



EUROPEAN SEMESTER THEMATIC FACTSHEET

EMPLOYMENT PROTECTION LEGISLATION

1. INTRODUCTION

Employment protection legislation consists of rules and procedures concerning the faculty of companies to hire or dismiss workers.

Employment protection legislation deals with:

- the lawfulness of probationary periods, mandated notice periods and severance payments (payments to workers for early contract termination);
- procedural requirements to be followed for individual dismissals or collective redundancies;
- sanctions for unfair dismissal; and
- conditions for using temporary or fixed-term contracts.

Such rules and procedures may be enshrined in law or in collective or individual labour contracts. The effectiveness of employment protection also depends on additional factors including court interpretations of legislative and contractual provisions.

Employment protection legislation is not granted uniformly in all Member States. Apart from the common minimum requirements stemming from EU legislation and other international obligations (see below), the characteristics of employment protection legislation mostly reflect different legal and institutional traditions. In countries with civil law traditions such legislation is usually regulated by law, while in common law countries it relies more on private contracts and dispute resolution. In the

latter countries courts have ample judicial discretion while in the former legislation plays a greater role.

Non-compliance with the terms of the legislation or with those agreed in collective contracts renders dismissal unlawful or invalid. This has implications for the obligations of the employer and the rights of the worker that vary between countries.

As a general rule, dismissal motivated by discriminatory reasons is considered unlawful, while protection to employees is usually not provided when dismissals are justified by major disciplinary reasons. Sanctions are generally also envisaged for the unlawful use of fixed-term contracts, i.e. outside the conditions established by legislation.

The rationale for employment protection legislation is to protect workers from arbitrary action by employers through a series of requirements the latter must comply with when dismissing workers. These reflect the social costs of dismissal to some extent. A dismissed worker loses income, tenure-related benefits and, potentially, accumulated job-specific skills and experience. If it takes a long time to find another job, some workers may also suffer negative social and health effects.

Society also bears the costs of workers losing their jobs as the financing of unemployment benefits and active labour market policies falls largely on

taxpayers. Protection against dismissal is recognised by the International Labour Organisation (ILO) Conventions¹, the EU Charter of Fundamental Rights², the EU Treaty³ and EU Directives setting minimum requirements for collective redundancies, information and consultation, and fixed-term and temporary work⁴. These directives provide a common minimum level of protection for workers in all Member States.

Unbalanced or excessively rigid employment protection legislation may have undesirable effects on the labour market. In particular, strict protection against dismissal for employees on open-ended contracts, coupled with loose regulation on temporary or other non-standard contracts, is likely to induce labour market segmentation⁵. This is because these factors may create incentives for employers to hire workers under temporary contracts in order to avoid high firing costs. Moreover, strict regulation against dismissals is usually associated with low hiring and firing

rates. These may contribute to higher unemployment rates and longer periods out of work for weaker groups such as young and/or low-skilled workers. On the other hand, there is no conclusive evidence that the strictness of employment protection legislation affects overall unemployment rates.

Employment protection legislation is usually the result of complex legislative and non-legislative frameworks. As such, there is no 'one-size-fits-all' approach and the policy response to challenges in this area should be tailored to each country's specificities. Moreover employment protection legislation should be considered as part of a broader institutional framework which includes social protection systems, active labour market policies and access to lifelong learning.

Reforms of employment protection legislation should be seen in relation to these institutional features and should be consistent with a 'flexicurity' approach⁶. Recent evidence shows that Member States that pursued comprehensive labour market reforms encompassing flexible and reliable contractual arrangements, comprehensive lifelong learning strategies, effective active labour market policies, and modern social protection systems, have better able to maintain employment and preserve fairness during the economic downturn.

The European Pillar of Social Rights aims to prevent labour market

¹ Termination of Employment Convention, 1982 (No 158).

² According to Article 30, 'every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices'.

³ Article 153 of the Treaty on the Functioning of the European Union provides for the possibility for the EU to support Member States in ensuring the protection of workers when their employment contract is terminated, and to adopt directives laying down minimum standards.

⁴ EU Directives 91/533/EEC on written statement, 1999/70/EC on individual employment conditions, 98/59/EC on collective redundancies, 2001/23/EC on transfer of undertakings, 1999/70/EC on fixed-term work, 2008/104/EC on temporary agency work.

⁵ Labour market segmentation means the coexistence in the labour market of different categories ('segments') of workers, characterised by different levels of job security and/or access to social security and other benefits and by low transition rates from less secure to more secure categories. The main distinction is typically, but not exclusively, between workers with temporary contracts and those with permanent ones.

⁶ EU Employment Guideline No 7 recommends that Member States should 'take into account the flexicurity principles' (Council Decision on guidelines for the employment policies of the Member States, 13 October 2016). Flexicurity can be defined as an integrated approach including four components: i) flexible and secure contractual arrangements; ii) lifelong learning strategies; iii) effective active labour market policies in order to facilitate transitions to new jobs; iv) modern social security systems providing adequate income support during transitions.

segmentation while making employment secure and adaptable. This is envisaged, in particular, by Principle 5 ('Secure and adaptable employment'⁷) and Principle 7 ('Information about employment conditions and protection in case of dismissals'⁸). Both of these fall under the area 'Fair working conditions'.

The **structure of this factsheet** is as follows.

Section 2 provides an identification of the main challenges commonly related to dysfunctional employment protection legislation systems. These are high segmentation and low dynamism of the labour market.

Section 3 describes policy levers related to the different challenges and aspects of employment protection legislation.

Section 4 presents an overview of the state of play across Member States.

Finally, detailed definitions and statistics are presented in the Annex.

This factsheet is related to those on active labour market policies, unemployment benefits, undeclared work, and skills for the labour market.

⁷ Principle 5 states among other things that 'the transition towards open-ended forms of employment shall be fostered' that 'in accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured' and that 'employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts'.

⁸ Principle 7 states among other things that 'prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation'.

2. POLICY CHALLENGES: AN OVERVIEW OF PERFORMANCE IN EU COUNTRIES

As discussed in the introduction, **high segmentation and low dynamism of the labour market** are the most common challenges where employment protection legislation is excessively strict or imbalanced in favour of protecting permanent workers. Moreover, undeclared work may occur as a result of excessive costs for firing regular workers, in addition to other causes such as excessive taxation on labour. (Undeclared work is discussed in a separate thematic factsheet).

