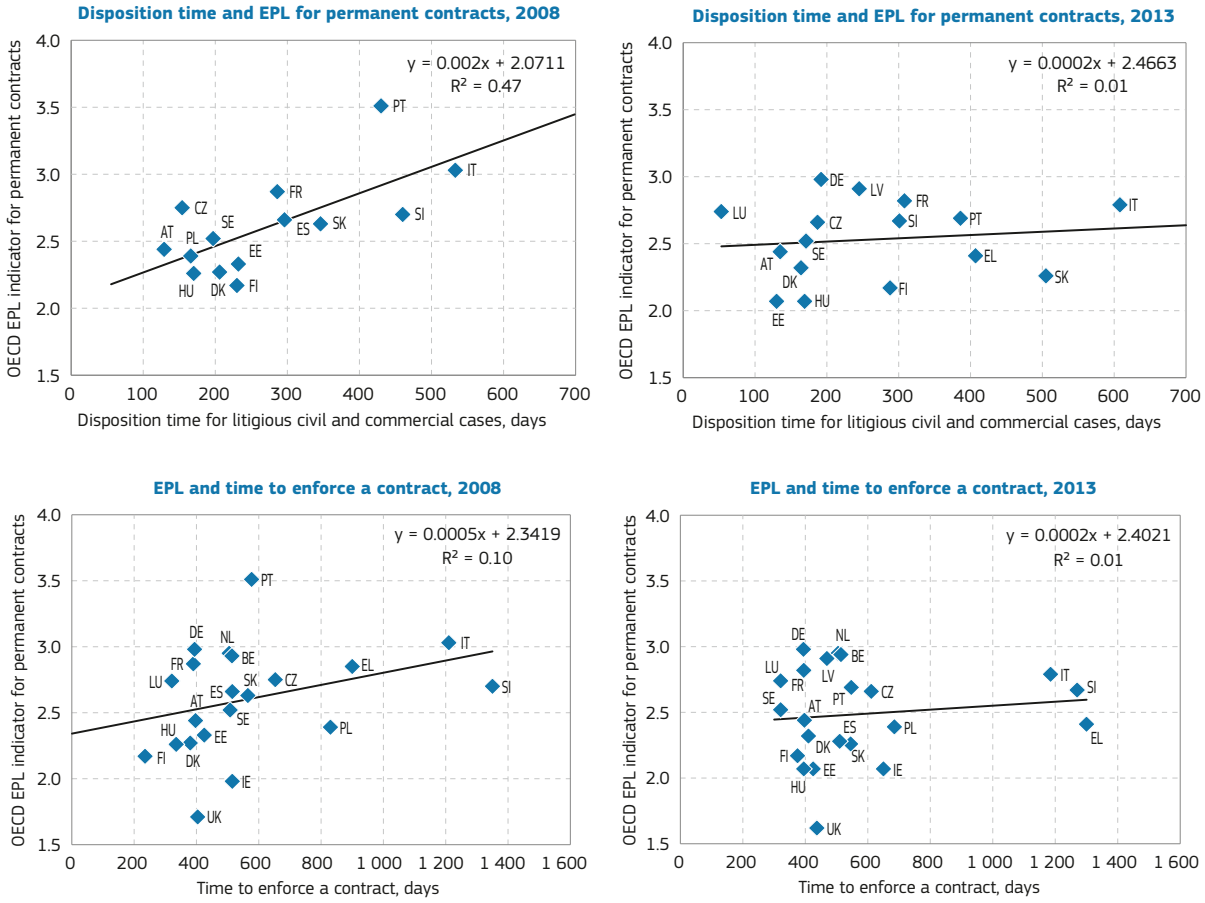
([43]) While the disposition time is computed through actual data provided by Ministers of Justice, the World Bank indicator is based on a survey among professionals, who are asked to assess the time required for the resolution of a standard commercial case (in the capital city of each country – data is only available for multiple cities for a few countries). Accordingly, it only provides an approximation of the actual average disposition time (although the two indicators are significantly correlated). However, it has the advantage of a yearly update and enhanced coverage (all EU Member States are included). This indicator is computed through a different methodology which takes into account further instances beyond the first one, which explains the longer estimated trial length on average.

Chart 9: Disposition time for civil and commercial litigation



Source: CEPEJ and EU Justice Scoreboard.

Chart 10: EPL and civil justice efficiency indicators, 2008 and 2013



Sources: CEPEJ, World Bank and OECD.

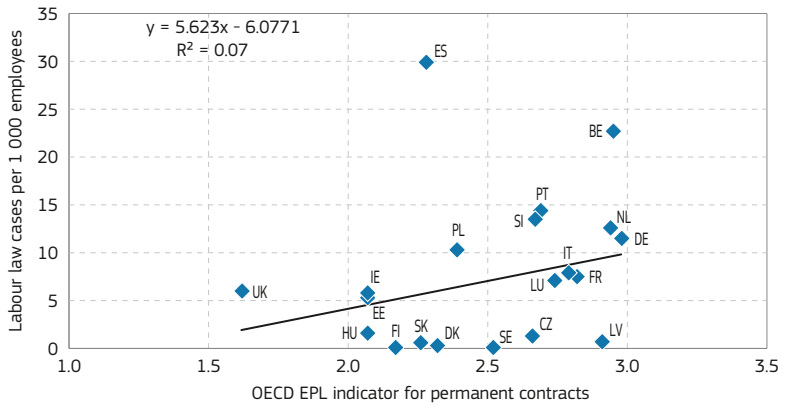
Note: The EPL indicator measures protection against both individual and collective dismissals (OECD EPRC index, see Table 2).

This is especially the case for courts' decisions on unfair dismissal, namely in countries where the reinstatement of dismissed workers is possible (e.g. Boeri et al., 2013).

Exploring the correlation between EPL and civil justice efficiency indicators can provide interesting insights into the occurrence of these patterns. As comparable cross-country information about the time needed to resolve employment cases is not available, the chapter uses the above-mentioned Commission/CEPEJ and World Bank indicators (referring to both civil and commercial lawsuits) as proxies. It is assumed that the duration of employment law cases is distributed similarly to the average duration of civil and commercial cases (of which they constitute a subset) in a given country ([44]). The stringency of EPL is measured with the OECD EPL indicator for permanent contracts, including additional

([44]) Note that this chapter uses only information on time costs. Statistical information about the monetary cost of litigation is rather limited. The World Bank collects information on average court and attorney fees but for a standard commercial case, not employment law cases, and fees might be very different in the context of labour law. Therefore, the trial length or time cost is considered a better proxy for judicial efficiency in a given country.

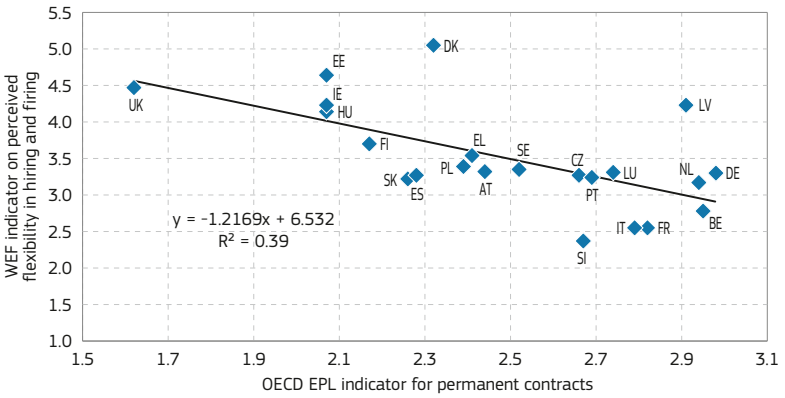
Chart 11: EPL and employment litigation, 2013



Sources: European Labour Law Network (ELLN) and OECD.

Note: No data available for AT, BG, CY, EL, HR, MT; DK: 2014; FR: 2012; HU: 2010; CZ, FI, LT, NL, SK: resolved cases. The EPL indicator measures protection against both individual and collective dismissals (OECD EPRC index, see Table 2).

Chart 12: EPL and WEF hiring and firing practices indicator, 2013



Sources: World Economic Forum and OECD.

Note: The EPL indicator measures protection against both individual and collective dismissals (OECD EPRC index, see Table 2).

requirements for collective dismissals (temporary contracts being less susceptible, by nature, to litigation).

A positive and statistically significant correlation between EPL stringency and trial length (measured using both available indicators) emerged in 2008 (Chart 10). This suggests that, at the beginning of the crisis, higher stringency of EPL went hand in hand with a longer time to resolve disputes, causing extra costs stemming from the judicial system in countries with already strict dismissal regulation.

By 2013 the relation between EPL and trial length becomes much weaker. Labour market reforms reducing the stringency of EPL for permanent workers have been implemented in several countries with a trial length above the average. By contrast, trial length has generally increased during the crisis, including in some countries with low EPL such as Finland and Ireland.

Several countries with efficient civil justice systems present an EPL index above the average, most notably Germany. Whether this combination of high EPL and efficient resolution of disputes can lead to favourable labour market outcomes is a relevant question, as it would suggest that lengthy and uncertain judicial procedure creates a wedge between *de jure* and *de facto* EPL. An econometric preliminary analysis will be done in the next section.

Structural factors such as legal origin might jointly influence both EPL and the efficiency of resolving disputes. According to some literature on the economic outcomes of different legal systems (e.g. La Porta et al., 2008), common law regimes are more business-friendly and less prone to rent-seeking behaviour than civil law regimes, based on detailed civil codes. As such, they would result in quicker enforcement of contracts and less burdensome legal procedures.

Similar reasoning applies to EPL. According to Venn (2009) who looks at OECD countries, the EPL index is lower on average in common law countries than in civil law ones, with countries based on German or Scandinavian systems in between. However, this is likely to become less relevant over time as there is an ongoing convergence process. Since the 1990s civil law countries have reduced the strictness of EPL, while common law countries have remained generally stable (if not slightly increasing).

5.2. EPL and employment litigation

There is a positive relationship between the stringency of EPL and the number of incoming labour cases as a proportion of total employees (Chart 11, based on employment cases data from the European Labour Law Network of experts ([45])). On average, countries with a more rigid and complex set of labour rules are characterised by a higher propensity to bring employment cases to court (similar results are presented in Venn, 2009). However, there are a non-negligible number of countries where, in spite of strict EPL, bringing employment cases to court is quite rare. This is typically the case of Member States where alternative dispute resolution mechanisms (e.g. mediation) effectively reduce litigation, and/or where employment law cases are resolved within the framework of collective agreements (typically in Scandinavian countries).

5.3. Civil justice efficiency and perceived EPL

The efficiency in resolving employment law cases might influence the perception stakeholders have about the stringency of labour legislation in a given country. That is, countries with a relatively low stringency of EPL but with inefficient resolution of such cases might be perceived as characterised by more rigid labour

([45]) The European Labour Law Network (ELLN), composed of 31 labour law experts, is the European Commission's official advisory board on issues relating to individual and collective employment and labour law. Experts were requested to provide recent statistical data on labour litigation at national level. As an outcome of the request, figures on incoming labour cases (or, alternatively, for resolved cases) are available for all Member States but 6 (AT, BG, CY, EL, HR, MT).

markets than countries with relatively high EPL but more efficient resolution of cases.

