International
Labour
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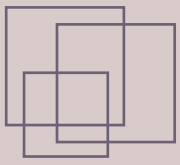
Geneva

EPLex

Employment protection legislation

Summary indicators



in the area of terminating
regular contracts
(individual dismissals)

Inclusive Labour Markets, Labour Relations
and Working Conditions Branch

Employment protection legislation:

Summary indicators in the area of terminating regular contracts

(individual dismissals)

INTERNATIONAL LABOUR OFFICE - GENEVA

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Preface

Labour market regulation, including employment protection legislation, is central to the ILO's mandate. It is the subject of continuous demand from constituents, who seek advice on policy design that is conducive to employment creation and which provides protection to workers.

Over the past decade, the demand for knowledge and advice on these topics from governments, employers, trade unions, labour-law practitioners and academics has grown in the global context of heightened competition, pressure for greater labour market flexibility, and the jobs crisis of 2008-2015. Over this period, numerous countries witnessed significant lay-offs and increasing instability of employment. Many countries adopted reforms of employment protection legislation (EPL), in the hopes of boosting employment creation and reducing unemployment, especially amongst most vulnerable groups. Nevertheless, there remains little understanding of the impact of recent reforms, or how different designs and configurations of EPL affect labour market performance. The key pre-condition for the reliability and soundness of the analytical work fostering such understanding is the existence of transparent, integral, and comprehensive data measuring EPL; the kind of data that capture to the best extent possible the complexity of the theoretical and of the empirical issues surrounding both EPL and its measurement.

This report takes up the challenge of laying down a novel methodology to create a set of Employment Protection Legislation Summary Indicators in the Area of Terminating Regular Contracts (Individual Dismissals). These indicators are based on the legal information collected by the ILO and contained in the ILO EPLex database *(http://www.ilo.org/dyn/eplex/termmain.home*), covering the legislation of more than 90 jurisdictions. ILO EPLex presents the legal information in a standardized format in a manner that accurately reflects specificities and diversities of national systems.

Drawing on ILO's comparative labour law and economic expertise, the methodology developed in this Report allows translating the ILO EPLex qualitative information into a set of quantitative indicators that can serve as a new tool for analytical work and policy advice. The Report provides the rationale for this methodology, describes methodological and coding assumptions for over 90 countries, and provides the resulting portrait of the quantified EPL around the world. By doing so, it creates a solid and balanced basis for future analyses of employment protection legislation.

Philippe Marcadent
Chief
Inclusive Labour Markets, Labour Relations
and Working Conditions Branch
Conditions of Work and Equality Department

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In order for any coding to be done at all, it has to be accepted that the resulting index will be, at best, an incomplete proxy for the real effects of labour law and related rule-systems (such as collective agreements) in a given country. […] The issue, with regard to any index, is not whether it is a completely realistic account of the workings of the law, since almost by definition, this cannot be achieved. The issue, rather, is how close to reality the index is, compared to the alternatives (Deakin et al., 2007).

1. Introduction

Employment protection and promotion of employment security as an essential aspect of the right to work have been a major concern of the International Labour Organization (ILO) throughout its history.[1] The first international labour instrument dealing specifically with this issue – the Termination of Employment Recommendation (No. 119) was adopted in 1963. It marked the recognition at the international level of the idea that workers should be protected against arbitrary and unjustified dismissals and against the economic and social hardship inherent in their loss of employment.[2] To take into consideration new developments since then, such as heightened global competition and recurrent economic downturns, the Termination of Employment Convention, 1982 (No. 158) and the Termination of Employment Recommendation, 1982 (No. 166), were adopted by the International Labour Conference in 1982[3].

To date, most of the countries around the world have adopted some type of employment protection legislation. These provisions usually reflect the de facto asymmetry of contractual rights of either party to terminate employment relationship, as well as the need to address the consequences of this asymmetry: while termination of the contract by the worker – exercising the fundamental right to protect his or her freedom of work – is oftentimes merely an inconvenience for the employer, the termination of the contract of employment by the employer can result in insecurity and poverty for the workers and their family, particularly during the periods of high unemployment.[4] Moreover, employment protection can also be seen as a gatekeeper for fundamental principles and rights at work, as well as other rights of a worker: for example, the fear of being dismissed arbitrary may induce employees to wave rights related to trade union activities, maternity, or education (De Stefano, 2014).

Against this background, the ILO has recently launched a research programme designed to record and measure employment protection legislation throughout the world, as well as develop a nuanced understanding of its impact on labour markets and economic development.

The research began with the development of a unique ILO database, EPLex.[5] This database has been formulated in response to requests from governments,

[1] ILC, 59th Session, 1974. Record of Proceedings, p. 527.
[2] Committee of Experts on the Application of Conventions and Recommendations, *General Survey – Protection against unjustified dismissal (1995)*, hereinafter "GS 1995".
[3] C158 and R166 currently have the "no conclusions" status.
[4] GS 1995.
[5] Available at: http://www.ilo.org/dyn/eplex/termmain.home

employers, trade unions, labour-law practitioners and academics for comparative information on legislation governing termination of employment. It contains rich and unique comparative information on laws and collective agreements governing employment protection in nearly 100 countries, and over the period 2009-2013. The database is continuously updated to cover more countries and years.

ILO EPLex database highlights the common approaches among the various legal systems, as well as the specificities of the rules governing individual and collective dismissals. The central objectives of EPLex are twofold. First, it is intended to provide a comparative overview of regulations governing contracts of employment, and of employment protection legislation (EPL). The countries have been selected to provide a diversity of systems, in geographic, developmental and legal terms. Second, it presents the legal information in a standardized format to facilitate its use by lawyers and economists in their research on EPL. Standardizing legal information to accurately reflect specificities and diversities of national systems drawing on ILO's comparative labour law expertise is a key feature of this database (ILO, 2009a).