The concept of labour market segmentation implies that (at least) two 'segments' coexist in the labour market. One segment of the workforce comprises workers with stable employment relationships, protection against dismissal and full access to social protection. Another segment is characterised by workers with one or more of the following:

- non-standard employment contracts⁹ providing limited or no protection against dismissal;
- unstable employment relationships and poor career prospects; and
- (frequently) limited access to social protection because they have paid social contributions for shorter periods.

⁹ Beyond the traditional distinction between employees and self-employed workers, there exist 'atypical' forms of employment such as on-demand, on-call, casual, 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.

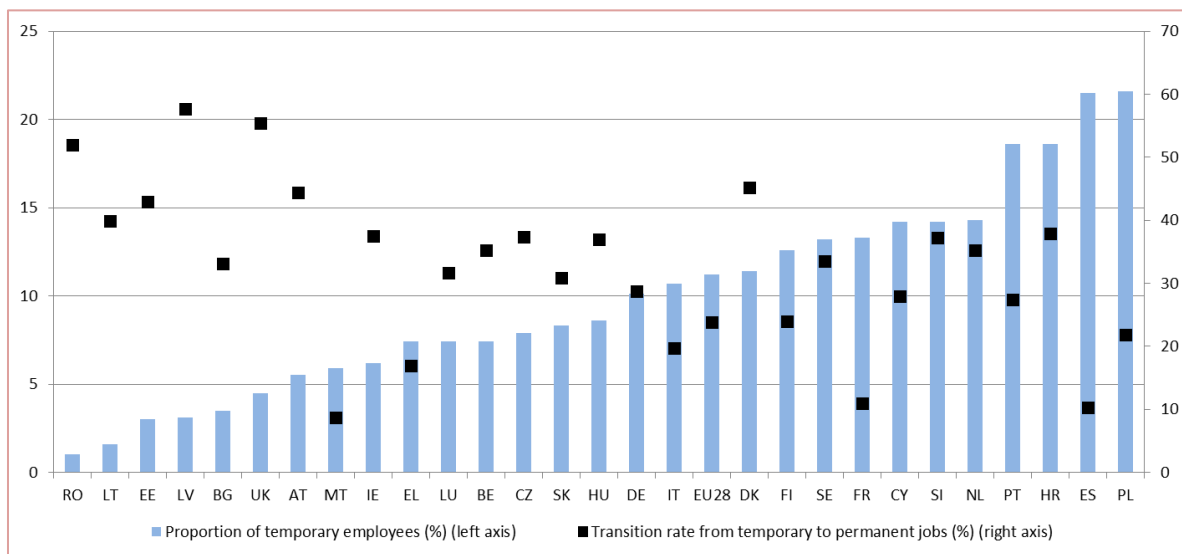
In a segmented labour market, fixed-term/atypical workers are typically in this situation against their will (i.e. they would prefer to work with a permanent contract¹⁰) and often perform tasks that are not temporary by nature.

Moreover, there are limited opportunities to transition from the less protected to the more protected segment of the labour force. In practice,

temporary contracts represent dead ends rather than stepping stones to permanent contracts.

The combination of high shares of fixed-term employees and low transition rates towards permanent employment seems particularly worrying in countries such as Poland, Spain and France (Figure 1).

Figure 1 – Proportion of temporary workers among total employees, age group 20-64 (2016); and transition rates from temporary to permanent contracts (2015)



Source: Eurostat, LFS and SILC.

Countries with a high proportion of self-employment may also be more exposed to segmentation problems.

This is the case when self-employment conceals partial abuses in order to mask what are actually dependent employment relationships (so-called bogus self-employment) and when Member States have not adapted their

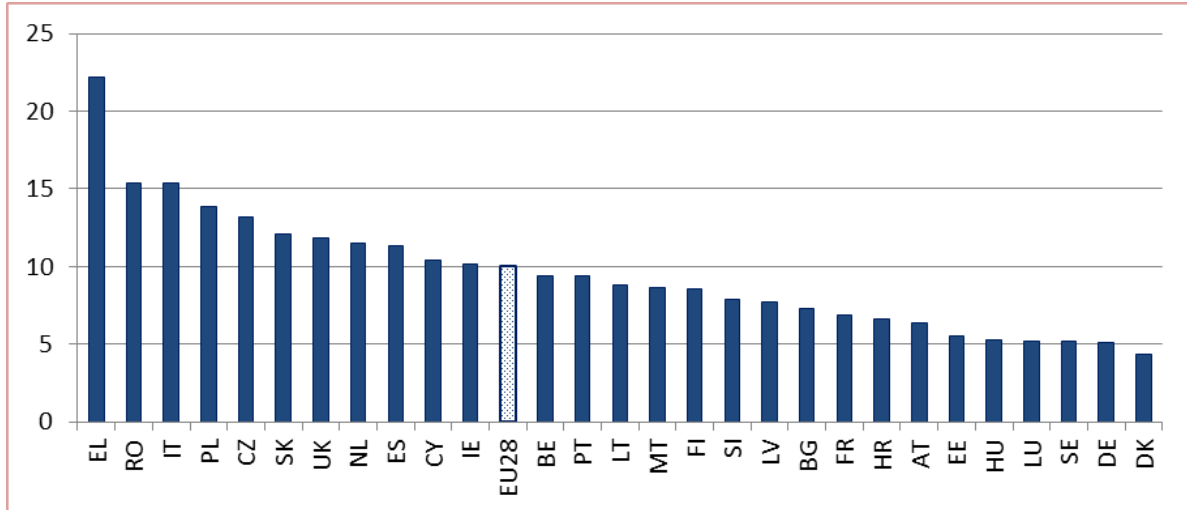
social security systems to include the self-employed¹¹.

The percentage of self-employed people (without employees) is highest in Greece (22.2%), Romania (15.4%) and Italy (15.4%), followed by Poland, the Czech Republic and Slovakia (Figure 2).

¹⁰ In the EU, 66.4 % of temporary workers (aged 20-64) in 2015 were in this status because they could not find a permanent job (Eurostat, LFS).

¹¹ Pedersini, R. and Coletto, D. (2010). 'Self-employed workers: industrial relations and working conditions', European Foundation for the Improvement of Living and Working Conditions, 2010.