The World Economic Forum provides an indicator of perceived EPL. This indicator, based on a survey of business leaders in the framework of the Global Competitiveness Report, ranks employers' perception about flexibility in hiring and firing practices on a scale between 1 (more rigid) and 7 (less rigid). This indicator negatively correlates with the OECD EPL index for permanent contracts (including additional requirements for collective dismissals) in 2013 (Chart 12). Nonetheless, there are some cases where employers' perception differs from what could be expected by looking at the actual stringency of labour market regulation, as measured by the OECD. Efficiency in resolving employment law cases may be one reason for this discrepancy.

In order to test this hypothesis, a simple regression is done which regresses the WEF 'hiring and firing practices' indicator on the OECD EPL indicator for permanent contracts, the World Bank 'time for enforcing contracts' indicator, and year dummies, over the 2008-2013 period. The time needed for enforcing contracts entails a negative and statistically significant (though small in magnitude) effect on the perceived flexibility of hiring and firing (Table 5). Taking Italy as an example, the estimated coefficient would imply that halving the time for resolving civil disputes (from 1 185 to 593 days) would be related to an increase in the WEF indicator by 0.32 (i.e. by 12 %, considering an average level of 2.66 over the period).

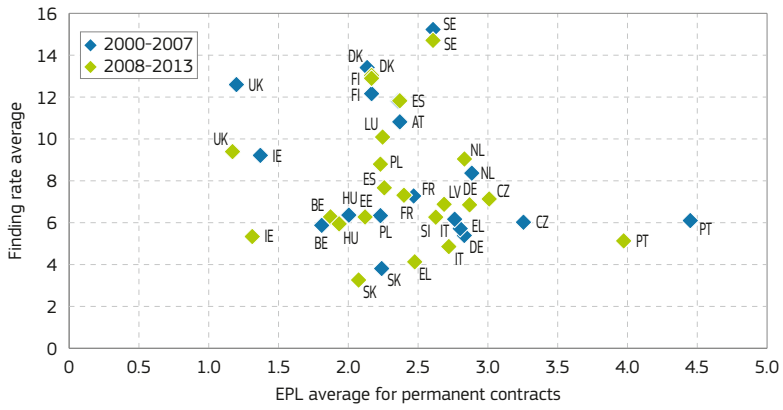
Table 5: Determinants of WEF 'hiring and firing practices' indicator

EPL for permanent workers	-1.250*
	(0.136)
Time for enforcing a contract	-0.00054*
	(0.000186)
Constant	6.838*
	(0.366)
Year dummies	Yes
Obs.	128
R-squared	0.489

Notes: OLS regression. Standard errors in parentheses.

* All coefficients significant at 5 % level.

Chart 13: Job finding rate and strictness of EPL: 2003-2007 vs. 2008-2013



Sources: Commission Services and OECD.

5.4. Impact of EPL on job finding and separation rates: the effectiveness of the judicial system

EPL generally comprises both a transfer (e.g. severance payments from the employer to the employee) and a deadweight loss (notably procedural costs, long disputes in courts). While the deadweight loss component inevitably raises effective labour costs, thereby weighing not only on dismissal decisions but also on hiring ([46]), the transfer component of EPL may be neutral provided that real wages are sufficiently flexible to compensate for the insurance element involved (e.g. Bertola and Rogerson, 1997).

Strict employment protection affects the adjustment capacity of labour markets, and may hamper structural change. EPL reduces the likelihood that jobs are destroyed in the presence of shocks, but, by raising the effective cost of employment, it also dampens job creation. Lower job destruction coupled with reduced creation (lower flows in and out of firms) is likely to translate into longer unemployment spells or into greater labour market segmentation, resulting from a high share of fixed-term jobs. In countries with strict EPL, unemployment can become permanent after a deep recession. Moreover, the design of employment protection, with notice and severance pay that usually rises with tenure, can also influence the composition of the employed and unemployed at given employment and unemployment levels (Bertola et al., 2007).

Job market flows

Economic theory suggests that employment protection reduces both job separations and hiring. By increasing the firing costs borne by firms, EPL also reduces the present value of a filled job for the employer, thereby leading to lower job creation (Mortensen and Pissarides, 1994; Bertola, 1999; Garibaldi, 1999).

Chart 13 provides a visual description of the relation between the EPL index for regular contracts and the job finding rate. A similar relation is also observed for the separation rate. The job finding and separation rates are also positively related with the index for temporary contracts.

Table 6 shows cross-country regressions of the job finding and separation rates on various components of the overall EPL index, controlling for common aggregate shocks. As suggested by theoretical models, restrictive legislation for individual and collective dismissals (i.e. stricter additional requirements in case of collective dismissals) reduces both job finding and separation rates and leads to longer spells of unemployment. Strict legislation on temporary contracts is associated with higher finding and separation rates, but the effect is imprecisely estimated and it cannot be excluded that it is zero. The disposition time and the time to enforce contracts are alternative measures of the effectiveness of settling employment law cases.

Countries are distributed according to whether the disposition time (columns 2-3) or the time to enforce contracts (columns 4-5) is above or below the respective median times. The estimate suggests that EPL has a stronger negative effect on job finding rates in countries where it takes a long time to resolve a case. It also means

([46]) The latter is due to the fact that the firm incorporates potential future dismissal costs in the hiring decisions.

Table 6

Effect of EPL on job finding rates: EU countries, 1997-2013

	Full sample (1)	Disposition time below median (2)	Disposition time above median (3)	Time to enforce contracts below median (4)	Time to enforce contracts above median (5)
Explanatory variables					
Overall EPL sub-indicators					
EPL on regular contracts	-1.57***	-1.89	-2.33**	-0.38	-1.53*
	[0.45]	[2.63]	[0.87]	[1.21]	[0.87]
EPL on temporary contracts	0.19	-0.41	1.38	0.31	0.83
	[0.49]	[1.42]	[1.03]	[0.68]	[1.11]
EPL on collective dismissals	-1.96***	-1.48	-2.63**	-1.91***	-2.03*
	[0.52]	[1.63]	[0.93]	[0.53]	[1.11]
R-squared	0.27	0.13	0.58	0.36	0.31
Observations	276	72	54	106	110

Estimation method: cross-section regression including year effects. Unbalanced panel; heteroscedastic and cluster robust standard errors in brackets.
* Statistically significant at 10% level ** Statistically significant at 5% level *** Statistically significant at 10% level

Effect of EPL on job separation rates: EU countries, 1997-2013

Dependent variables	Full sample (1)	Disposition time below median (2)	Disposition time above median (3)	Time to enforce contracts below median (4)	Time to enforce contracts above median (5)
Explanatory variables					
Overall EPL sub-indicators					
EPL on regular contracts	-0.13***	-0.23	-0.19	0.007	-0.26**
	[0.05]	[0.18]	[0.13]	[0.11]	[0.11]
EPL on temporary contracts	0.11	-0.03	0.25	0.01	0.30**
	[0.07]	[0.06]	[0.25]	[0.04]	[0.15]
EPL on collective dismissals	-0.16***	-0.21*	-0.16*	-0.19***	-0.16
	[0.045]	[0.11]	[0.08]	[0.05]	[0.11]
R-squared	0.21	0.35	0.27	0.58	0.38
Observations	276	72	54	106	110

Estimation method: cross-section regression including year effects. Unbalanced panel; heteroscedastic and cluster robust standard errors in brackets.
* Statistically significant at 10% level ** Statistically significant at 5% level *** Statistically significant at 10% level

that reforms to reduce firing costs have a stronger positive impact on job finding rates in countries where the effectiveness of the judicial system is relatively low.

For example, the EPL index for Sweden and Slovenia was about 2.6 (slightly above the median of 2.4 and the average of 2.5) in 2013. In Sweden, however, the time to enforce contracts (disposition time) is one quarter (about half) that of Slovenia, which implies ceteris paribus that the job finding rate is at least between 1 and 2 percentage points above that of Slovenia. Conversely a reduction in the EPL indicator for both countries of a magnitude comparable to that observed for Slovenia in 2014 (i.e. from 2.6 to 2.2) would be accompanied by an increase in the finding rate in Slovenia by 0.6 percentage points but no major change in Sweden. Job separation rates give similar findings.

These results provide initial evidence in favour of the hypothesis that inefficient civil justice adds up to strict EPL as a reason for subdued employment flows in a given country. Increasing EPL on regular contracts (e.g. by strengthening dismissals regulation) would imply a reduction in both job finding and separation rates (the latter only statistically significant when using World Bank data) in countries with excessive trial length, which in turn is related to higher uncertainty in the resolution of employment law cases.

Further analysis would be needed to investigate more in-depth the magnitude of the interaction effect between EPL and trial length, as well as to check the impact of further explanatory variables such as the monetary cost (for employers and employees) of bringing an employment case to court. Moreover, it is important to note that while EPL reforms are expected to increase labour market dynamics, i.e. entry and exit into and from employment, in the presence of weak labour demand the entry dynamics may be more modest. More generally, this points to the importance of distinguishing between the short and long-term effects of EPL reforms, as in the short-term the outcomes may be influenced strongly by the current economic and labour market situation.

6. Health and safety at work – how it can support better jobs, productivity and growth

This section provides a general overview of the recent developments in the EU in area of occupational safety and health (OSH), in particular concerning the implementation of the EU Strategic Framework on Health and Safety at Work 2014-2020, the ex-post evaluation of 24 EU OSH directives, tackling demographic change and protection of workers from the risks to chemicals.

Health and safety at work is one of the EU's longest standing priorities in the social field. As a result, a broad strategic policy framework has been developed in this area including a comprehensive body of EU legislation ([47]) and a series of action plans and strategies contributing to safer and healthier work environment for over 217 million workers across Europe. Risk prevention and health protection at the workplace benefits not only workers but also contributes to Member States' productivity and competitiveness, and improves the sustainability of their social protection systems. These economic and social benefits of public policy on health and safety at work are well documented in terms of positive impact on growths and productivity, and reduction of accidents and illnesses. Investment in improving health and safety at work contributes to better jobs and hence workers' wellbeing, and is also cost effective producing high ratios of return, averaging 2.2, and in a range between 1.29 and 2.89.

Despite the significant reduction in accidents and better prevention in the EU there is no time to rest on laurels as new challenges caused by, for example, the changing world of work and the use of new technologies, and existing OSH issues need to be dealt with.

6.1. Implementation of the EU Strategic Framework on Health and Safety at Work 2014-2020

The recent Strategic Framework for Health and Safety at Work 2014-2020 ([48]) aims at ensuring that the EU continues to play a leading role in the promotion of high standards for working conditions both within the European Union and internationally. In line with the Europe 2020 Strategy, it contributes to improving job quality and job satisfaction, while improving the competitiveness and productivity of European companies.

In particular, the Strategic Framework identifies key challenges and strategic objectives for health and safety at work, together with actions and instruments to address and achieve them.

The three major challenges are: 1) to improve implementation of existing health and safety rules, in particular by enhancing the capacity of micro and small enterprises to put in place effective and efficient risk prevention measures; 2) to improve the prevention of work-related diseases by tackling new and emerging risks without neglecting existing risks; 3) to take account of the ageing of the EU's workforce.

The Strategic Framework sets out a foundation for action, cooperation and exchange of good practice to improve health and safety at work in the EU. The commitment of all relevant stakeholders such as national authorities, social partners and EU institutions is vital for successful implementation of this Framework, the adoption of which has already triggered a very constructive and positive dynamics as regards OSH.