This effort of collecting and presenting legal information in a standardized format (qualitative data) has been accompanied by the creation of a quantitative component. The quantitative component is based on a methodology developed jointly by ILO lawyers and economists with the aim of producing a set of EPLex indicators that would render the EPLex qualitative material more accessible for statistical analysis, as well as making it more easy to use for researchers in a variety of disciplines.

Creation of the quantitative component has also been motivated by extensive recent research on the role of labour market institutions in general, and employment protection regulations in particular, in the functioning of modern labour markets. To date, the nature, role and effects of employment protection laws have been studied in depth in different contexts and according to different methodologies, but research and policy debate surrounding them is still unsettled.[6] One of the challenges that arise is that a large part of the research to date has focused on developed countries: consistent comparative analysis in developing and emerging economies has so far been hindered by a lack of comprehensive data. The ILO EPLex quantification project aims at filling this gap.

The objective of this Report is to present the methodology and results of the quantification of the ILO EPLex database in the area of termination of permanent contracts in the course of individual dismissals. This exercise resulted in production of eight EPlex indicators: (1) valid grounds for dismissals, (2) prohibited grounds for dismissals, (3) probationary period, (4) procedural notification requirements for dismissals, (5) notice periods, (6) severance pay, (7) redundancy pay, (8) avenues for redress, as well as a summary EPLex indicator. Further editions will also address the issues of constructing quantified indicators to measure the regulations of collective dismissals and the regulations of temporary contracts.

The quantification exercise aims at preserving the objectivity of the legal information. It is based fully and exclusively on available EPLex data[7] covering

[6] For the latest reviews, see Cazes et al. (2012), OECD (2013), Betcherman (2012, 2014).

[7] With minor exceptions acknowledged in this document, no additional information has been collected.

laws and national collective agreements, but not jurisprudence or statistical information of current practises in the area of employment protection. As such, its end product can be viewed as a set of *EPLex* indicators (rather than employment protection indicators more broadly). It is possible that some of the relevant information, especially if contained in procedural codes or case law has been omitted. The users of the data, if in disagreement with coding attributed to a specific country, may indicate the relevant source of information for the correction of the coding in the future updates of both ILO EPLex database and of quantitative indicators based on its information.

The quantification methodology, developed jointly by legal experts and economists, is based on the International Labour Standards, which are used as guiding principles in selecting what indicators need to be created, and how they should be measured. It is also based on the review of national practices of employment protection in nearly 100 countries, covering countries from all regions of the world, all levels of development, and all types of legal origin. Such overview helped ensuring that the methodology incorporates and reflects as many scenarios of employment protection legislation as possible, and that the scale of resulting indicators features both variability and meaningfulness.

Quantification of legal information may oftentimes be perceived as inappropriate, because one of the ways to use quantitative information may be to rank countries according to the scores they receive on any of the indicators, and such ranking may not be appropriate within the topic of EPL. In this light, it is important to distinguish ranking from ordering. Indeed, any quantified data can be ordered, but not all quantified data may be ranked. In fact, any ordering can become meaningful and can be called a ranking only when a specific sense to such ordering is attached. In the case of legal data, such sense can only be drawn from the empirical evidence against which the ordered data are tested. In other words, a "higher" value of any ordered indicator can be viewed as a "better" value only if this "betterness" is confirmed by empirical analysis. By the same token, an empirical analysis can also suggest that, for example, a "mid-range" value may be "better" than the highest or the lowest value.[8] Moreover, what is better and for which group of individuals would vary greatly depending on the research question, and would provide different results when, for example, one wants to address unemployment, versus equality, versus efficiency issues. It is precisely for this reason that any ranking based on the ILO EPLex indicators, without a properly formulated empirical question and analysis behind, is meaningless and irrelevant. For this reason, in this Report, no rankings are provided. Likewise, the users of the data should also be dissuaded from producing such rankings of their own. When the Report refers to "higher" or "lower" values of indicators, it does so with a purely ordering objective in mind.

The current attempt to quantify legal information in the area of employment protection legislation is not unique. It contributes to the growing field of quantitative data production on this topic. Other most known indicators include the OECD Summary Indicators of Strictness of Employment Protection Legislation, the World Bank Employing Workers Indicators, and the Cambridge Center for Business Research Labour Regulation Index. Compared to them, the ILO EPLex indicators presented here cover only the topic of terminating regular contracts (individual dismissals); are directly based on the fundamental principles and rights at work

[8] Recent empirical evidence supporting this argument includes Cazes et al. (2012) and World Bank (2013a).

and on the relevant ILO Conventions and Recommendations in the area of employment termination; are of purely de jure nature; and cover numerous developing and developed countries. This report further provides a careful comparison of differences and similarities in the methodological aspects of these indicators.

The rest of the Report is structured as follows. Chapter 2 outlines the methodology for creating quantitative indicators based on the EPLex. Chapter 3 provides the results of coding, examining variation in the indicators by region and over time. It also discusses the importance of accounting for the cross-country differences in legal coverage of these provisions. Chapter 4 compares these indicators with other existing indicators of employment protection that were developed by other international organizations and academia. The last Chapter concludes.