Figure 2 – Self-employed without employees as percentage of total employment, 2016



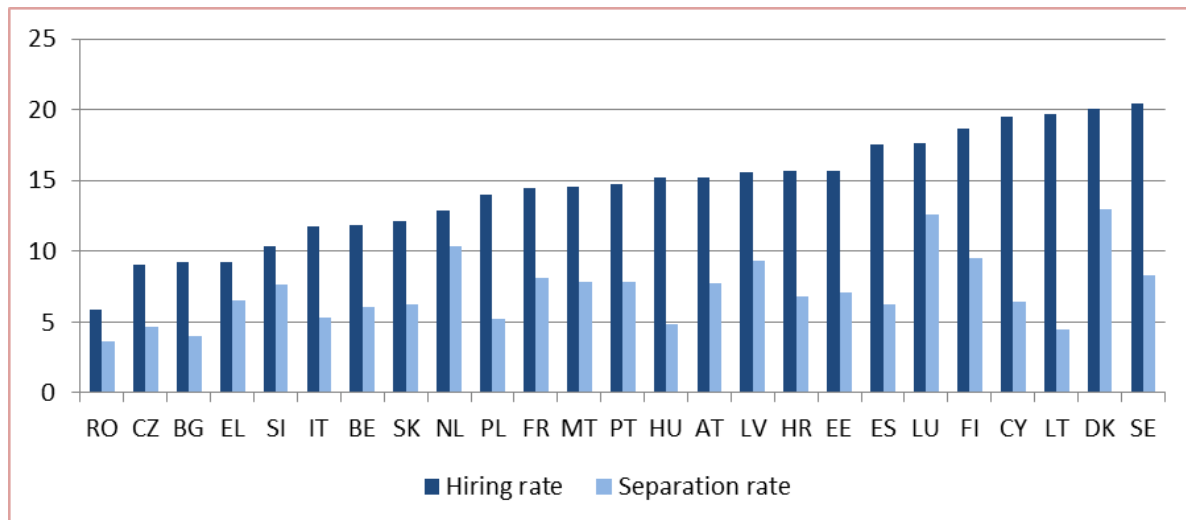
Source: Eurostat, LFS – own calculations.

Strict protection against dismissal reduces labour turnover: by increasing the cost to businesses of separating from workers, it tends to reduce both firing and hiring rates. This may have little or no effect on overall unemployment. However, it does affect the process of job creation and destruction, the duration of unemployment and the age composition of those out of work, and how efficiently labour is reallocated across firms and industries.

A combined reading of hiring and separation rates¹² gives an idea of **labour market turnover** (Figure 3). When both are high, the labour market is considered more dynamic and flexible (e.g. as in the case of Scandinavian and Baltic countries on the right side of the figure). However, high hiring/separation rates could be also an effect of the widespread use of temporary contracts. This ambiguity is partly reflected in the case of Spain, the Netherlands, Portugal and Cyprus. More specific analysis is in any case necessary in order to draw conclusions about the nature of labour turnover as such.

¹² Hiring and separation rates can be computed as the ratio to total employment of, respectively: i) individual transitions from unemployment to employment and job-to-job transitions (hiring rate); ii) individual transitions from employment to unemployment (separation rate). In absolute terms, if hires outnumber separations, net employment increases.

Figure 3 – Hiring and separation rates, 2016

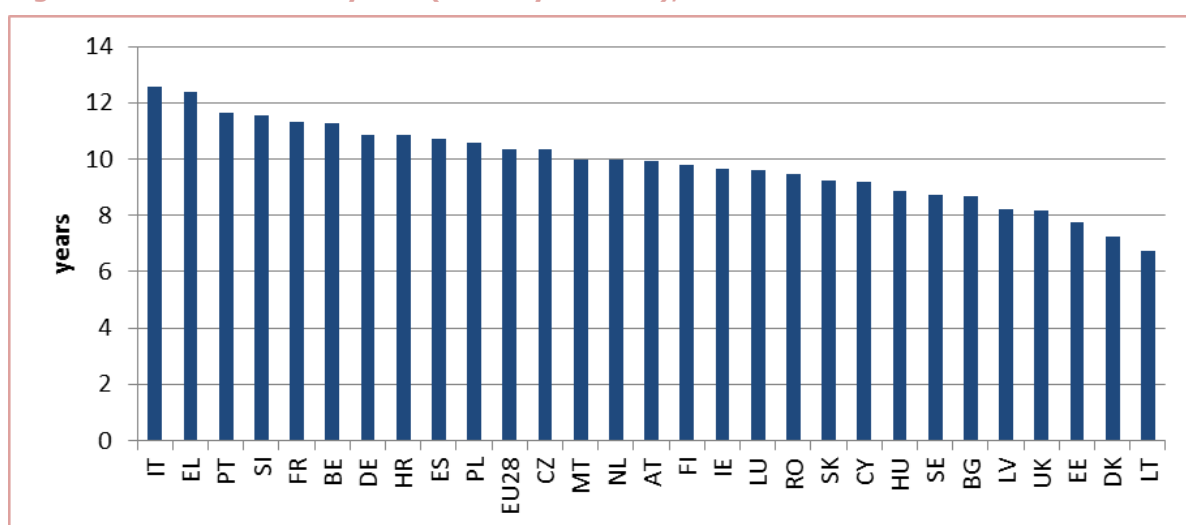


Source: Eurostat, LFS – own calculations.

Long tenure periods, especially for prime-age individuals, may also be a sign of static labour markets in which workers remain attached to their job and do not move between more productive firms and sectors. This might be relevant in particular where long tenure coexists with a high proportion of temporary workers (e.g. in France, Croatia, Italy, Portugal, Slovenia).

This points to labour market segmentation – it is a sign that 'insiders' are able to benefit from relatively long and stable career paths while 'outsiders' experience short-term jobs. Figure 4 gives an indication of average job tenure for workers aged 15-64.