Some Member States are already reviewing their own national strategies in light of the EU Strategic Framework, in consultation with relevant stakeholders, including their national social partners. Other EU institutions, such as the Council, the European Economic and Social Committee and the Committee of the Regions have adopted conclusions and opinions on it. The European Parliament is currently working on its feedback to the Strategic Framework. Specialised committees such as the Advisory Committee on Safety and Health at Work and Senior Labour Inspectors Committee, as well as European Agency for Safety and Health at Work have aligned their work plans to target their actions in support of the implementation of the Strategic Framework. At the same time, the Commission is taking actions such as developing an EU OSH information system and providing tools to support OSH risks management. All these joint efforts will contribute to EU workers health, safety and wellbeing and also will boost its growth, productivity and competitiveness.

The Strategic Framework will be reviewed in 2016 in the light of the results of the ex-post evaluation of EU OSH directives and progress on its implementation.

6.2. Ex-post evaluation of 24 EU health and safety at work directives

In line with the objectives of the EU OSH Strategic Framework the Commission is currently carrying out a full ex-post evaluation of EU health and safety legislation, which includes specific consultations with social partners.

Pursuant to Framework Directive 89/391/EEC, the Commission is committed to evaluating virtually the entire body of the EU OSH legislation (24 Directives). The evaluation is listed in the REFIT programme and it covers relevance, effectiveness and coherence of the legislation as well as administrative burdens. Due to its broader scope and specific regulatory regime under the Framework Directive, the ex-post evaluation aims at a wider evaluation of the legislation including in terms of benefits, of research and new scientific knowledge.

The Commission will present the results of the evaluation and provide, where appropriate, suggestions on how to improve the functioning of the EU OSH regulatory framework. The Commission document will be based, on the one hand, on national implementation reports provided by Member States, and on the other hand on the outcomes of a preliminary report set out by an independent external contractor. In addition, the Commission will use the experience it has gained from monitoring the transposition and application of the directives in the Member States.

([47]) A non-exhaustive list of examples includes:
– Regulation No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation ofcertain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 *(on rest periods).*
– Regulation 1899/2006 of the European Parliament and of the Council of 12 December 2006 amending Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation *(dealing with rest requirements, fatigue).*
– Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels.
– Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (16th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).
– Directive 2003/10/EC of the European Parliament andof the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (17th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC activities).

([48]) http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0332.

6.3. Addressing the ageing of the EU workforce

Europe is facing a demographic change with working-age population shrinking and a number of older people rising. In this context, health and safety at work of the ageing workers has been identified by the EU OSH Strategic Framework 2014-2020 as one of the key challenges in this area.

An opinion poll carried out by the European Agency for Safety and Health at Work (EU-OSHA) ([49]) shows that a large majority of EU citizens think that good health and safety practices are very important to help people work for longer before they retire. On the other hand, the results of Eurobarometer survey indicates that only three in ten workers (31%) say there are measures to adapt their workplace for older people ([50]). Thereby, there is a clear need for action.

In this respect, the EU OSH Strategic Framework sets the improving health and safety of older workers as one of its key strategic objectives and proposes concrete actions to address this issue including: identification and exchange of good practice on ways to improve OSH conditions for older workers; promotion of rehabilitation and reintegration measures and; raising awareness and sharing information and tools through the Healthy Workplaces Campaigns ([51]) coordinated by EU-OSHA.

Furthermore, EU-OSHA carries out, on behalf of the Commission, the European Parliament's pilot project on health and safety of older workers running from 2013 until the end of 2015. It is investigating OSH policies and initiatives taken and tools available at the EU, national, intermediaries and company level. It aims to assess the prerequisites for OSH strategies and systems to take account of an ageing workforce and ensure better prevention for all throughout working life. The project will provide and share examples of successful and innovative practices. In doing so, the work aims to highlight what works well, what needs to be done or prioritised and to identify the main drivers and obstacles to effective implementation of policy initiatives in this area. A great deal of the produced information will be used by the next Healthy Workplaces Campaign 2016-2017 on ageing workers in its awareness raising activities and when sharing good practice.

Joint efforts are needed to better protect each and every worker in Europe and to make sure that ageing people not only work in healthy and safe conditions, but also enjoy their retirement afterwards in good health.

6.4. Protection of workers from the risks related to chemicals: new term of office of the Scientific Committee on Occupational Exposure Limits (SCOEL)

A new term of office has commenced on 14 April 2015 with a new membership of the Scientific Committee on Occupational Exposure Limit Values to Chemical Agents (SCOEL). 21 members from the EU were selected solely on the basis of their scientific excellence and experience on the subject. The Committee will be of key importance to providing the European Commission on request with dedicated recommendations and opinions regarding occupational exposure limits and related issues.

The prevention of occupational risks related to chemicals is covered by two key Directives among the group of 24 mentioned above: the Chemical Agents Directive (CAD) ([52]) and the Carcinogens and Mutagens Directive (CMD) ([53]).

Both Directives establish Occupational Exposure Limit values, which are airborne concentrations of chemicals that should not be exceeded in the workplace in order to protect the health of workers. They constitute to be an important and specific tool for risk assessment and risk control in the workplace, and therefore, they facilitate the compliance with the provisions contained in the Directives.

Occupational limit values should be based in the latest available scientific data by means of an independent scientific assessment. For this purpose, the Commission has established and has been operating over the last two decades the SCOEL. On the basis of this evaluation and after having consulted the relevant stakeholders, the Commission proposes limit values at European level that are further transposed into national limit values at Member States level. The process of setting up occupational limit values at EU level constitutes a good example of evidence-based policy making, and how scientific knowledge is used to improve the health protection of European workers.

The mandate of SCOEL is to examine available information on toxicological and other relevant properties of chemical agents, evaluate the relationship between the health effects of the agents and the level of occupational exposure, and when possible recommend values for occupational exposure limits which it believes will protect workers from chemical risks. SCOEL was first set up in 1995 and its members were selected following an invitation from the European Commission to the Member States that requested the nomination of suitable candidates in their countries, although they acted as independent experts and not as representatives of their Member States. The Commission Decision 2014/113/EU ([54]) establishes a new selection procedure based in an open call for expression of interest. This ensures transparency and equal opportunities for highly qualified and specialised scientific experts across all the EU countries.

Following an open call for expressions of interest ([55]), members of SCOEL have been selected and appointed in 2015 for a new term of office of three years. All SCOEL members act as independent experts and provide scientific knowledge in the areas, inter alia, of chemistry, toxicology, epidemiology, occupational medicine and industrial hygiene.

7. Summary and conclusions

Labour legislation is seen as a key determinant of job creation together with other institutional, public administration and product market conditions. Labour legislation in the EU today is the result of more than two centuries of history which have shaped many of its dimensions,

([49]) EU-OSHA, Opinion poll, 2012, https://osha.europa.eu/en/priority_groups/ageingworkers.

([50]) Eurobarometer, 2014 http://ec.europa.eu/public_opinion/flash/fl_398_sum_en.pdf.

([51]) EU-OSHA Healthy Workplaces Campaigns https://osha.europa.eu/en/healthy-workplaces-campaigns.

([52]) OJ L 131, 5.5.1998, p. 11.

([53]) OJ L 229, 29.6.2004, p. 23.

([54]) OJ L 62, 4.3.2014, p. 18.

([55]) OJ C 373, 21.10.2014, p. 14.

with country differences in rules and procedures that reflect different legal and institutional traditions (e.g. civil law vs. common law differences). EU legislation sets minimum standards in a number of important areas, while promoting an overall improvement in working conditions and avoiding social dumping across the EU.

Two theories for the existence of labour law have been put forward. One explains the existence of labour legislation in relation to society's goals of fairness and ensuring a more equal distribution of wealth, power and goods. The other puts forward that labour legislation exists to address market failures caused by transaction costs and asymmetric information, potential coercion and opportunism by employers given the potential incompleteness of contracts, and the wish to promote efficiency and competitiveness through a well-coordinated and flexible division of labour. In addition to these a theoretical justification based on rights, i.e. that labour law in market economies is justified by some more 'forceful' type of rights, has been developed.

Labour legislation as a means to support job creation must be analysed in conjunction with the other determinants and in view of continuous socio-economic change. Socio-economic and structural change (associated with technology, globalisation, population ageing, greening of the economy, equal opportunities…) is changing the world of work. Technology and globalisation can create opportunities with new products and markets but also new working structures.

Technological innovation has the potential for developing safer production processes and can help mitigate physical or psychosocial barriers to labour market participation of women, older workers, those with family responsibilities and disabled workers. It can allow for more flexible working arrangements (in terms of both time and place of work) allowing a better fit between abilities and preferences and a better work life balance. The more globalised world where even micro companies have gone global requires some additional flexibility in terms of time and place of work for example.

Labour legislation often defines normal working hours, rest days and place of work. The question is whether more flexibility in these aspects is needed in order to allow for better reconciliation between work, family and private life and encourage labour market participation of various population groups, when the figure of the employee working 9 to 5 for one employer at the employer premises is becoming less of a norm. The employment contract has indeed become ever more varied to adjust to new realities and various other types of contracts cover what is in fact the provision of work services. Ongoing socio-economic and structural changes can make a case for labour legislation to be revisited and, as appropriate, updated, clarified or just consolidated in view of the new socio-economic realities.

The important question, of course, is whether this wider range of contracts may come at the expense of job quality. Stable and predictable work relationships and in particular more permanent types of contracts induce employers and employees to invest more in skills and lifelong learning. They allow individuals to plan for their future by providing sustainable prospects of career and earnings progression. In contrast, more temporary contracts, especially when unwanted by the worker, can lead to low levels of training, low motivation, low productivity, poor access to social protection and in-work poverty.

As indicated in the 2016 AGS, the more general move towards more flexible labour markets should facilitate employment creation but should also be combined with transitions towards more permanent contracts. It should not result in more precarious jobs but rather in a fair balance between flexibility and security.

Does more employment protection reduce job creation? The answer is: it all depends. The chapter suggests that EPL must be seen in relation to other dimensions and notably the effectiveness of judicial systems. While EPL can have an impact on the job finding and separation rates, the analysis suggests this can be mediated by the effectiveness of the judicial system. Initial analysis indicates that an inefficient civil justice system can add up to strict employment protection legislation as a reason for subdued employment flows in a given country. Excessive trial length, which in turn is related to higher uncertainty in the resolution of employment law cases, combined with strict employment protection for regular contracts can reduce job finding and separation rates. In other words, less efficient civil justice puts a wedge between the de jure legislation and the de-facto.