2. Methodology to create summary indicators for the ILO Employment protection legislation database

2.1 Overview of the ILO EPLex

ILO EPLex database provides information on the employment protection legislation and does not, generally, cover case law or collective agreements on the subject. The reasons for this approach are practical: constraints of space and the impossibility of gaining an accurate picture of the case law on termination from the information sources available. However, where a brief reference to case law is necessary to prevent a misleading picture of the law, and reliable information is available, this has been added. In addition, when a national collective agreement is in force, it has also been referred to in EPLex (ILO, 2009a).

The database deals only with employees in the private sector. In the vast majority of both common law and civil law legal systems, public employees are subject to specific statutory rules.

For the purposes of the database, the terms “termination” and “dismissal” refer to the ending of employment at the initiative of the employer. This is in line with the Termination of Employment Convention, 1982 (No. 158), which regulates termination of employment at the initiative of the employer. The termination of an employment relationship by an employee does not fall within the scope of the Convention; neither would termination which arises out of a freely negotiated agreement reached by both parties. Similarly, the Convention would not apply to cases where an employee willingly resigns or takes voluntary retirement (GS 1995).

ILO EPLex provides information on all the key topics that are regularly examined in national and comparative studies on employment termination legislation. The information is broken down to cover more than 50 variables. These variables are organized into seven topical sub-areas, which follow the outline of the Convention 158 and of most of the national legal provisions governing employment protection.

The legislation governing termination of employment, like all labour legislation, reflects societal values and labour market conditions in a given period. As these evolve, this legislation might change as well. By tracking legislative developments over time, ILO EPLex illustrates the diversity of approaches taken to the important topic of termination of employment and provides the basis for further investigation (ILO, 2009a).

2.2 General overview of the methodology for coding the EPLex qualitative data

To summarize the rich information of ILO EPLex database, and to allow for a wider use of the database by practitioners and researchers from various disciplines, a methodology for creating quantitative EPLex indicators measuring

the de jure level of employment protection is put forward. The following principles guide the design of this methodology:

- The set of quantitative EPLex indicators is aligned with the fundamental principles and rights at work and with relevant ILO Conventions and Recommendations in the area of employment termination (Appendix A and B).

- The set of quantitative EPLex indicators is fully based on the ILO EPLex legal database, and fully corresponds to its structure, logic, and content. As such, the EPLex indicators are based on laws and, where relevant, on national collective agreements, but not on jurisprudence, statistical information of current practises, or subjective perceptions of the functioning of the legal system.

- Assigning numeric values to coding of the legal data strives to minimize value judgements in interpreting the laws. Codification is done in a systematic comparable way for each country and year.

- Indicators are based on rich, non-overlapping, exhaustive components describing EPL aspects in the area of individual dismissals to the fullest extent possible.

- Where relevant, two EPLex indicators per country are computed, separately for distinct categories of workers (for example, blue-collar versus white-collar) or enterprises (distinguishing by size).

Appendix C further contains general coding assumptions.

All resulting indicators are distributed on a 0-1 scale. Lower values of EPLex indicators represent lower level of de jure employment protection in a given country and a given year, while higher values of EPLex indicators represent higher level of de jure employment protection.

Employment protection embraces the notions of both worker protection against dismissal, and easiness or costs of dismissal for employers. From a legal viewpoint, however, these two notions are not necessarily mirror images of each other: higher level of worker protection against dismissal may not be uniformly equated with a more “costly” dismissal for employers. This is because the employment protection legislation (and the resulting indicators based on it) is asymmetric in its impact on workers and on employers. This asymmetry stems from the asymmetry inherent to the employment contract itself: the employee is bound by the hierarchical power of the employer who manages the contractual relationship, and hence the two parties of the contract are not entirely equal in their bargaining power and in the execution of the employment relationship. Given this, one of the aims of labour law is to rationalize and rebalance the uni-directionality of contractual labour relationship; it’s role lies in “redressing the inequality of bargaining power inherent to employment relationship” (Deakin, 2014), and in “compensating the worker for exposure to the employer’s unilateral power by inserting norms of reciprocity and mutual insurance into the wage-work bargain” (ibid; Deakin and Wilkinson, 1999). It is in this sense that labour law has a protective function. It is also one of the reasons why laws about termination of employment are widely referred to as employment protection laws. Given this reasoning, neither labour laws, nor indicators based on reading of labour laws,

should necessarily be viewed as aiming at protecting one party “at the expense” of another party.

In a similar spirit, the EPLex indicators as such do not and cannot carry a value judgement on whether a higher value is *better,* and for whom. An establishment of such value judgements can only be an outcome of thorough empirical analysis, with carefully designed research question and methodology.

It is also important to bear in mind that at the time of employment termination, there may be asymmetric costs and benefits arising to employers and to workers. For example, workers may benefit from indemnities arising from sources other than employer, such as unemployment insurance funds. Such benefits would increase the level of worker protection against income loss associated with a dismissal. Indeed, Article 12 of the Convention 158 provides for a worker whose employment has been terminated to be entitled to (a) a severance allowance or other separation benefits; (b) benefits from unemployment insurance or assistance or other forms of social security; or (c) a combination of such allowance and benefits. To the extent that such benefits are usually not considered as part of employment protection legislation, and do not alter dismissal incentives, they are not retained for the creation of the EPLex indicators, either. In this light, the EPLex indicators should be viewed as a narrower concept as compared to the concept of the *worker protection*; they may also be viewed as a building block towards creating worker protection measures.

Creation of the EPLex indicators is made with explicit reference to international labour standards. For the purposes of this project, reference is made to the following ILO conventions and recommendations:

- fundamental ILO Conventions that contain fundamental principles and rights at work, including prohibited grounds of dismissal or discrimination, including with regard to dismissal (C098, C111);

- specific international labour standards governing employment termination (C158, R166 – see Appendix A and B for full texts);

- other international labour standards that contain reference to employment termination (such as C135, C156, C183, R143, R165, R200).