Figure 4 – Job tenure in years (15-64-year-olds), 2016

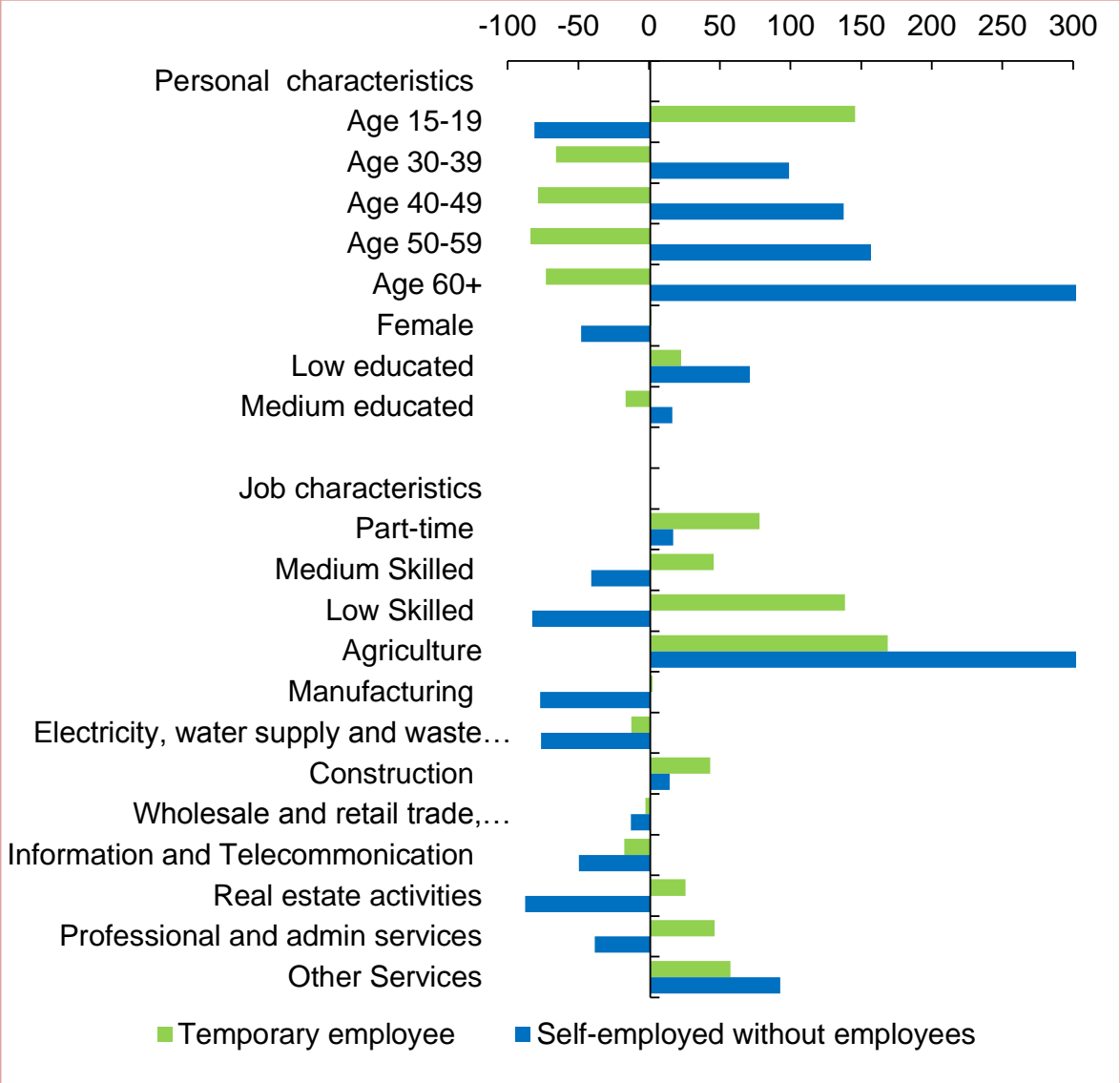


Source: Eurostat, LFS – own calculations.

Labour market segmentation does not affect different population groups equally. Temporary employees and self-employed workers (without employees) tend to be poorly educated, to work part-time and to be employed in agriculture, construction or services.

While temporary employees are usually young, the chance of being in 'solo self-employment' increases with age. This emerges clearly from a European Commission analysis¹³ presented in Figure 5.

Figure 5 — Probability of being a temporary employee or self-employed without employees



Source: Labour market and wage developments in Europe, 2017.
 Note: 1) The graph shows for various personal and job characteristics the change in the likelihood of being a temporary employee or a self-employed person without employees as compared to the reference category. Each bar represents by how much the probability increases for one specific individual characteristic when the others are held constant: for example, being younger than 20 years old increases the likelihood of being a temporary employee by 145% compared to an individual aged 20 to 29.

¹³ Labour market and wage developments in Europe. Annual Review 2017.

3. POLICY LEVERS TO ADDRESS THE POLICY CHALLENGES

A vast amount of literature has investigated the impacts of employment protection legislation on labour markets. A compendium of recent theoretical and empirical evidence on the macroeconomic impact of such legislation can be found in the European Commission's *Labour market developments in Europe 2012* report¹⁴ and the *Employment and social developments in Europe Review 2015*¹⁵. A review of the impact on labour market segmentation can be found in the recent *Labour market and wage developments in Europe 2017*¹⁶ report.

We refer to these three reports for in-depth analyses of the determinants and outcomes of employment protection legislation, including the impact of labour litigation, as well as for detailed policy guidance. This section presents a non-technical summary of the main findings and best policy practices to address the challenges presented in Section 2.

Employment protection legislation comprises both a 'transfer' component (e.g. severance payments from the employer to the employee) and a 'deadweight loss' component (e.g. procedural costs, dispute settlement processes). The deadweight loss component raises effective labour costs, thereby weighing not only on dismissal decisions but also on hiring. By contrast, the transfer component may have neutral effects provided that wages are sufficiently flexible to

compensate for the greater security the restrictions on firing provide. Strict employment protection, especially concerning procedural requirements, reduces the likelihood of jobs being destroyed in the event of economic shocks. By raising the effective cost of employment, however, it also dampens job creation. As a consequence, it reduces job losses during recessions but also limits the number of jobs created during expansionary periods, as employers are likely to avoid incurring high dismissal costs. Labour turnover is usually low in countries where legislation entails high and uncertain dismissal costs. These may limit the reallocation of employment towards more productive activities.

Strict employment protection legislation increases the duration of unemployment and long-term unemployment rates. The predicted effect of such legislation on the overall unemployment rate is ambivalent (as strong employment protection legislation reduces both job creation and job destruction). However, the combination of lower job destruction and reduced job creation is likely to translate into longer unemployment spells. In particular, unemployment tends to last longer for those entering the labour market for the first time and for intermittent spells (e.g. groups where the young, the low-skilled and women are overrepresented).

The combination of strong protection against dismissal for those on open-ended contracts and loose enforcement of protection for temporary or other non-standard contracts induces labour market segmentation. Stricter employment protection legislation regulating permanent contracts increases the likelihood of temporary contracts being used. It also widens the gap between the job tenure of permanent and temporary workers and between their respective wage

¹⁴ European Commission (2012), 'Labour market developments in Europe 2012', European Economy 5/2012.