Annex 1: Overview of EU labour law

Table 7: Overview of EU labour law

Short summary	Directive Title	
	Working conditions – Individual rights	
Information on individual employment conditions	**Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.**	This Directive establishes the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. It aims to provide employees with improved protection, to avoid uncertainty and insecurity about the terms of the employment relationship and to create greater transparency on the labour market. The Directive states that every employee must be provided with a document containing information on the essential elements of his/her contract or employment relationship.
Health and safety in fixed term and temporary employment	**Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.**	This Directive aims to ensure that workers on fixed-term and temporary contracts are afforded the same level of protection, including in the area of health and safety, as that of other workers. In particular, Member States may prohibit the use of temporary workers to perform tasks that are particularly dangerous, especially work requiring special medical surveillance. Where Member States do not use this option, they must ensure that all workers who are called on to perform work requiring special medical surveillance have access to this.
Young people at work	**Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.**	The Directive on the protection of young people at work is partly a health and safety measure and partly a human rights measure, prohibiting child labour and protecting young people's education and development. The main points of the Directive are as follows. • The minimum working age must not be lower than the age when compulsory schooling ends, or 15 years in any event. Exemptions are possible, for example for children aged at least 14 on work-experience schemes, and for those aged at least 13 performing light work. • Employers must take special measures to protect the safety and health of young people (those under the age of 18), in areas such as the physical work environment, work organisation, training, and health monitoring. • Young people must be protected from risks to their safety, health and development arising from their lack of experience, risk-awareness or maturity. They must not do work that is harmful or beyond their capacity. • Adolescents aged 15 to 17 must not generally work more than 8 hours a day and 40 hours a week. Stricter limits apply to under-15s, where they are allowed to work. • Young people must not generally perform night work. • Adolescents must have a daily rest period of at least 12 consecutive hours. Where under-15s work, their daily rest period must be at least 14 consecutive hours. • Young people must generally have a minimum weekly rest period of 2 days, consecutive if possible. • Where their daily working time exceeds 4.5 hours, young people are entitled to a rest break of at least 30 minutes.
Posting of workers	**Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.**	The Directive seeks to ensure that transnational service provision occurs in a fair competitive environment and respects workers' rights. It aims both to protect businesses' basic internal market freedom to provide services in other Member States and to prevent social dumping. Therefore, when companies send their employees temporarily to other EU countries to provide services, the directive gives these workers the basic employment rights that apply in the country to which they are posted. These relate to: • maximum work periods and minimum rest periods; • minimum paid annual holidays; • minimum rates of pay – though it should be noted that the Directive does not oblige Member States to set minimum wages if they do not already exist in the country in question; • the conditions for hiring out workers, in particular by temporary work agencies; • health and safety; • protection for pregnant women, women who have recently given birth, and minors; • equal treatment and non-discrimination.
Posting of workers	**Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (Text with EEA relevance).**	The Posting of Workers Enforcement Directive aims to safeguard respect for posted workers' rights in practice and strengthen the legal framework for service providers. In particular, the Enforcement Directive: • increases the awareness of workers and companies about their rights and obligations as regards the terms and conditions of employment; • improves cooperation between national authorities in charge of posting (obligation to respond to requests for assistance from competent authorities of other Member States – a 2 working day time limit to respond to urgent requests for information and a 25 working day time limit for non-urgent requests); • clarifies the definition of posting so as to increase legal certainty for posted workers and service providers, while at the same time tackling 'letter-box' companies that use posting to circumvent the law; • defines Member States responsibilities to verify compliance with the rules laid down in the 1996 Directive (Member States designate specific enforcement authorities responsible for verifying compliance; and Member States where service providers are established need to take necessary supervisory and enforcement measures).

Short summary	Directive Title	
Part-time work	**Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC. Council Directive 98/23/EC of 7 April 1998 on the extension of Directive 97/81/EC on the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland. Note: based on EU social partner agreement**	The Directives prohibit discrimination against workers in non-standard forms of employment: Part-time workers must not be treated, in terms of their employment conditions, less favourably than comparable full-time workers solely because they work part time, unless different treatment is justified on objective grounds. Directive 98/23/EC is an extension of Directive 97/81/EC on the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland.
Fixed-term work	**Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by the ETUC, UNICE and CEEP. Note: based on EU social partner agreement**	The Directives prohibit discrimination against workers in non-standard forms of employment: fixed-term workers must not be treated, in terms of their employment conditions, less favourably than comparable 'permanent' workers solely because they have a fixed-term contract or relationship, unless different treatment is justified on objective grounds.
Working time	**Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.**	The EU working time Directive was primarily conceived as a health and safety measure, because factors such as excessive working hours, inadequate rest and unregulated night work have damaging health effects. The Directive's main points are as follows. • Workers' average weekly working time (including overtime) must not exceed 48 hours. Weekly hours may be averaged over a period of 4 to 12 months. Countries have the option of exempting workers from the 48-hour maximum working week, if workers agree to this individually. • If their working day is longer than 6 hours, workers are entitled to a rest break. • Workers must have a minimum daily rest period of 11 consecutive hours, and a minimum weekly rest period of 35 hours. • Workers have a right to paid annual leave of at least 4 weeks. • Night workers must not generally work for more than 8 hours per shift on average, and must be subject to special health and safety protection. This Directive consolidates Directives 2000/34/EC and 93/104/EC.
Temporary agency work	**Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.**	The Directives prohibit discrimination against workers in non-standard forms of employment. Temporary agency workers' basic working and employment conditions (those relating to pay, working time and holidays) must, during their assignment at a user undertaking, be at least those that would apply if they had been recruited directly by that undertaking to do the same job.
Employer insolvency	**Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Text with EEA relevance).**	This Directive ensures payment of employees' outstanding claims in the event of employer insolvency. It requires Member States to set up an institution to guarantee the payments. If an insolvent employer had activities in at least two EU Member States, an employee's outstanding claims must be met by the institution in the Member State where the employee worked.
	Working conditions – Sectorial	
Maritime transport	**Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Ship owners' Associations (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST). Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Ship owners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC. Note: based on EU social partner agreement**	Directive 2009/13 set up specific rules on working conditions for seafarers notably defining either a maximum working time of 14 hours per day and 72 hours per week, or a minimum rest time of 10 hours per day and 72 hours per week. Directive 2009/13/EC amends Directive 1999/63/EC.

Short summary	Directive Title	
Civil aviation	**Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by AEA, ETF, ECA, ERA and IACA (Text with EEA relevance). Note: based on EU social partner agreement**	This Directive set up specific rules in civil aviation such as a maximum annual working time of 2 000 hours, including maximum flying time of 900 hours (from when the aircraft first moves from its parking position until it comes to rest in the designated parking position and engines are stopped).
Road transport	**Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities.**	This Directive establishes minimum requirements in relation to the organisation of working time in order to improve the health and safety protection of persons performing mobile road transport activities and to improve road safety and align conditions of competition.
Rail transport	**Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. Note: based on EU social partner agreement**	This Directive set up specific rules in cross-border rail services such as a maximum daily driving time of 9 hours on day shifts and 8 hours on night shifts, subject to a maximum of 80 hours' driving time within 2 weeks.
Inland waterway transport	**Council Directive 2014/112/EU of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF). Note: based on an EU social partner agreement)**	The Directive sets minimum rules on working time for passenger or cargo transport ships in inland navigation across the EU.
Working conditions – Collective rights		
Collective redundancies	**Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.**	Collective redundancies are defined as a certain number of dismissals for reasons not related to the individual workers concerned over a certain period. EU countries may choose between applying the Directive to,: • over a period of 30 days, at least 10 redundancies in establishments employing 21-99 workers, redundancies affecting at least 10% of the workforce in establishments employing 100-299 workers, and at least 30 redundancies in establishments employing 300 or more workers; or • over a period of 90 days, at least 20 redundancies, whatever the number of workers employed in the establishment. An employer envisaging collective redundancies must consult representatives of the workers in good time with a view to reaching an agreement. These consultations must, at least, cover ways of avoiding or reducing the redundancies, and of mitigating the consequences. Directive 98/59 consolidates Directives 75/129/EEC and 92/56/EEC.
European Company Statute	**Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).**	This Statute allows companies incorporated in different Member States to establish themselves as a company under EU law by merging or converting into an SE, or forming an SE holding company or an SE joint subsidiary, and to operate throughout the EU according to some unified rules.
European Company Statute	**Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.**	The legislative framework also provides for the involvement of employees – information and consultation, plus board-level employee participation in some circumstances – in European companies. This Directive sets out to ensure that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE. Companies participating in the formation of a European company must negotiate with the employees via a special negotiating body (SNB) made up of employee representatives. The negotiations are expected to result in a written agreement on the employee involvement arrangements.

Short summary	Directive Title	
Transfer of undertakings	**Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.**	The transfer of undertakings Directive protects employees' rights in case of business transfers. The key employment-protection provisions are as follows. • When an undertaking is transferred to another employer, the rights and obligations arising from employment contracts or relationships must be transferred from the 'old' employer (the transferor) to the 'new' employer (the transferee). • A transfer must not in itself constitute grounds for an employee's dismissal by the transferor or the transferee. However, this does not prevent dismissals for economic, technical or organisational reasons. • After a transfer, the transferee must observe the terms of any collective agreement that applied to the transferor, until the agreement expires or a new one comes into force. This Directive consolidates Directives 77/187/EC.
Information and Consultation of employees	**Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.**	It establishes a general framework setting out minimum requirements for the right to inform and consult employees in undertakings or establishments within the European Community. Information and consultation are required on the following. • The recent and probable development of the undertaking's or the establishment's activities and economic situation. • The situation, structure and probable development of employment within the undertaking or establishment and any anticipatory measures envisaged, in particular where there is a threat to employment. • Decisions likely to lead to substantial changes in work organisation or in contractual relations. To avoid undue burdens on small and medium-sized enterprises, the Directive applies only to undertakings employing at least 50 employees, or to establishments employing at least 20 employees, according to the choice made by the Member State.
European Cooperative Society (SCE)	**Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).**	Cooperatives wishing to engage in cross-border business may make use of the Statute of European Cooperative Society (SCE) established by the Regulation. This Regulation establishes a legal statute for a European Cooperative Society (SCE) and guarantees equal terms of competition between cooperative societies and capital companies. It contributes to the development of the cross-border activities of cooperative societies. The establishment of an SCE statute aims to encourage the development of the internal market by facilitating the activity of this type of company at European level. With the same aim, the Council adopted Regulation (EEC) No 2137/85 relating to European Economic Interest Grouping and Regulation (EC) No 2157/2001 (see above) relating to a Statute for a European Company, and Directive 2005/56/EC (see below) on cross-border mergers of limited liability companies.
European Cooperative Society (SCE)	**Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.**	This special supplementary Directive provides for the involvement of employees in European Cooperatives. Information, consultation and in some cases, participation procedures at transnational level are to be used whenever a European Cooperative is created. These procedures are established as a priority through an agreement. The arrangements for the involvement of employees (information, consultation and participation) shall be established in every SCE.
Cross-Border Mergers	**Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (Text with EEA relevance).**	This Directive regulates cross-border mergers of limited-liability companies. It fills an important gap in the European company law by setting up a simple framework in which as a general rule each merging company is governed by the provisions of its national law applicable to domestic mergers. The Directive responded to strong demand from businesses to facilitate cross-border mergers in the EU which had previously been impossible or very difficult and expensive; it aimed to reduce costs and guarantee legal certainty for companies taking part in these procedures.
European Works Council	**Directive 2009/38 of the European Parliament and of the Council of 6 May 2009 on the establishment of a European works council or a procedure in a community scale group of undertakings for the purposes of informing and consulting employees.**	European Works Councils are bodies representing the European employees of a company. Through them, workers are informed and consulted by management on the progress of the business and any significant decision at European level that could affect their employment or working conditions. Member States are to provide for the right to establish European Works Councils in companies or groups of companies with at least 1 000 employees in the EU and the other countries of the European Economic Area (Norway, Iceland and Liechtenstein), when there are at least 150 employees in each of two Member States. This Directive recasts Directives 94/45/EC and 97/74/EC.