Conventions and recommendations have a different legal value: while conventions are open to ratification and are legally binding on the ratifying States, the recommendations are not. The purpose of the EPLex coding is not to highlight which countries have ratified and are complying with conventions, but rather to identify to what extent national legislations contain provisions outlined in these standards regardless of the ratification and compliance issues. Note that the ILO Member States have to respect, promote, and realize fundamental principles and rights at work, enshrined in the fundamental ILO conventions, even if they have not ratified relevant conventions, as stated in the ILO Declaration on Fundamental Principles and Rights at Work, 1998.

2.3 Specific methodological assumptions for coding EPLex components

Termination of Employment Convention, 1982 (No. 158) and the ILO EPLex database structure offer a natural framework for summarising legal information covering over 50 thematic sub-components. In the area of terminating regular contracts, individual dismissals, these variables are organized under the following areas: *Employment contracts, Substantive requirements, Procedural requirements, Severance pay* and *Redress*. Also, *Source and Scope* area contains information on legal coverage.

This structure lends itself into eight EPLex indicators, each governing a specific area of employment protection, as well as a composite EPLex indicator:

- Valid grounds for dismissals
- Prohibited grounds for dismissals
- Probationary period
- Procedural notification requirements for dismissals
- Notice periods
- Severance pay
- Redundancy pay
- Avenues for redress

This section describes the logic behind each of the indicators, the coding scheme, and the specific assumptions made. Box 1 presents the summary of this methodology.

Area 1. Substantive requirements for dismissal

Area 1.1. Valid grounds for dismissal, in light of prohibited grounds

Article 4 of Convention 158 articulates that "[t]he employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service". The ILO Committee of Experts on the Application of Conventions and Recommendations has frequently suggested that the need to base termination of employment on a valid reason is the cornerstone of the Convention's provisions (GS 1995; ILO, 2009b). The adoption of this principle, as outlined in Article 4, "removes the possibility for the employer to unilaterally end an employment relationship of indeterminate duration by means of a period of notice or compensation in lieu thereof. […] The Convention requires that there be a valid reason for termination of employment, whether it is terminated following a period of notice or not. In other words, giving the worker a period of notice does not exempt the employer from stating his reasons for terminating the employment" (ibid). Various academic disciplines, including economics, align with

this stance, by viewing the definition of unfair dismissal as the single most important element in the employment protection legislation (Skedinger, 2010).

Article 4 further requires that the reason given be connected with one of the following grounds: (i) the capacity of the worker; (ii) the conduct of the worker; or (iii) the operational requirements of the undertaking, establishment or service.

National legislations vary in this respect. Some of them contain the same or similar terms as Convention 158. Others provide an explicit definition of economic or worker-related dismissals, or contain detailed lists of what can constitute valid grounds for dismissals, usually in line with the three types of reasons outlined by Convention 158. In other countries, legislation is less specific, requiring, for example, a "valid reason" or "real and serious grounds" for dismissal, while the verification of the reasons' actual "validity" is left to the specialized bodies which may rely on case law.

Article 13 of Recommendation No. 166 further supplements Convention No. 158 by providing that a "worker who has been notified of termination of employment or whose employment has been terminated should be entitled to receive, on request, a written statement from his employer of the reason or reasons for the termination". The revision of national legislations suggests that this provision is not always contained along with the provision to have a reason for dismissal.

Given the above considerations, an indicator measuring the degree of employment protection based on legal definition of valid grounds for dismissals, distributed on a 0-1 scale, with 0 measuring the lowest level of protection, is created according to the following coding scheme:

0 – when there is no obligation to *have* a reason for dismissal (understood in light of prohibited grounds)

0.5 – when there is an obligation to *have* a reason for dismissal, and valid grounds (justified dismissal) are any fair reason

0.75 – when there is an obligation to *have* a reason for dismissal, and valid grounds (justified dismissal) are economic reasons, worker's conduct, and worker's capacity

1 – when there is an obligation to *have* a reason for dismissal, and valid grounds (justified dismissal) are only worker's conduct

Subtract 0.25 if there is no obligation to *give* a reason for dismissal, for a minimum of 0.

National legislations that do not feature a notion of valid grounds for dismissal are attributed the lowest score. One has to bear in mind, however, that when no valid grounds for dismissal are required in statutory provisions, this does not mean that employers enjoy a total freedom to terminate employment contract. The absence of valid grounds must always be understood in light of prohibited grounds: most of the countries that do not require a valid reason for dismissal provide safeguards against wrongful and unfair dismissals. For example, provisions forbidding discrimination are used to protect workers against wrongful

or unfair dismissals. Hence, this area should be regarded jointly with the area "prohibited grounds".

It may be argued that a situation when a national legislation contains a specific exhaustive list of valid reasons, as compared to the situation when the legislation is less specific, may reduce the range of possibilities for dismissals, and offer higher level of employment protection. It may also be argued, however, that clear definitions may reduce the need to contest dismissals in front of competent authorities, if employee agrees with the provided reason. Clearer and more specific definitions, in case of contesting dismissals, may also lead to swifter court procedures. Whether this is indeed the case, and whether quicker and more predictable court procedures provide better employment protection is ultimately a matter of empirical research, as "more regulation" or "more clarification" may not necessarily mean "more protection". In attributing coding values, the first interpretation was chosen, i.e.: clear definitions or detailed lists of reasons are interpreted as implying a higher employment protection as compared to the formulation "any fair reason". To better explore the richness of the regulations and test the merits of alternative codification, the users of this indicator may wish to work with dichotomous values of this variable.