¹⁵ European Commission (2016), 'Employment and social developments in Europe Review 2015', Directorate-General for Employment, Social Affairs and Inclusion.

¹⁶ European Commission (2017), 'Labour market and wage developments in Europe. Annual Review 2017', Directorate-General for Employment, Social Affairs and Inclusion.

levels¹⁷. Stringent employment protection legislation mainly affects new entrants to the labour market, the well-educated and people working in market services. Strict regulation of temporary hiring does not influence the likelihood of being in a temporary job. However, even where the legal framework is strict, weak enforcement of it increases the chance of people being put on temporary contracts. With relatively stringent protection of open-ended contracts, workers hired under non-permanent arrangements risk being stuck in unstable jobs.

Nevertheless, it might be considered that the employment situation of those in temporary jobs is not always as precarious as often argued. This is because employees may have long-term relationships with the same employer and enjoy the same if not stricter protection rules against dismissal. Firms may also be encouraged to circumvent hiring and firing restrictions by contracting out work to self-employed people.

Ill-designed labour regulation can hinder employment participation, especially for groups facing specific challenges (the low-skilled, young people, older workers and women). This can happen if rules and costs make employing them economically unattractive and encourage the persistence of undeclared work by creating perverse incentives for firms to circumvent legislation.

Moreover, while it is widely recognised that job security can encourage employees to invest in firm-specific skills that help productivity, overly strong employment protection legislation can hurt productivity and growth by leading to less efficient

allocation of labour resources and less innovation. By favouring the dispersion of job-specific skills, more extensive use of temporary work may also dampen labour productivity growth.

To give the best results, employment protection legislation should not hamper transitions between jobs. It should allow the economy to respond smoothly to shocks requiring the reallocation of labour between different sectors or occupations, while protecting workers effectively. Complex and uncertain regulation governing the termination of open-ended contracts makes firms reluctant to hire workers and engage in innovative activities because of the unpredictable costs of dismissing employees. Workers can also be discouraged from pursuing cases of unfair dismissal when the interpretation of the law makes enforcement of employment protection legislation uncertain. Uncertainty over judicial outcomes is also costly for employees: they may see the payment of their salaries suspended while a court case is under way and in situations where judges differ widely on the expected duration of a case.

The effectiveness of the dispute resolution system following claims of unfair dismissal has a strong impact on employment protection legislation in practice. Early dispute resolution frameworks reduce the direct costs and uncertainty of labour disputes. The design of pre-trial conciliation and mediation mechanisms and the distribution of costs between the plaintiff and the defendant may influence the litigation rate. Similarly, the possibility for courts to take into account pre-court attempts to negotiate a settlement may influence the incentives to resolve disputes before going to court. This can ultimately reduce labour litigation and the uncertainty of court rulings.

In terms of best policy practice, the assessment of employment protection legislation reform priorities across EU

¹⁷ These differences remain after controlling for individual and job-specific characteristics that influence the demand of specific contract types. European Commission (2017), 'Labour market and wage developments in Europe. Annual Review 2017', Directorate-General for Employment, Social Affairs and Inclusion.

Member States could take into account the following aspects:

Segmentation problems can be tackled by reducing the gap between employment protection legislation for permanent and temporary contracts. Excessive use of temporary contracts and low rates of transition to permanent contracts may be caused by overly strict legislative constraints on individual and collective dismissals and/or overly flexible regimes for fixed-term contracts. In countries with such gaps, the desirability of a single open-ended contract linking a worker's protection to their tenure has been emphasised in recent debate.

Excessive proliferation of different types of contracts may lead to serious gaps between insiders and outsiders ('contractual fragmentation'). Increasing the flexibility of specific types of contracts without modifying the rules for permanent contracts or for collective dismissals has in the past widened the gaps between insiders and outsiders in the labour market. This has led to segmentation of the market in a number of Member States.

There is no single way to reform employment protection legislation systems but different paths that depend on country characteristics. The specific scope and direction of reforms depend on:

- the priority given to each of the labour market problems to be tackled;
- the features of employment protection legislation that can best contribute to achieving the reform objectives;
- the need to address other issues than the legislation itself (e.g. unemployment benefits) to ensure the reform path is effective and feasible; and
- the wide differences in national employment protection legislation systems and the need to preserve their internal coherence.

Appropriate complementary measures, ensuring 'flexicurity', are essential when reforming employment protection legislation.

According to the 'flexicurity' paradigm, the focus should be shifted from protecting the specific job (job security) to providing employment security over a person's working life. This means that greater contractual flexibility should accompany reforms providing universal and adequate coverage of unemployment benefits, effective active labour market policies and lifelong learning opportunities. These measures would help workers make the transition from temporary to permanent contracts and give them adequate levels of security to face heightened labour market risks.

Support by social partners is essential to implementing ambitious reforms of employment protection legislation effectively and ensuring they are socially sustainable.

The sequencing and timing of reforms are important. Weakening employment protection legislation during a downturn may cause greater job destruction that is not compensated by higher job creation. This may result in higher unemployment (and higher spending on unemployment benefits) in the short run, although in the medium term this will be compensated by stronger job creation.

4. CROSS-EXAMINATION OF POLICY STATE OF PLAY

Member States' regulations appear highly heterogeneous, even within groups of countries with similar socioeconomic characteristics. The biggest differences in employment protection legislation across the EU are in the regime for dismissing people on regular contracts. The differences relate not only to the legislation's stringency but also the instruments to protect workers against dismissal. The greatest differences concern the definition of fair and unfair dismissal and the related remedies.

- In some countries the **definition of fair dismissal** is not restrictive, and unfair dismissals are limited to cases which are not reasonably based on economic circumstances and to cases of discrimination. (This is the situation in e.g. Belgium, Czech Republic, Denmark, Greece, Ireland, Italy, Hungary, Poland, Slovakia and the United Kingdom). In the Anglo-Saxon countries, in particular, there is no need to justify an economic dismissal as such. In some other countries (e.g. France, Slovenia, Finland) dismissals are not justified if they are not based on an objective and relevant reason. Further specific conditions apply in case of collective redundancy (e.g. in Estonia, the Netherlands, Austria).
- **Protection of workers in case of unfair dismissal** differs widely across the EU. Broadly speaking, in case of unfair dismissal a worker is entitled either to a pecuniary compensation on top of what is normally required for a fair dismissal, or to be reinstated. Employers may also have to pay the worker's foregone wages ('back pay'). In some cases reinstatement is not provided for (e.g. Belgium, Finland) while in others reinstatement is the rule (e.g. Estonia, Austria). In some Member States, 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).
- The **design of severance payments** also differs greatly between countries. Severance payment entitlements may be enshrined in law (e.g. France, Hungary, Portugal and Slovenia) or established collective agreements (e.g. Sweden and Denmark for blue collar workers). In some countries severance pay does not exist at all

(e.g. Belgium, Finland, and Sweden). In Austria, employees have access to individual severance accounts. Where severance payments exist, the amount varies greatly between Member States depending on the reason for dismissal (justified or not justified) and other conditions.