Annex 2: Employment Protection Legislation

Components of EPL

EPL consists of rules and procedures that impose limits on the adjustment of the workforce. It refers to provisions defining the lawfulness of dismissal, formal and procedural requirements to be followed in case of individual or collective dismissals, payments to workers for early contract termination and penalties imposed on unfair dismissal, hiring restrictions (e.g. favouring specific groups of disadvantaged workers or limiting specific types of contracts).

Individual dismissals, regular contracts

EPL legislation generally contains a number of conditions to be respected by employers for dismissing workers. Otherwise the dismissal is unfair, with implications in terms of obligations for the employer and rights to compensation for the worker. The main aspects of EPL for individual dismissals from regular contracts are as follows.

- *Probationary period.* During the trial period both parties can terminate the employment relationship at no cost. Employers may favour long probationary periods as it is cheaper to discourage less qualified applicants from seeking jobs than to renegotiate the contracts of workers who are found to be unsuitable. However, to avoid the risk of employers abusing long trial periods, legislation may establish maximum trial periods. In some countries, temporary derogations from the maximum trial period are allowed, most notably for work-related training. In some cases, trial periods include lower dismissal costs at the beginning of the employment relationship.

- *Procedural requirements and notice periods*. Written notice may need to be given prior to dismissal. Long notice periods may have monetary implications as they imply involuntary and possibly unproductive employment. Failure to comply with the notice period may give the worker rights to compensation for lost earnings. Notification time usually increases with job tenure. The dismissal procedure may need to be authorised or discussed with third parties, such as unions or administrative authorities.

- *Reasons for individual dismissal*. Most regulations dealing with employment termination impose an obligation on the employer to justify the dismissal. Dismissal may be justified: (i) on disciplinary grounds or for personal reasons, other than discrimination; (ii) on economic grounds (redundancy, technological change, unsuitability of the worker). While dismissals on disciplinary grounds do not imply compensation for the worker, dismissals on economic grounds may imply compensation.

- *Role of judges.* Valid reasons for dismissal and the discretion of judges in questioning employers' decisions vary in national legislations. Valid reasons for dismissal can be broadly defined, allowing for a disparate range of situations. Alternatively, they may be very detailed, reducing the oversight of judges over employers' decisions.

- *Consequences of unfair dismissal.* In common law countries the law or collective agreements often provide for severance payments for employees in case of dismissals without necessarily requiring a justified economic reason for the dismissal. In civil law countries, the legislation often prescribes justified economic reasons. If such reasons are not justified the employer may have to reinstate the employee. Similarly, a dismissal can be declared without just cause and the court may order the employer to reinstate the worker. Monetary compensation as an alternative to reinstatement may exist, or either the employer or the employee may choose the type of sanction. In addition to reinstatement, employers may have to pay damages to employees for wage losses and the unpaid social security contributions for the period between the dismissal and the judgment.

- *Design of severance payments.* Severance pay consists of a lump sum payment to a worker who has been involuntarily laid-off. Entitlement may be enshrined in law or in collective agreements. The payment may differ according to the reason for dismissal (justified or not justified). Severance payments for justified dismissals do not exist in all countries, while for unjustified dismissals they are usually an alternative to reinstatement. The size of severance payments is often linked to length of tenure and the wage at the moment of dismissal, and may be subject to a maximum cap. The amount is negatively linked to the length of notice given to the dismissed employee.

Collective dismissals

Collective dismissal procedures are triggered by the simultaneous dismissal for economic reasons of a certain number of employees. The legislation often defines additional requirements for the employers in case of collective dismissals, in view of the social implications arising from the lay-off of a large number of employees in a short period of time and/or in a specific geographical area. Compared with individual dismissals, collective dismissals generally have to fulfil additional procedural requirements for the dismissal to be valid. Rules on collective dismissals include the following elements.

- *Definition of collective dismissal.* The legislation sets the minimum number of workers (usually linked to the plant size) to be dismissed in a given lapse of time and location for the dismissal to be considered as collective.

- *Procedural and notification requirements.* Employers are required to consult workers' representatives when contemplating collective dismissals to find alternative solutions to dismissals whenever possible. Employers are also asked to notify public authorities of the intention to make collective dismissals.

- *Criteria for selecting employees to be dismissed.* Transparent and non-discriminatory criteria may be indicated by law, in collective agreements, or announced by the employer at the moment of dismissal.

- *Implications of unfair collective dismissals.* In most cases, severance payments provided irrespective of the specific reason for individual economic dismissal are also due in case of collective dismissal. Additional monetary compensation (e.g. co-financing of unemployment benefits)

may have to be paid by the employer. National legislation may provide for other consequences for the non-respect of procedural and notification requirements for collective dismissal.

Legislation on fixed-term contracts

EPL legislation also provides for the conditions under which fixed-term contracts can be used and the main features of such contracts. Employers may have an incentive to use a series of fixed-term contracts rather than regular contracts to save on dismissal costs. The legislation places constraints on the use of such contracts with a view to preventing discrimination against fixed-term workers and possible abuse of fixed-term contracts. Requirements generally consist of pre-defined cases justifying the use of fixed-term contracts and limits on the number of renewals or the total duration of accumulated contracts. The most frequent reasons given in legislation for justifying the use of fixed-term contracts are: coping with unexpected fluctuations of demand; replacing permanent staff on holiday, maternity leave or sick leave; hiring workers with specialised skills to carry out specific projects; and start-up ventures implying risky and uncertain returns.

Different types of contract reflect different needs for the use of temporary labour. While permanent contracts usually have similar features within each country, different types of temporary work contract may exist to match conditions for their use to the specific needs. In the case of a very short-term need to replace temporarily absent permanent workers, interim work is often chosen because of relatively low procedural costs.

Main features of EPL regulations across EU countries ([56])

Where EPL differs most is in the arrangements for individual dismissals from regular contracts. It differs not only in terms of the degree of stringency but also in the instruments used to protect workers against dismissal. The main issues are:

- *Individual notice and dismissal*. Normally, procedures depend on whether the reason for dismissal is personal, due to the worker's incapacity or for disciplinary reasons, or economic. Procedures may depend on the type of worker, company size, and trade union membership. In general, personal dismissal procedures tend to be lighter. In some countries employers have to notify one or more third parties (normally workers' representatives, the public employment service, labour inspectorate or other government authorities), perhaps at the request of the employee, if they intend to dismiss an employee. Apart from notification, employers may also have to justify dismissals to third parties. Delays before notice can start may exceed 1 month.

- *Definition of justified or unfair dismissals*. In some countries fair dismissal is not defined restrictively and unfair dismissals are limited to cases which are not reasonably based on economic circumstances or on discrimination (e.g. Belgium, Czech Republic, Denmark, Greece, Hungary, Ireland, Italy, Poland, Slovakia, Slovenia, the United Kingdom). In some countries, dismissals are not justified if they are not based on an effective and relevant reason (e.g. Finland, France). In addition, in case of redundancy, dismissals are considered as unfair if the employer fails to take into account the specific circumstances of dismissed workers such as the social dimension (e.g. France, Germany, Austria), tenure (e.g. Estonia, Sweden) and family responsibilities (e.g. Slovenia), or if the dismissal aims to improve profits at the expense of stable profits (France) or because the employee wants to make use of his/her rights to parental leave (the Netherlands). In some countries, fair dismissal requires specific alternatives to redundancy to be considered. These alternatives may include retraining, rehabilitation and/or a transfer of a worker to another position in a firm (e.g. Austria, Finland, Estonia, France, Germany, Sweden).

- *Trial period, notice period and severance pay*. Monetary costs related to dismissal depend on both the length of the notice period and severance payments. In some countries employers do not have to pay any severance payments but notice periods can be very long (e.g. Belgium, Denmark, Finland, Sweden). In others, severance pay is the main cost of dismissal (e.g. Spain). Notice and severance pay generally do not apply during the trial period. The maximum trial period in the EU spans from less than 1 month to 12 months; in the majority of countries it is between 3 and 6 months. Severance payments are usually financed wholly by the dismissing employer, but in some countries severance payments are shared among several employers. In Austria for instance, severance payments are financed via a fund in the name of the employee, which is portable across employers until it is used up (dismissal or retirement) and to which all employers in the career history of the employee contribute.

- *Compensation and reinstatement if dismissal is unfair*. In the case of unfair dismissal, firms have additional obligations to an employee. Normally, a worker is entitled either to a monetary compensation on top of what is normally required for fair dismissals or to be reinstated, and employers may also have to pay the worker's foregone wages ('back pay'). The regime for reinstatement differs widely across EU countries. In some cases reinstatement is not foreseen (e.g. Belgium, Finland) while in others the decision about reinstatement is left to the worker (e.g. Austria, Czech Republic). Firms may have to bear additional compensation in the absence of reinstatement (e.g. Luxembourg, United Kingdom). In some countries, firms have to both reinstate a worker and provide the salary due from the date of dismissal to the date of reinstatement – with back pay usually capped- (e.g. Italy, Portugal).

There is less variation in terms of legislation to deal with collective dismissals across EU countries. There is a series of common elements linked to the existence of common EU principles to be followed in case of collective dismissals enshrined in EU Council Directives 75/129 and 98/59/EC.

- *Definition of collective dismissal*. National laws generally refer to the minimum number of workers dismissed in a given period of time, most often linked to firm or plant size.

([56]) Information in this section is mostly based on OECD http://www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm or ILO http://www.ilo.org/dyn/eplex/termmain.home. Further information can be found on the website of the European Labour Law Network at http://www.labourlawnetwork.eu/home/prm/52/%20size__1/index.html.

- *Notification and consultation procedures*. In all EU countries, employers are required to inform and consult with workers' representatives when planning collective dismissals. Consultation usually covers alternatives to redundancy and ways to mitigate its effects. In many countries, the employer is also obliged to draw up a social plan that may comprise both passive (subsidies to alleviate financial hardship) and ALMP (re-training). All EU countries also oblige employers to notify planned collective dismissals to competent public authorities.

- *Dismissal selection and re-employment criteria*. EU directives require that employers notify workers' representatives of the criteria to be followed for selecting employees to be dismissed. Various countries have also introduced mandatory criteria to be followed as a protective measure for workers (e.g. Estonia, France, Germany). In some countries, rules must be followed for the reinstatement of collectively dismissed workers when employers begin hiring again (e.g. Cyprus, Finland, Luxembourg, Slovakia, Slovenia). In some countries legally binding selection criteria for dismissals coexist with priority rules for re-employment (e.g. France, Italy, Lithuania, the Netherlands, Romania, Spain, Sweden).

- *Monetary costs.* In most cases, the same severance payments provided for individual economic dismissal are also due in case of collective dismissal. In some countries, additional monetary compensation has to be provided by the employer (e.g. Belgium, Italy, Poland). In others, specific provisions are contained in the social plan (e.g. Austria, Germany, Luxembourg, the Netherlands).

The regulation of fixed-term employment differs considerably across the EU, in spite of the presence of common EU principles. Following Council Directive 1990/70/EC on fixed term contracts, at least one of three aspects of temporary contracts are legally regulated: (i) reasons justifying their use; (ii) maximum number of renewals (i.e. contracts with the same firm); (iii) maximum duration of successive fixed-term contracts. Different combinations of these elements are regulated differently across countries.

- *Reasons justifying fixed-term employment.* There is no requirement to use fixed-term contracts only in predefined cases in Belgium, Germany, Greece, Italy, the Netherlands, Poland or the United Kingdom, while others define only an objective for the extension of the first contract (e.g. Austria, Hungary). In some countries specific reasons for hiring on fixed-term contracts are defined (e.g. Finland, France, Romania).