Area 1.2. Prohibited grounds for dismissals

International labour standards also provide guidance as to what reasons would not constitute a valid reason for terminating an employment relationship. These standards include:

I. The ILO fundamental principles and rights at work, which, with the reference to employment protection legislation, include *freedom of association and the effective recognition of the right to collective bargaining,* as well as *elimination of discrimination* in respect of employment and occupation. They are governed by the following fundamental Conventions:

- Right to Organize and Collective Bargaining Convention, 1949 (No. 98);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Under these Conventions, the following "core" grounds constitute prohibited grounds of dismissal (discrimination):

- trade union membership, participation in union activities outside working hours or, with the consent of the employer, within working hours (C098, Art. 1);
- race (C111, Art. 1, 1(a));
- colour (C111, Art. 1, 1(a));
- sex (C111, Art. 1, 1(a));
- religion (C111, Art. 1, 1(a));
- political opinion (C111, Art. 1, 1(a));

- national extraction (C111, Art. 1, 1(a));

- social origin (C111, Art. 1, 1(a)).

For the purposes of this project, these grounds may be viewed as “core” prohibited grounds, because they are enshrined in the fundamental Conventions, and in particular, are listed as “core” components of discrimination in C111, Art. 1, 1(a). Note that fundamental Convention 111 also includes additional principles in Art.5, and states that countries may determine that special measures designed to meet the particular requirements of persons who, for reasons such as *sex*, *age*, *disablement, family responsibilities or social or cultural status*, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination, including in respect of dismissal.

II. Specific international labour standards governing employment termination:

- Termination of Employment Convention, 1982 (No. 158);

- Termination of Employment Recommendation, 1982 (No. 166).

Under these Standards, in addition to the above, the following grounds should not constitute valid reasons for termination:

- seeking office as, or acting or having acted in the capacity of, a workers’ representative (C158, Art. 5(b));

- the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities (C158, Art. 5(c));

- marital status, family responsibilities, pregnancy (C158, Art. 5(d));

- absence from work during maternity leave (C158, Art. 5(e));

- temporary absence from work because of illness or injury, the definition of which, as well as the extent to which medical certification is required is left to national methods (C158, Art. 6; R166, Art. 6);

- age, subject to national law and practice regarding retirement (R166, Art. 5);

- absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice (R166, Art. 5).

Workers’ representatives shall enjoy effective protection against any act of prejudicial to them, including dismissal, based on their status or activities as workers’ representative also under Workers’ Representatives Convention, 1971 (No. 135).

Marital status, family situation or *family responsibilities* should not constitute valid reasons for termination also according to Workers with Family Responsibilities Convention, 1981 (No. 156), Art. 8; and under Workers with Family Responsibilities Recommendation, 1981 (No. 165), Art. 16.

Pregnancy and *absence from work during maternity leave* also constitute prohibited grounds for dismissal under Maternity Protection Convention, 2000 (No. 183), Art. 8.

Note that measures and national regulations in respect of *pregnancy*, *maternity*, and *family responsibilities* are also considered to be essential for promoting gender equality in employment, and hence to eliminating sex discrimination, which constitutes prohibited ground for dismissal under fundamental Convention 111. It is with the view of promoting gender equality that numerous countries have included explicitly *pregnancy, maternity*, and *family responsibilities* as a prohibited ground of discrimination in their national legislation[9].

III. Other international labour standards that contain reference to employment termination.

These include, for example, HIV and AIDS Recommendation, 2010 (No. 200), which states that real or perceived HIV status should not be a cause for termination of employment (Art. 11).

On the basis of these Standards, an indicator measuring the degree of employment protection based on legal definition of prohibited grounds of dismissals is created using the following assumptions. First, in coding, reference is made only to statutory provisions specific to governing labour relations, and not to general anti-discrimination standards that may be contained in a range of different laws, including the constitution. The reason for this is that, even if general anti-discrimination laws may have reference to dismissal, there may be different consequences under general anti-discrimination laws and specific laws on unfair dismissal, as regards compensation levels, reinstatement, or the burden of proof. General non-discrimination laws tend to be less protective with regards to unfair dismissals as compared to specific laws governing labour relations. Second, national labour provisions may sometimes contain only a partial list of fundamental principles and rights at work, alongside with the full or partial list of principles suggested by specific international labour standards. The existence of fundamental principles and rights at work should prime over more "specific" principles. Current coding scheme contains an implicit assumption that having specific principles in the labour provisions represents a more advanced situation as compared to cases where only fundamental principles and rights at work are provided for. EPLex users are welcome to signal to the EPLex team cases in which this assumption is not correct.

The following coding scheme is adopted:

0 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that only partly meets the ILO fundamental

[9] See Committee of Experts on the Application of Conventions and Recommendations, General Survey of the reports on the Workers with Family Responsibilities Convention (No. 156) and Recommendation No. 165, 1981. Report III (Part 4B), ILC, 80th Session, 1993, para. 266. See also Committee of Experts on the Application of Conventions and Recommendations, General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization, 2008. Report III (Part 1B), ILC, 101st Session, 2012, para 782-786.

principles and rights at work. In other words, one or more of the following grounds are missing:

- trade union membership, participation in union activities outside working hours or, with the consent of the employer, within working hours;
- race;
- colour;
- sex;
- religion;
- political opinion;
- national extraction;
- social origin.