The **regulation of temporary contracts** also differs quite considerably within the limits of the principles set out in the Directives on fixed-term work and temporary agency work. Member States also differ on the rules and procedures for **collective dismissals**. However, common principles enshrined in the Directives on collective redundancies¹⁸ somewhat reduce the variations between EU countries.

Employment protection legislation indicators make it possible to quantify the overall strictness of employment protection legislation and to compare different countries. The OECD compiles such indicators for most of its member countries (the OECD Employment Protection Legislation Index) from 21 elements of legislation (see Figure 5 and Table 1 in the Annex for a description of these indicators). The latest update of this index covers legislation in force in 2013 (or 2014 or 2015 for a limited number of countries) in 21 EU Member States that are members of the OECD plus three other Member States¹⁹ — as such, most recent reforms are not considered. The methodology has been refined to take more systematic account of how legislation, collective bargaining agreements and case law are interpreted²⁰.

¹⁸ Directives 75/129/EEC and 98/59/EC.

¹⁹ The employment protection legislation database does not include Bulgaria, Cyprus, Malta and Romania.

²⁰ OECD, Employment Outlook 2013, Chapter 2.

Indicators on OECD employment protection legislation have limits and should be interpreted with caution. Not all changes in employment protection legislation modify the OECD indicators. A change may be insufficient to modify the scoring given to a particular characteristic of government regulation. Alternatively, specific aspects of the legislation may not be considered in the calculation of the index (e.g. the length and uncertainty of judicial procedures in case of unfair dismissal, or treatment of the self-employed). Moreover, the indicators do not fully capture certain aspects relating to the enforcement of employment protection legislation²¹.

In the years before the financial crisis most reforms aimed at facilitating hiring on fixed-term contracts. Between 2000 and 2008 employment protection legislation indicators for individual regular contracts and collective dismissals remained broadly stable. At the same time the regulation of fixed-term contracts was noticeably loosened in a number of countries. These 'partial' labour market reforms have been held responsible for increasing the gap between highly protected permanent workers and poorly protected temporary workers²².

Since 2008 in-depth reforms of employment protection legislation have been undertaken in a number of Member States, in particular in southern Europe and parts of eastern Europe. To a large extent the reforms have weakened permanent workers' protection against dismissal. This has been done by, among other things, limiting scope for reinstatement in the case of unfair dismissal, capping back-pay, cutting levels of severance pay and extending the duration of the trial period.

In some countries, procedures for collective dismissals have been simplified and their cost therefore reduced. The regulation of temporary contracts has been changed to discourage their excessive use, including through higher non-wage costs²³. As a consequence, the employment protection legislation indicator for open-ended contracts has either remained constant or markedly decreased (Figure 6).

The fall in the indicator appears to be particularly strong for Portugal, but reductions can also be seen for Estonia, Greece, Spain, Italy, Hungary, Slovenia Slovakia, and the UK. For some countries (e.g. Italy, the Netherlands) the indicator is not able to capture the effect of labour market reforms implemented after 2013.

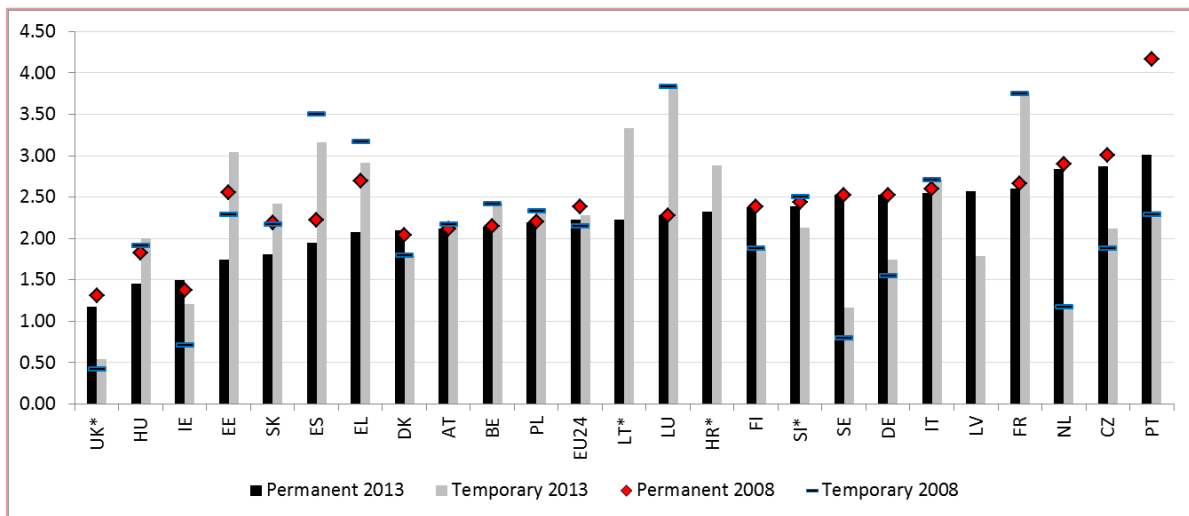
²¹ A third common criticism concerns the inevitable degree of subjectivity affecting the codification of national legal features into a composite index (Venn 2009). Since codification may at times provide misleading interpretation of national rules and procedures, or ignore relevant non-legislative data, the OECD index should be handled with care or possibly integrated with an up-to-date and more comprehensive EU-28 database.

²² E.g. Blanchard, O and A. Landier, (2001) 'The perverse effects of partial labor market reform: fixed duration contracts in France', NBER Working Paper 8219. Boeri, T. and P. Garibaldi (2007) 'Two tier reforms of employment protection: a honeymoon effect?', *The Economic Journal*, Vol. 117, pp. 357-385.