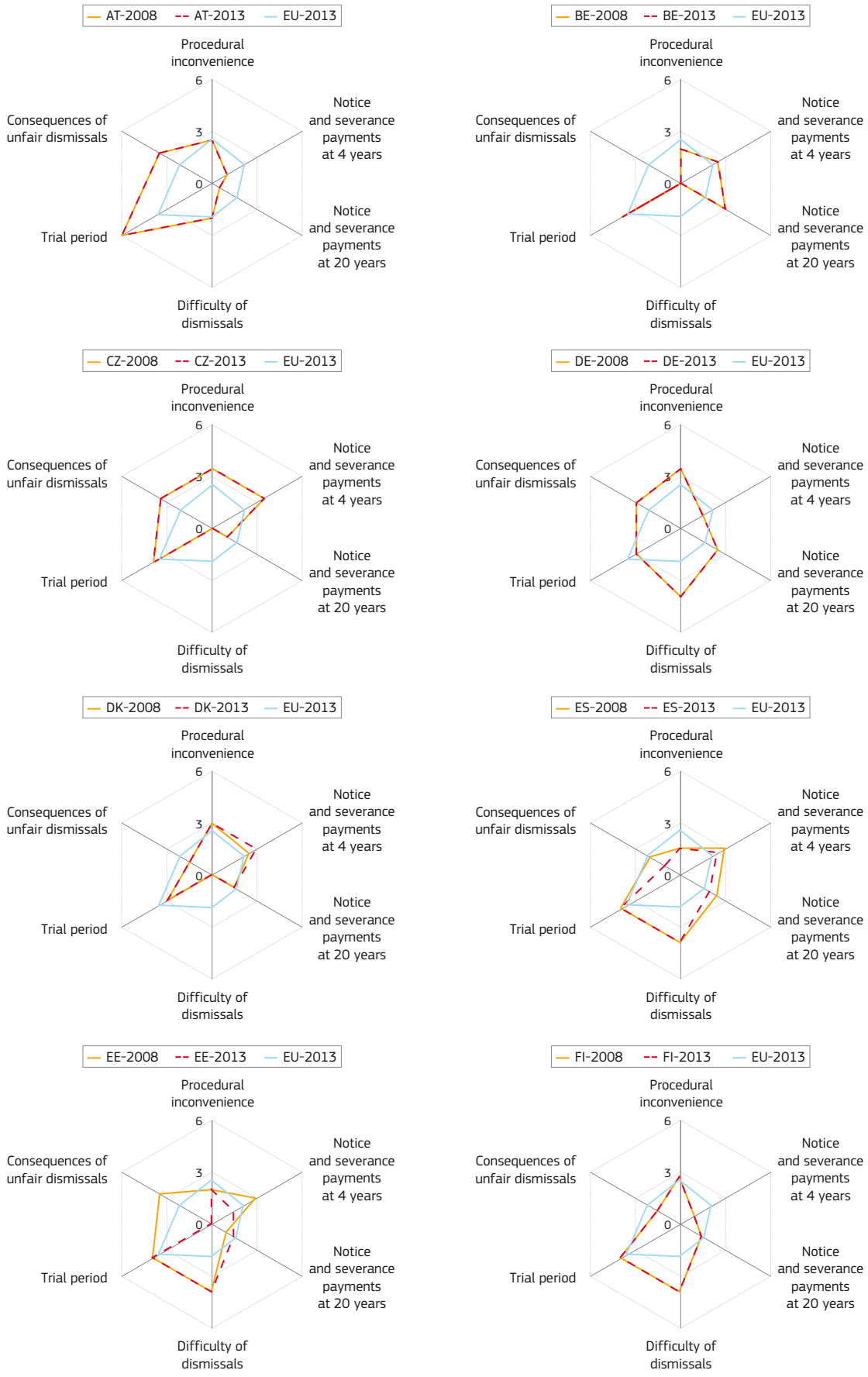
- *Renewal of fixed-term contracts*. Some countries define a maximum number of renewals of fixed-term contracts (generally between 2 and 4) while in others there is no limit to how many times the same worker can be offered a fixed-term contract. In those cases, subsequent renewals generally imply a conversion to a permanent contract except where there are objective reasons (e.g. Austria, Denmark, Hungary, Ireland). In some countries, limits on renewal and the maximum cumulative period of fixed-term contracts depend on whether the use matches pre-specified cases.

- *Maximum cumulative number of fixed-term contracts*. The cap on cumulative maximum duration may be either absent or very long (e.g. Austria, Denmark, Finland, Poland, Estonia) or rather short (between 2 and 3 years, e.g. France, Luxembourg, or Belgium if successive contracts are justified by the nature of the work). Finally, in Spain the maximum duration depends on the type of temporary contracts and may reach up to 4 years.

EPL index cross-country comparisons for 2008 and 2013

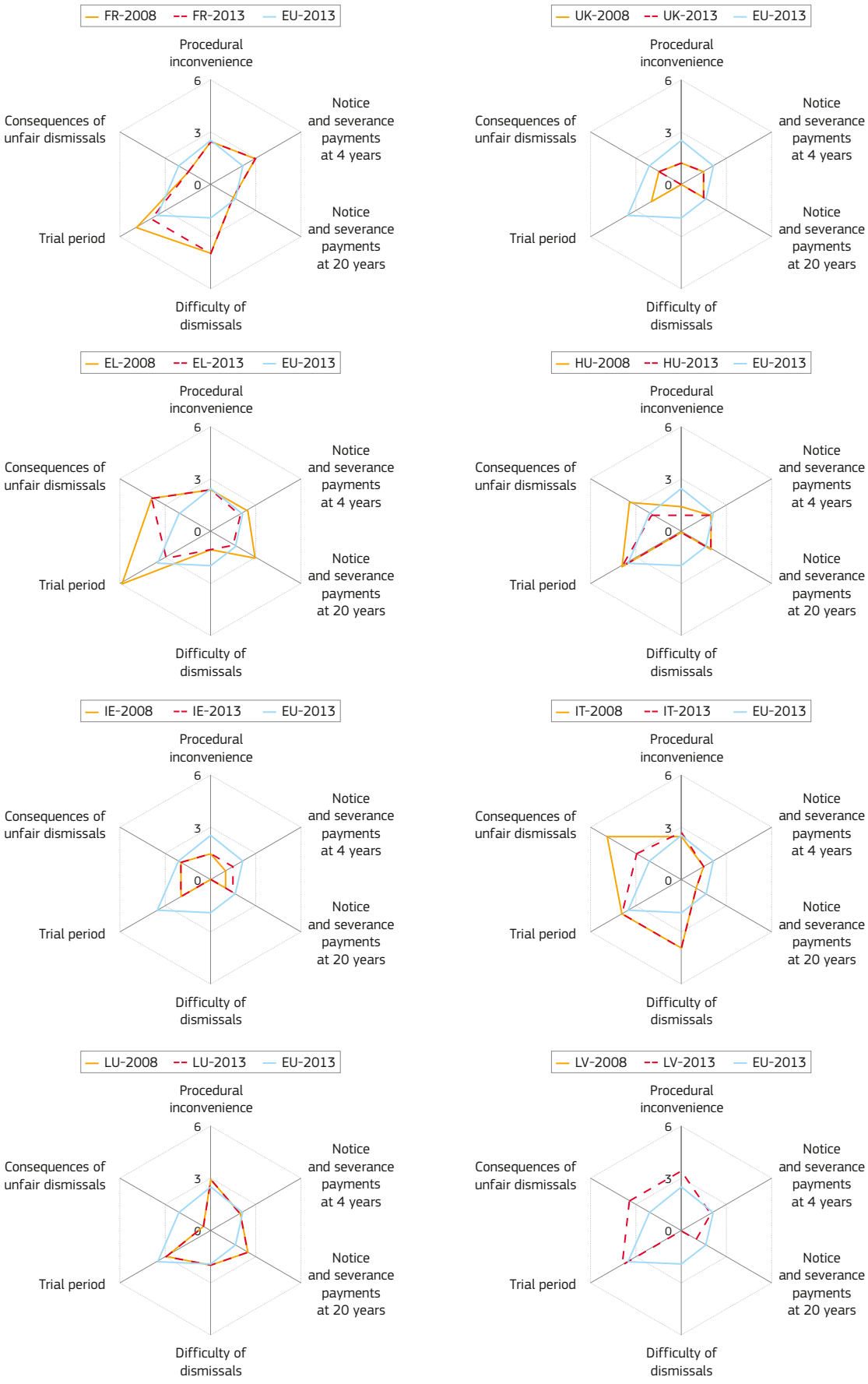
Chart 14 below shows the dimensions of EPL for regular contracts across EU countries for 2013 and 2008. The radar charts provide information about procedural inconvenience employers encounter if they intend to dismiss a worker (notification and notice period), trial period, notice and severance payments (for tenures up to 4 years and 20 years), definition of unfair dismissals and their consequences (monetary compensation and reinstatement).

Chart 14: Components of EPL index cross-country comparisons for 2008 and 2013



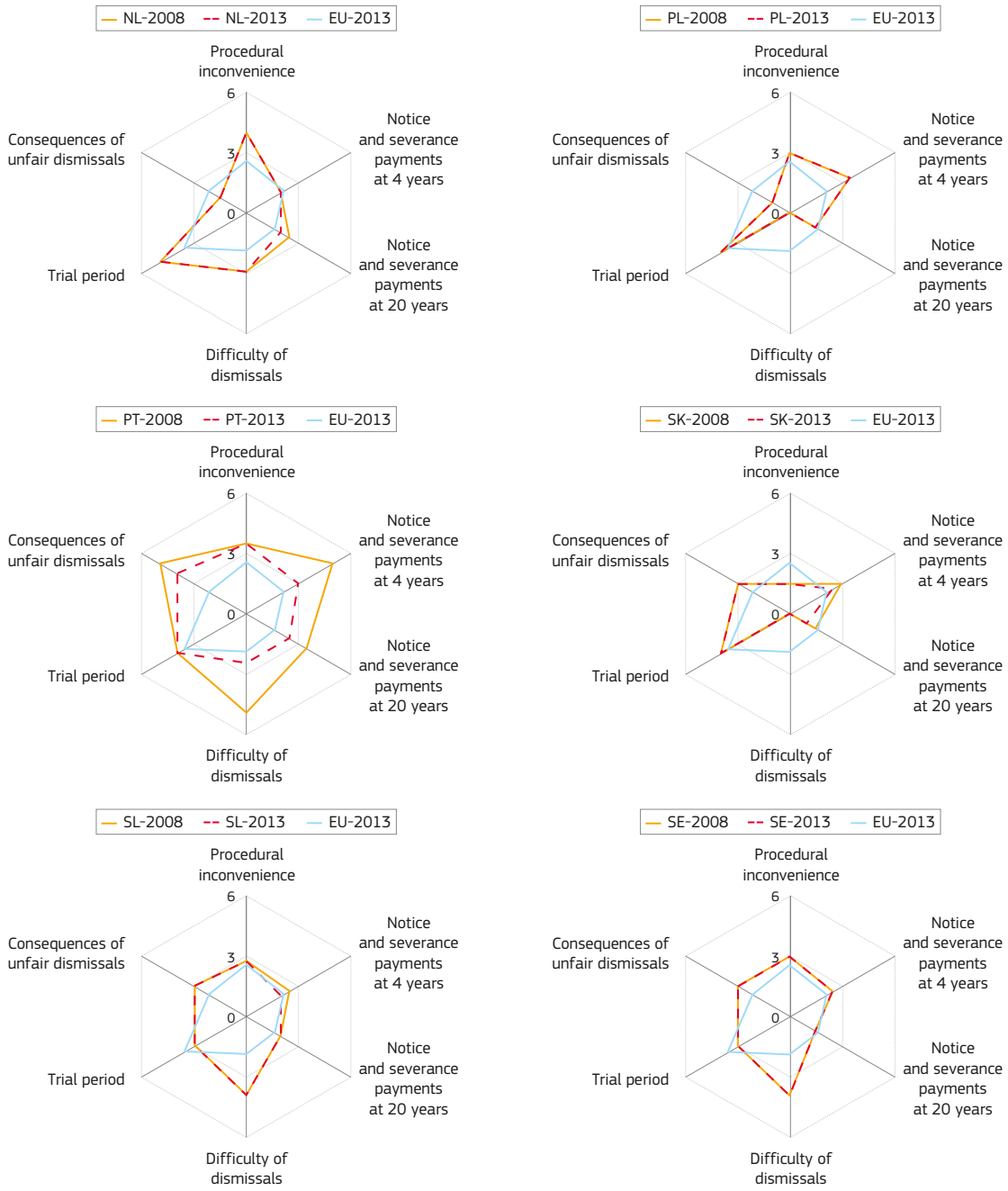
Source: OECD Employment Protection Database.