0.25 - when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that at least partly meets the ILO fundamental principles and rights at work; however, it also contains at least one of the grounds listed in fundamental conventions beyond the “core” discriminatory grounds, or which are co-provided by fundamental and specific international labour standards regulating employment termination. In other words, one or more of the following grounds are present, in addition to at least partial presence of the grounds under 0 category:

- age, subject to national law and practice regarding retirement;
- disablement;
- social or cultural status;
- marital status, family responsibilities, pregnancy.

The logic for this category is that *age*, *disablement*, and *social or cultural status* are provided for in Convention 111, but in addition to the “core” discriminatory grounds, in Art. 5. Age also falls under specific international labour standard regulating employment termination (R166, Art. 5). *Marital status, family responsibilities,* and *pregnancy* fall under the regulation of both fundamental Convention (C111, Art. 1, 1(a) with reference to sex discrimination) and specific international labour standard regulating employment termination (C158, Art. 5).

0.5 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that at least partly meets the ILO fundamental principles and rights at work; however, it also partly meets additional principles established by specific international labour standards governing employment termination. In other words, in addition to at least partial presence of the grounds under 0 and 0.25 categories, it contains at least one of the following categories:

- the filling of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

- absence from work during maternity leave;

- temporary absence from work because of illness or injury;

- absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice.

Note that the current coding scheme does not explicitly include the category *seeking office as, or acting or having acted in the capacity of, a workers' representative*. According to GS 1995, paragraph 112, "protection against termination of employment as a result of trade union membership or participation in trade union activities, provided for in Article 5(a) of the Convention [158] and in national legislation, generally covers trade union officials who are acting as workers' representatives for a number of reasons. Workers' representatives are specifically mentioned in Article 5(b) of the Convention in order to ensure similar protection to people who are acting as workers' representatives outside the trade union context. […] Depending on the country, worker's representatives may include various categories of persons, including trade union delegates, staff delegates and members of work councils and of safety and health committees". Thus, the category *seeking office as, or acting or having acted in the capacity of, a workers' representative* overlaps with the category *trade union membership and activities*, but is also broader. In the current EPLex data collection effort, it was not possible to make a systematic distinction between the two categories. For the coding, this implies that *seeking office as, or acting or having acted in the capacity of, a workers' representative* is currently treated in a narrow sense, jointly with *trade union membership and activities*, under the 0 category. This also implies that countries with national labour legislation explicitly containing this category among prohibited grounds are not attributed 0.5 score unless this category is complemented by other categories listed under the 0.5 score above.

0.75 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that fully meets the ILO fundamental principles and rights at work; and fully meets the principles established by specific international labour standards governing employment termination. In other words, it contains all of the following items:

- trade union membership, participation in union activities outside working hours or, with the consent of the employer, within working hours;

- race;

- colour;

- sex;

- religion,

- political opinion;

- national extraction;
- social origin;
- the filling of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- marital status, family responsibilities, pregnancy;
- absence from work during maternity leave;
- temporary absence from work because of illness or injury;
- age, subject to national law and practice regarding retirement*;
- disablement*;
- social or cultural status*;
- absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice*.

In some countries, *age* and or *absence from work due to military service*, may be missing from the list of prohibited grounds. Given that the specific international labour standards leave the regulation of this area to national methods subject to other national practices of retirement and military services, whenever only these reasons were missing, but all other reasons listed above are present, the country is still attributed the score 0.75. Likewise, when only *disablement* or *social or cultural status* are missing, but all other categories are present, the country is still attributed the score 0.75; the logic being that the fundamental international labour standards include these grounds as additional to "core" prohibited grounds of discrimination.

1 - when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that fully meets the ILO fundamental principles and rights at work; and exceeds the principles established by specific international labour standards governing employment termination, by additionally containing other categories.

Such categories may be set by various international labour standards beyond those governing fundamental principles and rights at work or employment termination specifically, and include, for example, real or perceived HIV status of a worker. They may also include factors set by the ILO code of practice "Protection of workers' personal data" (1997), such as information about criminal convictions, personality tests or genetic screening; or other factors established by national practise, such as whistle blowing.

In addition to prohibited grounds for dismissal, numerous countries also single out groups of workers enjoying special protection. This distinction is important: for example, when *pregnancy* is included under "prohibited grounds", this means that a woman cannot be dismissed because of her pregnancy; but she can be dismissed for other, valid, reasons. In contrast, when *pregnant women* are included under "workers enjoying special protection", this means that a pregnant woman cannot be dismissed during her pregnancy neither because of her

pregnancy nor because of any other reason. While no separate indicator for "workers enjoying special protection" topic is created, this information is taken into account in the coding of prohibited grounds. For example, in Bangladesh, trade union membership and activities are the only prohibited ground featured in the national legislation; on this basis alone, Bangladesh could have been attributed the 0 score. However, in addition, Bangladesh national legislation also features pregnant women and women on maternity leave among "workers enjoying special protection". Accounting for this information allows attributing 0.25 score to Bangladesh on the prohibited grounds item.

Area 2. Maximum probationary period, including all possible renewals

Article 2 of Convention No. 158 specifies that "A member may exclude the following categories of employed persons from all or some of the provisions of this Convention: […] (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration".

The probationary or trial period, also referred to in some countries as minimum employment period (Australia), or qualifying period (Ghana, UK), is a period of employment during which a worker is not fully covered by employment protection legislation. Statutory provisions feature significant differences in defining exemptions from other employment termination rules that this period concerns. Under the International Labour Standards and in a lot of national law, it is, however, not the prohibitions covered in the previous section (prohibited or discriminatory grounds) that are contemplated when there is exclusion during probation. Several cases of exemptions during a probationary period can be distinguished: (1) protection against unfair dismissal does not apply; (2) different valid grounds for dismissal, as compared to the general contractual regime, may apply; (3) different notification or severance pay rules may apply; (4) various combinations of these cases.