²³ For a review of labour market reforms, see 'Labour market and wage developments in Europe 2015', Chapter 4, European Commission. Additional detailed information on recent reforms can be found in the LABREF database:

<https://webgate.ec.europa.eu/labref/public/>. Recent evidence from LABREF is summarised in European Commission (2017), *Labour Market and Wage Developments in Europe: Annual Review 2017*, Chapter 3.

Figure 6: Employment protection legislation index for permanent and temporary work contracts in 2013* and 2008



Source: OECD Employment Protection Database.

*2014 for Slovenia and UK; 2015 for Croatia and Lithuania

Activity to reform employment protection legislation has been particularly intense in countries with both large accumulated imbalances and stringent job protection legislation before the crisis. These include Spain, Croatia, France, Italy, Portugal and Slovenia. Belgium passed the single status law, essentially harmonising notice periods between blue and white collar workers and redefining unfair dismissals. Dismissal costs, including for collective dismissals, were also reduced in the United Kingdom. The remainder of the section presents a partial list of reforms implemented in recent years.

Croatia completed the labour law reform started in 2013 by adopting the Labour Act in 2014. This facilitates the use of some forms of non-standard work and simplifies dismissal procedures. In August 2016, **France** introduced a reform specifying the circumstances in which individual dismissals can be undertaken for economic reasons. The reform also introduces more flexibility into how working conditions are set at company level. In 2014, **Italy** adopted a comprehensive labour market reform in the form of the Jobs Act. Among other things, this revises dismissal

rules for open-ended contracts, simplifies and reduces non-standard forms of contracts and increases internal flexibility rules within firms.

In **Lithuania**, the revision of the Labour Code passed in 2016 reduced the cost of individual dismissals by shortening the notice period and reducing severance pay. It also loosened restrictions on using fixed-term contracts and introduced a number of new contract types. These include apprenticeship contracts, project-based work contracts, job-sharing contracts and multiple-employer contracts. In July 2015, **the Netherlands** introduced a cap on severance payments for unfair dismissal and provided more clarity on the routes to be followed in case of dismissal (the Public Employment Service in case of economic reasons and the courts in case of personal reasons). The maximum duration of temporary contracts was also reduced (from 3 to 2 years) and the number of months between contracts before a new chain of temporary contracts can start was increased. In 2016 **Poland** introduced restrictions on the number of consecutive fixed-term employment contracts and on their maximum duration. It also brought the notice

period for fixed-term contracts into line with that for permanent contracts.

More generally, a number of Member States have tightened limits on fixed-term contracts, and more specifically on the use of temporary agency work (e.g. Denmark, France, Italy, Slovakia, Slovenia). By contrast, others have

facilitated access to fixed-term contracts (e.g. Czech Republic) and temporary agency work (e.g. Greece, Lithuania). Some (e.g. Croatia, Italy, Portugal,) have increased the duration or renewal possibilities of fixed-term contracts in order to encourage job creation.

5. REFERENCES

- Blanchard, O and A. Landier, (2001), 'The perverse effects of partial labor market reform: Fixed Duration Contracts in France', NBER Working Paper 8219.
- Boeri, T. and P. Garibaldi (2007), 'Two tier reforms of employment protection: a Honeymoon effect?', *The Economic Journal*, Vol. 117 pp 357-385.
- European Commission (2012), 'Labour market developments in Europe 2012', *European Economy* 5/2012.
- European Commission (2016), 'Employment and social developments in Europe Review 2015', Directorate-General for Employment, Social Affairs and Inclusion.
- European Commission (2017), 'Labour market and wage developments in Europe. Annual Review 2017', Directorate-General for Employment, Social Affairs and Inclusion.
- OECD (2013), 'Employment Outlook 2013', OECD Publishing.
- Pedersini, R. and Coletto, D. (2010). 'Self-employed workers: industrial relations and working conditions', European Foundation for the Improvement of Living and Working Conditions, 2010.
- Venn, D. (2009), 'Legislation, collective bargaining and enforcement: Updating the OECD employment protection indicators', OECD Social, Employment and Migration Working Paper No 89.

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ANNEX

Main features of employment protection legislation

Three main aspects of employment protection are usually regulated by legislation: the protection of workers in case of **individual dismissal**; specific requirements for **collective redundancies**; and **temporary forms of employment**.

The main features of employment protection legislation for **individual dismissals** are as follows:

- **Probationary period.** During the trial period both parties can terminate the employment relationship at no cost (a notice period and severance pay generally do not apply). To avoid the risk of employers taking advantage of long trial periods, the legislation often fixes a maximum duration. In some countries, the legislation allows deviations from the standard maximum length through temporary derogations, most notably for work-related training. In some cases, the trial period is regulated in such a way as to reduce dismissal costs at its start. The maximum trial period in the EU ranges from less than 1 month to 12 months; in a majority of countries it is between 3 and 6 months.
- **Notice periods and procedural requirements.** Labour laws often stipulate a notice period for dismissal and an obligation to provide prior notification in writing. Failure to comply with the notice period may give a right to compensation for the earnings that the worker would have received had this been correctly observed. Generally speaking, procedures depend on whether the reason for dismissal is personal (e.g. due to incapacity, or for disciplinary reasons) or economic. Procedures may also depend on the type of worker, company size and trade union membership.

- In some countries employers that intend to dismiss an employee have to notify, sometimes at the employee's request, one or more third parties (workers' representatives or the public employment service, labour inspectorate or other government authorities). As well as notification, in some countries employers also have to provide third parties with a justification for dismissals. Depending on the country, delays before the notice period can start may exceed 1 month.
- **Reasons for individual dismissal.** In most cases the legislation on terminating an employment contract requires the employer to substantiate the reasons for the dismissal. A dismissal can be justified on:
 - **disciplinary grounds** or personal reasons (except discriminatory cases);
 - **economic grounds** (elimination of the post, technological change, unsuitability of the worker).

While dismissal on disciplinary grounds does not involve compensation to the worker, dismissal on economic grounds does involve compensation (severance payments) in most countries. National laws differ on the scope of valid reasons for dismissal and the discretion of judges in questioning employers' decisions. Valid reasons for dismissal can be defined in a broad way, with the advantage of providing room to cope with a disparate range of situations. Alternatively, the reasons for justified dismissal can be very detailed, thereby reducing labour judges' room to scrutinise employers' decisions. In some countries, unjustified dismissals are limited to cases which are not reasonably based on economic circumstances and cases of discrimination. In other countries dismissals are not justified if they are not based on an objective and relevant reason. In addition, in case

of redundancy, dismissals are considered unlawful if the employer fails to take into account specific circumstances of the dismissed workers (e.g. tenure, family responsibilities, professional qualifications, age/gender balance in a firm). In some countries, lawful dismissal requires specific alternatives to redundancy to be considered. These alternatives include retraining and/or transfer of the worker to another position in the firm.