Chart 14: Components of EPL index cross-country comparisons for 2008 and 2013



Source: OECD Employment Protection Database.

Chart 14: Components of EPL index cross-country comparisons for 2008 and 2013



Source: OECD Employment Protection Database.

Annex 3: World Bank 'Doing Business' indicators of labour market regulation

Table 8: Difficulty of Hiring – World Bank Doing Business indicators

Member State	Fixed-term contracts prohibited for permanent tasks?	Maximum length of a single fixed-term contract (months)	Maximum length of fixed-term contracts, including renewals (months)	Minimum wage applicable to the worker assumed in the case study (USD/month)	Ratio of minimum wage to value added per worker
Austria	No	No limit	No limit	1 555.92	0.26
Belgium	No	No limit	No limit	2 368.12	0.41
Bulgaria	No	36 - Art. 68 of the Labour Code	36	233.18	0.27
Croatia	Yes	Labor Law on July 1st, 2013 (OG 73 / 13) - No maximum duration on first time fixed term contract	No limit	534.87	0.32
Cyprus	No	There are No specific requirements for renewing a fixed-term contract but if a contract for a permanent task is for a period of more than 30 months, it may be considered as an indefinite - term contract. - Art.7 of Employees of Fixed Term (Prohibition of Unfair Treatment) Law 98(I)/2003.	30	1 250.12	0.42
Czech Republic	No	36 months - Sec. 39 of Act No 262/2006 Coll., Labor Code, as amended.	108	544.8	0.25
Denmark	No	No limit	No limit	0	0
Estonia	Yes	60 months - Art. 9 (1) New ECA	120	457.92	0.21
Finland	Yes	There is no specific maximum duration for fixed-term employment contracts. (Chap. 1 Sect. 3 - ECA) However, after 60 months a fixed-term contract is subject to the same requirements for termination as an indefinite term contract. (Chap. 6 Sect. 1 - ECA).	60	2 287.55	0.38
France	Yes	18 months; can be extended to 24 months for work abroad or in certain other specific circumstances listed at article L.1242-8 of the Labor Code	18	1 922.57	0.35
Germany	No	No maximum duration for fixed-term contract with objective cause; 24 months for fixed-term contract without objective cause (Sect. 14 para. 2 TzBfG)	24	0	0
Greece	Yes	36 months	No limit	814.75	0.29
Hungary	No	60 months with a derogation if the contract is subject to official approval, in which case the term is that which was officially approved, which may exceed 5 years, § 192 of the Act I of 2012 on the Labour Code	60	453.74	0.3
Ireland	No	No limit (PEFTWA 2003)	No limit	1 809.66	0.37
Italy	No	36 months- After this period a fixed term worker acquires the right to a permanent position in the same firm (Art.1 of the Law No 368/2001)	36	2 035.74	0.46
Latvia	Yes	36 (Sec. 45(1))	36	602.77	0.32
Lithuania	No	60 (5 years x 12 months) (Art. 109(1))	60	382.61	0.21

Member State	Fixed-term contracts prohibited for permanent tasks?	Maximum length of a single fixed-term contract (months)	Maximum length of fixed-term contracts, including renewals (months)	Minimum wage applicable to the worker assumed in the case study (USD/month)	Ratio of minimum wage to value added per worker
Luxembourg	Yes	24 months - Art. L. 122-4 (1)	24	3 000.18	0.34
Malta	No	No limit. However, the law states that a temporary worker shall be considered permanent if (i) the employee has been continuously employed under one or several fixed-term contracts for more than 4 years, and (ii) if the employer cannot provide objective reasons to justify the renewal of such a contract for a fixed term.	48	952.98	0.38
Netherlands	No	36	36	1 036.47	0.17
Poland	No	No limit. However, if a fixed-term contract is signed for extensive period not justified by objective reason, it may be considered as a breach of the so-called rules of social cohabitation. In consequence, the court may consider the contract as a contract for indefinite period. Art. 25(1) of the Polish Labour Code.	No limit	535.52	0.35
Portugal	Yes	66 months, according to Law No 76/2013, of November 7th. Under this law, fixed-term contracts expected to terminate before November 8th of 2015 (included those renewd under Law No 3/2012, of January 10th) can be renewed two more times.	66	754.09	0.29
Romania	Yes	36	60	251.28	0.23
Slovak Republic	No	24 months (Art. 48(2))	24	470.54	0.23
Slovenia	Yes	24 months (Art. 55(2))	24	1 054.91	0.38
Spain	Yes	It depends on the type of fixed-term contract: (i) for a particular task or service, the contract terminates when the service or task is completed with a maximum duration of 36 months (that can be extended up to 12 months if provided in the relevant collective bargaining agreement); (ii) due to productivity needs, the maximum duration is 12 months - Art. 15(1) (a) and (b), Workers' Statute	12	1 140.02	0.31
Sweden	No	Fixed term contracts are allowed for permanent and temporary tasks up to 2 years (24 months)	24	0	0
United Kingdom	No	No limit, but employees who have worked successive fixed term contracts for a period of four years or more will become permament employees unless the employer can objectively justify the continued use of a fixed term arrangements.	No limit	1 371.67	0.27

Source: World Bank Doing Business indicators.

Table 9: Rigidity of hours – World Bank Doing Business indicators

Member State	50-hour workweek allowed for 2 months a year in case of a seasonal increase in workload?	Maximum working days per week	Premium for night work (% of hourly pay)	Premium for work on weekly rest day (% of hourly pay)	Major restrictions on night work?	Major restrictions on weekly holiday?	Paid annual leave for a worker with 1 year of tenure (in working days)	Paid annual leave for a worker with 5 years of tenure (in working days)	Paid annual leave for a worker with 10 years of tenure (in working days)	Paid annual leave (average for workers with 1, 5 and 10 years of tenure, in working days)
Austria	Yes	5.5	17%	100%	No	No	25	25	25	25
Belgium	Yes	6	0%	0%	Yes	Yes	20	20	20	20
Bulgaria	Yes	6	3%	0%	Yes	No	20	20	20	20
Croatia	Yes	6	10%	35%	Yes	Yes	20	20	20	20
Cyprus	Yes	5.5	0%	0%	No	No	20	20	20	20
Czech Republic	Yes	6	10%	10%	No	No	20	20	20	20
Denmark	Yes	6	0%	0%	No	No	25	25	25	25
Estonia	Yes	5	25%	0%	Yes	No	24	24	24	24
Finland	Yes	6	23%	100%	No	No	30	30	30	30
France	No	6	20%	20%	Yes	Yes	30	30	30	30
Germany	Yes	6	0%	0%	No	No	24	24	24	24
Greece	Yes	5	25%	75%	No	Yes	20	22	25	22.3
Ireland	Yes	6	0%	0%	No	No	20	20	20	20
Italy	Yes	6	15%	30%	No	No	26	26	26	26
Latvia	Yes	5.5	50%	0%	Yes	No	20	20	20	20
Lithuania	No	5.5	50%	100%	No	No	20	20	22	20.7
Luxembourg	No	5.5	0%	70%	No	Yes	25	25	25	25
Malta	No	6	0%	0%	No	No	24	24	24	24
Netherlands	Yes	5.5	0%	0%	Yes	No	20	20	20	20
Poland	Yes	5.5	20%	100%	No	No	20	20	26	22
Portugal	Yes	6	25%	50%	No	Yes	22	22	22	22
Romania	Yes	5	25%	100%	No	No	20	20	20	20
Slovak Republic	Yes	6	20%	0%	No	No	25	25	25	25
Slovenia	Yes	6	75%	50%	No	No	20	21	22	21
Spain	Yes	5.5	25%	0%	Yes	No	22	22	22	22
Sweden	Yes	5.5	0%	0%	No	Yes	25	25	25	25
United Kingdom	Yes	6	0%	0%	No	No	28	28	28	28

Source: World Bank Doing Business indicators.

Table 10: Difficulty of redundancy – World Bank Doing Business indicators

Member State	Maximum length of probationary period (months)	Dismissal due to redundancy allowed by law?	Third-party notification if 1 worker is dismissed?	Third-party approval if 1 worker is dismissed?	Third-party notification if 9 workers are dismissed?	Third-party approval if 9 workers are dismissed?	Retraining or reassignment obligation before redundancy?	Priority rules for redundancies?	Priority rules for reemployment?
Austria	1	Yes	Yes	No	Yes	No	No	Yes	Yes
Belgium	0	Yes	No	No	No	No	No	No	No
Bulgaria	6	Yes	No	No	No	No	No	No	No
Croatia	6	Yes	Yes	No	Yes	No	Yes	Yes	Yes
Cyprus	24	Yes	Yes	No	Yes	No	Yes	No	Yes
Czech Republic	3	Yes	No	No	No	No	No	No	No
Denmark	3	Yes	No	No	No	No	No	No	No
Estonia	4	Yes	No	No	No	No	Yes	Yes	No
Finland	6	Yes	No	No	No	No	Yes	No	Yes
France	4	Yes	No	No	Yes	No	Yes	Yes	Yes
Germany	6	Yes	Yes	No	Yes	No	Yes	Yes	No
Greece	12	Yes	No	No	Yes	Yes	No	Yes	No
Hungary	3	Yes	No	No	No	No	No	No	No
Ireland	12	Yes	No	No	Yes	No	No	No	No
Italy	2	Yes	Yes	No	Yes	No	Yes	Yes	Yes
Latvia	3	Yes	No	No	No	No	Yes	Yes	No
Lithuania	3	Yes	No	No	No	No	Yes	Yes	No
Luxembourg	6	Yes	Yes	No	Yes	No	No	No	Yes
Malta	6	Yes	No	No	No	No	No	Yes	Yes
Netherlands	2	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Poland	3	Yes	No	No	No	No	Yes	Yes	Yes
Portugal	3	Yes	Yes	No	Yes	No	Yes	Yes	Yes
Romania	3	Yes	No	No	No	No	Yes	Yes	Yes
Slovak Republic	3	Yes	Yes	No	Yes	No	Yes	No	No
Slovenia	6	Yes	No	No	No	No	Yes	Yes	No
Spain	2	Yes	Yes	No	Yes	No	No	No	No
Sweden	6	Yes	No	No	Yes	No	Yes	Yes	Yes
United Kingdom	6	Yes	No	No	No	No	No	No	No

Source: World Bank Doing Business indicators.