Ideally, a coding scheme would benefit from reflecting these differences across countries. However, not all national legislations provide a clear definition of a probationary period or the list of exemptions; and oftentimes these are left to the jurisprudence. Collecting this information hence remained outside the scope of the EPLex project; and it is currently not possible to assign different weights to countries with different definitions of probationary period in a consistent manner.

Nevertheless, it is still useful to provide examples of countries where this distinction is made explicitly in the law (Table 1). EPLex users working with the Table 1 sample of countries may consider establishing their own weighting scheme to differentiate between different degrees of employment protection during trial period.

Table 1. Exemptions during a probationary period: Examples of some selected countries

Protection against unfair dismissal does not apply	Different valid grounds for dismissal, as compared to the general contractual regime, may apply	Different notice period may apply
Angola	Japan (the employer's freedom to dismiss an employee during the probationary period is broader than an ordinary dismissal, though it should still be based on an objective reason)	Angola (no notice)
Antigua and Barbuda		Antigua and Barbuda (different rule for notice period)
Australia		Japan (different rule for notice period)
Brazil (statutory trial period is 90 days; a separate rule exists for probation period before compensation for unfair dismissal claims can be made, it is 1 year)	Norway (valid grounds for dismissal include only worker's lack of suitability for the work, lack of proficiency or reliability)	Korea (shorter notice)
El Salvador		Lesotho (shorter notice)
Estonia		Norway (shorter notice)
New Zealand (as of 2011)		Romania (shorter notice)
Peru		Rwanda (shorter notice)
Portugal		Portugal (depending on the length of probation, shorter notice may apply)
Tanzania, United Republic of		United Arab Emirates (no notice)
Turkey (employees with less than 6 months of employment are excluded from protection against unjustified dismissal)		
Uganda (max. trial period is 12 months; protection against unfair dismissal does not apply in the first 13 weeks)		
UK		
United Arab Emirates		

The EPLex database contains information on the standard maximum duration of the probationary period, including all renewals. To convert this actual information into a coded category with the 0-1 scale, the national data was first transformed into monthly data. Then, normalization was applied[10], attributing 0 values to cases when statutory provisions contain no limitation of probationary periods, and 1 to cases when probationary periods are less than 1 month. Technically, normalization amounts to dividing the actual probation period of a country by the maximum value of probationary period observed across all countries of the EPLex database. The maximum and minimum limits are chosen on the basis of examining national practices of over 100 countries, which shows that countries usually choose to have probationary periods lasting between 1 and 24 months, or do not specify their length. Probationary period of less than 1 month is available only in case of Belgium, for blue-collar workers; unlimited probationary periods are observed in 14 countries: Canada, Chile, Ghana, Japan, Malaysia, Mexico, Namibia, Nigeria, Singapore, South Africa, Sri Lanka, Thailand, United States, and Zambia. To distinguish between countries with no limitation of duration of probationary periods, and countries that put the maximum limit as compared to

[10] While such data normalization is standard; in the context of employment protection legislation, the idea is borrowed from Deakin, Lele and Siems (2007).

all others, in normalization, the “no limitation” case is equated with 25 months. Clearly, any assumption put on the cap affects the indicators’ distribution. The 25 months cap is not unrealistic, however, in the sense that probation periods higher than this limit are rarely observed in practise, and the “closest possible” case is 24 months, observed only in Cyprus, the UK, and Tunisia (in case of executives only). While “no limitation” may be perceived as being potentially above 24 months, in many countries, the custom duration may actually be lower. In all other countries, the maximum probationary period is usually less than or equal to 12 months.

Based on this normalization, higher values of the indicator denote a lower permitted duration: the sooner an employee finishes his or her probation, the sooner general regime of protection against dismissals will start applying; hence the employee may be considered as better protected from dismissal as compared to workers who face longer probationary periods.

The sub-indicator *maximum probationary period* is built using the information on the *standard* maximum duration of the trial period. However, national legislations may contain specific provisions for some other, specific, categories of workers or enterprises. When different regulations exist for two clearly distinct and sufficiently large groups of workers and enterprises, such provisions are coded separately. In all other cases, only the standard probationary period is retained for coding. Table 2 contains the full list of country examples where several regimes of probationary periods may co-exist. The ILO EPLex database provides further details on such special cases.

Table 2. Countries with several regimes of probationary period

By skill level or occupation	By enterprise size	By contract type (FTC, project-based work)	By type of payment (hourly, daily basis, etc)	By worker origin (migrant)	Collective agreements or individual employment contracts
Algeria	Australia*	Angola	Burkina Faso	Niger	Algeria
Angola	Spain	China	Central African Republic		Antigua and Barbuda
Austria		Indonesia	Côte d'Ivoire		Austria
Armenia		Moldova, Republic of	Senegal		Denmark
Bangladesh		Morocco			Ghana
Belgium*		The Netherlands			Hungary
Burkina Faso		Portugal			Italy
Cambodia		Romania			Montenegro
Cameroon					Niger
Central African Republic					Portugal
Congo Democratic Republic of the*					Senegal
Côte d'Ivoire*					Slovakia Slovenia
Denmark					Spain
Gabon					Tunisia
Iran, Islamic Republic of					Turkey
Kyrgyzstan					United States
Madagascar*					
Malawi					
Moldova, Republic of					
Morocco					
Niger					
Peru					
Portugal					
Romania					
Russian Federation					
Senegal*					
Spain					
Tunisia*					
Viet Nam					