- **Consequences of unlawful dismissal.** In case of unlawful dismissal firms face legal consequences. Normally, a worker is entitled either to a pecuniary compensation on top of what is normally required for lawful dismissals, or to be reinstated. Employers may also have to pay a worker's lost wages. The regime for reinstatement differs widely across the EU. In some cases it is not provided for, while in others it is the rule. Often, the decision about reinstatement is left to the worker. In some countries, firms may have to pay additional compensation if the worker is not reinstated. In others they are required to pay compensation only for wage losses and for the social security contributions unpaid during the period between the dismissal and the judgment. 'Back pay' is capped in some countries. In some (e.g. Germany), the reinstatement option is available to the employee but is rarely taken up as the structure of the labour process contains strong incentives for both sides to resolve any litigation by mutual agreement before going to court.
- **Severance payments.** Severance pay consists of a one-off lump-sum payment to a worker who has been involuntary dismissed. Severance payment entitlements may be set out in law or in collective agreements. The payment may differ according to the reason for dismissal (justified or not justified). In the majority of countries

severance payments exist in case of dismissal for economic reasons but are not usually due in case of dismissal for disciplinary reasons. In some countries employers do not bear any severance payments but the notice period can be very long (e.g. Finland, Sweden)²⁴. In others, severance pay is the main cost of dismissal (e.g. the Netherlands, Spain). The size of severance payments is often linked to the length of service and to the employee's wage level close to the moment of dismissal. Severance payments may be subject to a cap. In some countries their size is inversely correlated to the length of the notice period. The financing of severance payments generally comes entirely from the employer that undertakes the dismissal, but in some countries severance payments are shared among several employers. In Austria, for instance, they are financed through a fund in the name of the employee. This is portable across employers until dismissal or retirement, and all employers in the employee's career contribute.

Collective redundancy procedures are triggered by the simultaneous dismissal of a number of employees for reasons not connected to the individual workers concerned. In case of collective redundancies the minimum requirements set by the 1998 Directive on collective redundancies²⁵ are applicable in all Member States. Rules on collective dismissals concern:

- **Definition of collective dismissal.** This is the minimum number of workers dismissed in a given lapse of time, in a given location, for the dismissal to qualify as collective. The number is often linked to firm/plant size.

²⁴ With few exceptions (Belgium, Germany, Greece), statutory severance payments are due without any consideration of the notice period.

²⁵ Directive 98/59/EC.

- **Procedural and notification requirements.** These concern employers' obligations to:
 - consult workers' representatives when contemplating collective redundancies, with a view to finding alternative solutions whenever possible; and
 - notify the competent public authority of their intention to carry out a collective redundancy.
- **Criteria for selecting employees to be dismissed.** Transparent and non-discriminatory criteria may be indicated by law, in collective agreements, or through the information and consultation procedure.
- **Compensation and other implications of unlawful collective dismissals.** In most cases, severance payments provided for individual economic dismissals are also due in case of collective redundancy. Additional monetary compensation (e.g. co-financing of unemployment benefits) may have to be provided by the employers. National legislation provides for legal consequences if procedural or notification requirements or selection criteria for dismissal are not complied with.

Legislation places **constraints on the use of fixed-term contracts** in order to prevent discrimination against fixed-term workers and the abuse of such contracts. The minimum requirements for fixed-term contracts to be followed by all Member States are set by the Directive on fixed-term work²⁶. The conditions for using such contracts generally include providing reasons to justify their use and accepting limits on the number of renewals and/or the total duration of cumulated contracts. (Reasons justifying their use include, for example, coping with unexpected fluctuations in demand; replacing permanent staff for short periods; hiring workers with specialised skills to carry

out specific projects; and start-up ventures implying risky and uncertain returns).

Different types of contract exist for temporary agency work. The specificity of temporary agency work is that if usually two parties — employer and worker — are involved in an employment relationship, then temporary agency work includes a third party — the user undertaking. Temporary agency workers are employed and paid by a temporary work agency (the employer), but they are placed at the disposal of user undertakings on a temporary basis and work under their supervision. Depending on the national legislation applicable, temporary agency workers can work under fixed-term contracts or under permanent employment contracts.

This form of employment meets a real need of user firms: it enables them, for instance, to manage production peaks or replace absent employees fairly easily. The minimum level of requirements to protect temporary agency workers are set by the 2008 Directive on temporary agency work²⁷.

²⁶ Directive 99/70/EEC.

²⁷ Directive 2008/104/EC.

Table 1 – Strictness of employment protection, OECD indexes

		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
Belgium	2013	2.99	2.14	5.13	2.42
Czech Republic	2013	2.66	2.87	2.13	2.13
Denmark	2013	2.32	2.10	2.88	1.79
Germany	2013	2.84	2.53	3.63	1.75
Estonia	2013	2.07	1.74	2.88	3.04
Ireland	2013	2.07	1.50	3.50	1.21
Greece	2013	2.41	2.07	3.25	2.92
Spain	2013	2.36	1.95	3.38	3.17
France	2013	2.82	2.60	3.38	3.75
Croatia	2015	2.30	2.32	2.25	2.88
Italy	2013	2.89	2.55	3.75	2.71
Latvia	2013	2.91	2.57	3.75	1.79
Lithuania	2015	2.42	2.23	2.88	3.33
Luxembourg	2013	2.74	2.28	3.88	3.83
Hungary	2013	2.07	1.45	3.63	2.00
Netherlands	2013	2.94	2.84	3.19	1.17
Austria	2013	2.44	2.12	3.25	2.17
Poland	2013	2.39	2.20	2.88	2.33
Portugal	2013	2.69	3.01	1.88	2.33
Slovenia	2014	2.39	1.99	3.38	2.13
Slovakia	2013	2.26	1.81	3.38	2.42
Finland	2013	2.17	2.38	1.63	1.88
Sweden	2013	2.52	2.52	2.50	1.17
United Kingdom	2014	1.59	1.18	2.63	0.54
EU unweighted average		2.47	2.21	3.12	2.28

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