Table 11: Redundancy costs indicators (weeks) – World Bank Doing Business indicators

Member State	Notice period for redundancy dismissal for a worker with 1 year of tenure	Notice period for redundancy dismissal for a worker with 5 years of tenure	Notice period for redundancy dismissal for a worker with 10 years of tenure	Notice period for redundancy dismissal (average for workers with 1, 5 and 10 years of tenure)	Severance pay for redundancy dismissal for a worker with 1 year of tenure	Severance pay for redundancy dismissal for a worker with 5 years of tenure	Severance pay for redundancy dismissal for a worker with 10 years of tenure	Severance pay for redundancy dismissal (average for workers with 1, 5 and 10 years of tenure)
Austria	2	2	2	2	0	0	0	0
Belgium	8	18	33	19.7	0	0	0	0
Bulgaria	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3
Croatia	4.3	8.7	10.7	7.9	0	7.2	14.4	7.2
Cyprus	2	7	8	5.7	0	0	0	0
Czech Republic	8.7	8.7	8.7	8.7	8.7	13	13	11.6
Denmark	0	0	0	0	0	0	0	0
Estonia	4.3	8.6	12.9	8.6	4.3	4.3	4.3	4.3
Finland	4.3	8.7	17.3	10.1	0	0	0	0
France	4.3	8.7	8.7	7.2	0.9	4.3	8.7	4.6
Germany	4	8.7	17.3	10	2.2	10.8	21.7	11.6
Greece	0	0	0	0	8.7	13	26	15.9
Hungary	4.3	6.4	7.9	6.2	0	8.7	13	7.2
Ireland	1	4	6	3.7	0	11	21	10.7
Italy	2.9	4.3	6.4	4.5	0	0	0	0
Latvia	4.3	4.3	4.3	4.3	4.3	8.7	13	8.7
Lithuania	8.7	8.7	8.7	8.7	8.7	17.3	21.7	15.9
Luxembourg	8.7	17.3	26	17.3	0	4.3	8.7	4.3
Malta	2	8	12	7.3	0	0	0	0
Netherlands	4.3	8.7	13	8.7	0	0	0	0
Poland	4.3	13	13	10.1	4.3	8.7	13	8.7
Portugal	4.3	8.6	10.7	7.9	1.7	8.6	17.1	9.1
Romania	4	4	4	4	0	0	0	0
Slovak Republic	8.7	13	13	11.6	0	8.7	13	7.2
Slovenia	4.3	5.1	6.6	5.3	0.9	4.3	10.8	5.3
Spain	2.1	2.1	2.1	2.1	2.9	14.3	28.6	15.2
Sweden	4.3	13	26	14.4	0	0	0	0
United Kingdom	1	5	10	5.3	0	3.5	8.5	4

Source: World Bank Doing Business indicators.

Table 12: Social protection schemes and benefits – World Bank Doing Business indicators

Member State	Availability of unemployment protection scheme?	Health insurance existing for permanent employees?
Austria	Yes	Yes
Belgium	Yes	Yes
Bulgaria	Yes	Yes
Croatia	Yes	Yes
Cyprus	Yes	No
Czech Republic	Yes	No
Denmark	Yes	No
Estonia	Yes	No
Finland	Yes	Yes
France	Yes	Yes
Germany	Yes	Yes
Greece	Yes	Yes
Hungary	Yes	Yes
Ireland	Yes	No
Italy	Yes	Yes
Latvia	Yes	No
Lithuania	Yes	No
Luxembourg	Yes	Yes
Malta	Yes	No
Netherlands	Yes	No
Poland	Yes	No
Portugal	Yes	No
Romania	Yes	Yes
Slovak Republic	Yes	Yes
Slovenia	Yes	Yes
Spain	Yes	Yes
Sweden	Yes	Yes
United Kingdom	Yes	Yes

Source: World Bank Doing Business indicators.

Annex 4: World Bank Doing Business indicators on contract enforcement

The World Bank Doing Business indicators on enforcing contracts measure the efficiency of a country's judicial system in resolving a commercial dispute. They assess the efficiency of the judicial system by following the evolution of a commercial sale dispute over the quality of goods and tracking the time, cost and number of procedures involved from the moment the plaintiff files the lawsuit until payment is received (Table 13). The data is built by following the step-by-step evolution of a commercial sale dispute before local courts. The data is collected through study of the codes of civil procedure and other court regulations as well as questionnaires completed by local litigation lawyers and judges. The ranking of economies on the ease of enforcing contracts is determined by sorting their distance to frontier scores for enforcing contracts. These scores are the simple average of the distance to frontier scores for each of the component indicators. The most recent round of data collection was completed in June 2014.

Effective commercial dispute resolution has many benefits for businesses, as efficient and transparent courts protect economic rights and can encourage new business relationships. Speedy trials are essential for small enterprises, which may lack the resources to stay in business while awaiting the outcome of a long court dispute. Studies have shown that in countries with slower courts, on average, firms tend to have less bank financing for new investments while in countries with good contract enforcement firms tend to produce and export relatively more customised products, especially in industries where the continuation of the relationship is most important. Other research suggests that foreign direct investment tends to be greater where the cost of contract enforcement in debt collection and property eviction cases is lower, particularly when the host economy is more indebted.

Table 13: What do the enforcing contracts indicators measure?

Procedures to enforce a contract through the courts (number)
Steps to file and serve the case
Steps for trial and judgment
Steps to enforce the judgment
Time required to complete procedures (calendar days)
Time to file and serve the case
Time for trial and to obtain the judgment
Time to enforce the judgment
Cost required to complete procedures (% of claim)
Average attorney fees
Court costs
Enforcement costs

Table 14: World Bank – Enforcing contracts rank

Member State	WB enforcing contracts rank	DTF	Time (days)	Cost (% of claim)	Procedures (number)
Luxembourg	2	85.7	321	9.7	26
Austria	5	81.55	397	18	25
France	10	77.67	395	17.4	29
Belgium	10	77.67	505	17.7	26
Germany	13	76.74	394	14.4	31
Lithuania	14	75.85	300	23.6	31
Latvia	16	75.59	469	23.1	27
Finland	17	75.58	375	13.3	33
Ireland	18	75.47	650	26.9	21
Netherlands	19	75.1	514	23.9	26
Hungary	20	73.36	395	15	34
Sweden	21	72.43	321	31.2	31
Portugal	27	69.65	547	13.8	34
Estonia	32	68.91	425	21.9	35
Denmark	34	68.79	410	23.3	35
United Kingdom	36	68.08	437	39.9	29
Czech Republic	37	68	611	33	27
Romania	51	64.95	512	28.9	34
Poland	52	64.83	685	19.4	33
Croatia	54	64.81	572	13.8	38
Slovak Republic	55	64.68	545	30	33
Spain	69	62.65	510	18.5	40
Bulgaria	75	61.27	564	23.8	38
Malta	107	56.27	505	35.9	40
Cyprus	113	54.17	735	16.4	43
Slovenia	122	52.4	12 700	12.7	32
Italy	147	45.61	11 850	23.1	37
Greece	155	43.6	15 800	14.4	38

Source: World Bank Doing Business.

Table 15: World Bank – Availability of specialised courts

Member State	Availability of courts or court sections specializing in labor disputes?
Austria	Yes
Belgium	Yes
Bulgaria	No
Croatia	No
Cyprus	Yes
Czech Republic	No
Denmark	No
Estonia	No
Finland	No
France	Yes
Germany	Yes
Greece	Yes
Hungary	No
Ireland	Yes
Italy	Yes
Latvia	No
Lithuania	No
Luxembourg	Yes
Malta	Yes
Netherlands	Yes
Poland	Yes
Portugal	Yes
Romania	Yes
Slovak Republic	No
Slovenia	Yes
Spain	Yes
Sweden	Yes
United Kingdom	Yes

Source: World Bank Doing Business.

Table 16: World Bank assessment of the overall judicial system, the level of automation in the court system, the availability of alternative dispute resolution mechanisms and the availability of case management

Member State	"In the measured city, is there a small claims court or a fast-track procedure for small claims? A small claims court is a court with limited jurisdiction to hear cases with relatively small amounts of money. These courts usually have relaxed rules of civil procedure, relaxed rules of evidence and are characterized by the use of plain language."	"Is voluntary post-filing mediation available? Voluntary post-filing mediation is a type of mediation that originates from the court after the case is filed. Voluntary refers to the possibility for the parties to opt out."	"Is case management available within the competent court? Case management refers to a set of principles or techniques for controlling the movement of cases through the court, enhancing procedural efficiency and facilitating the day-to-day activities of judges, court users and court staff. Commonly used techniques in case management include setting tight timelines for key steps in processing cases, setting firm and credible hearing dates, arranging pretrial and scheduling conferences and requiring early disclosure. "	"If case management is available within the competent court, are any of its components automated? Automated case management techniques could offer: (i) the ability for lawyers and judges to effectively track the status of cases and their position in the court process from the moment a case is filed until the moment the case is resolved; (ii) detailed workload statistics and management reports; (iii) the ability to monitor case processes."	"Is a pre-trial conference part of the case management system before the competent court? A pre-trial conference is a meeting designed to narrow down contentious issues and evidentiary questions before the trial. Its purpose is to expedite the trial process while discouraging unnecessary pretrial motions or other delay tactics. "	Are Supreme Court and Appellate Court judgments published online or in official gazettes?	Fearing that the defendant may dissipate assets, move assets out of the jurisdiction or become insolvent, would the plaintiff be allowed to request and obtain attachment of the defendant's movable assets prior to obtaining a judgment?	Is it possible to carry out service of process electronically (by e-mail, SMS, fax, etc.)?
Austria	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Belgium	Yes	Yes	Yes	No	No	No	Yes	No
Bulgaria	No	Yes	Yes	Yes	No	No	Yes	No
Croatia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Cyprus	No	Yes	No	No	Yes	Yes	Yes	No
Czech Republic	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Denmark	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Estonia	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Finland	No	Yes	Yes	Yes	Yes	Yes	Yes	No
France	Yes	Yes	Yes	No	No	Yes	Yes	No
Germany	Yes	Yes	Yes	No	No	Yes	Yes	No
Greece	Yes	Yes	No	No	No	No	Yes	No
Hungary	Yes	No	Yes	No	No	Yes	Yes	No
Ireland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Italy	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Latvia	Yes	No	Yes	Yes	No	Yes	Yes	Yes
Lithuania	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes	No	Yes	No	No	No	Yes	No
Malta	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Netherlands	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Poland	Yes	Yes	Yes	Yes	No	No	Yes	No
Portugal	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Romania	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Slovak Republic	Yes	Yes	No	No	No	Yes	Yes	No
Slovenia	Yes	Yes	Yes	No	No	Yes	Yes	No
Spain	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Sweden	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
United Kingdom	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

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