Note*: * - countries in which provisions exist for clearly distinct and sufficiently large groups of workers and enterprises; two indicators per country are created (see Appendix C for more details). In all other cases, reported are* additional *regimes that co-exist with the general regime.*

Area 3. Procedural requirements for dismissals

Area 3.1. Procedural notification requirements for individual dismissals

Article 11 of the Convention No. 158 provides that "worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct". The purpose of this obligation is twofold: it is aimed at preventing a worker from being taken by surprise by immediate termination of employment, as well as at mitigation of its detrimental consequences. Also, such notice is intended to enable the worker to prepare for the upcoming job loss and to allow job search. Indeed, Recommendation No. 166 additionally provides that, during the period of notice, the worker should be entitled to a reasonable amount of time off without loss of pay at times that are convenient to both parties, so that the worker may look for other employment (ILO, 1995; 2009b).

Recommendation No. 166 further supplements Convention No. 158 by identifying additional procedures that may be followed prior to, or at the time of, termination. The Recommendation provides, inter alia, that the employer should notify a worker in writing of a decision to terminate employment, and that the worker should be entitled to receive a written statement from the employer of the reason or reasons for termination on request. The Recommendation envisages the possibility of employers consulting workers' representatives before a final decision is taken on individual cases of termination of employment (ibid).

Furthermore, Convention 158, Article 8 also envisages the possibility that terminations be authorised by competent authorities (impartial bodies), such as a court, labour tribunal, arbitration committee or arbitrator. In that case, a worker who considers that his or her employment has been unjustifiably terminated may have to follow a different procedure of appeal.

Based on this, countries may be distinguished depending on whether they allow for an oral statement to terminate employment relationship, whether they require a written statement, whether they require notification of a third party, or a third party's approval for dismissal. The "third party" notion varies across countries, and may include public administration (ministry of labour, labour inspectorates, labour councils, guild societies, employment agencies, etc), judicial bodies (labour courts, industrial relations courts, etc), and/or workers' representatives. As it is virtually impossible, and not necessarily useful, to establish the hierarchy of these bodies, for comparative purposes, they are treated equally and as a single category within the current coding scheme. Clearly, however, differences across countries exist in how efficiently one body or the other may deal with the employers' request.

In numerous instances, legislation allows for pay in lieu of notice. Usually, in such cases, employer and employee have a possibility to agree on a mutually acceptable date of employee's departure. Note however, that prohibiting pay in lieu of notice may not always be welcome by an employer, if he or she wants to terminate employment relationship immediately. Absence of pay in lieu of notice may also serve as a protection for the employee, as it allows searching for another employment while being employed, but also continuing to maintain relationship with former colleagues and worker representatives for a better contesting of the dismissal, if needed. Thus, in the coding scheme, it is useful to distinguish

countries that do and do not allow pay in lieu of notice, by placing countries that do not allow pay in lieu of notice into a category with somewhat higher employment protection.

Given the above, an indicator measuring the degree of employment protection based on legal provisions for procedural requirements is created according to the following coding scheme:

0 – when employer needs only orally notify a worker of a decision to terminate his employment

0.25 – when employer must notify a worker in writing of a decision to terminate his employment

0.5 – when employer must notify a third party (such as works council or the competent labour authority)

For categories from 0 to 0.5, add 0.25 if pay in lieu of notice is not allowed

1 – when employer cannot proceed to dismissal without authorisation from a third party.

Area 3.2. Notice period at different tenures

Convention 158 requires that a period of notice be of a "reasonable" duration. The specific length of notice period is left to be determined by national practice through a range of means, including legislation, regulations, collective agreements, the contract itself, or by custom.

The EPLex database contains information on the length of notice periods at seven tenure profiles: 6 months and above; 9 months and above; 2 years and above; 4 years and above; 5 years and above; 10 years and above; 20 years and above. Data for each individual profile are reported separately.

As with the trial period, it is useful to establish a coding scheme that uses data normalization, in order to convert it into an indicator distributed on a 0-1 scale. The advantage of this normalization procedure is that it allows converting actual data into a 0-1 scale without introducing subjective thresholds to the data. This is especially important for comparison of countries with very similar, though distinct, notice periods: artificial categorization of such countries as being "more" or "less" protective is avoided. Technically, normalization amounts to first converting the actual information of each country and each tenure profile into comparable units (months), and dividing the actual amount by the maximum value of notice period observed for this tenure profile in the EPLex database.

The normalization procedure may raise concerns that data may become sample-dependent (i.e., the coding for all countries depends on the information of a given specific country). If, for example, a country that has the maximum notice period in the sample at a specific tenure (say, 6 months), introduces reforms and reduces the notice period, than the maximum becomes irrelevant for the rest of the sample. A new maximum, based on another country's information, may change indicators' value for all countries, even if they did not introduce any legal changes. To address this issue, the calculation of the maximums is based on the information for all available countries and years. The sample-dependence problem that may

arise from the normalization is also significantly mitigated by the fact that, at each tenure, there are usually several countries that have the maximum value of notice period. For example, at 6 months, provisions for white-collar workers in Belgium, the Democratic Republic of the Congo, Côte d'Ivoire, Denmark, Madagascar, and Senegal, prescribe that notice period should be 3 months.

Once notice periods at each tenure are normalized, they are aggregated through a simple average to produce the *notice periods* indicator.[11]

National legislations governing notice periods for terminating employment relationship are extremely diverse. Significant differences exist across countries in the way they regulate notice depending on the reasons for dismissals, workers' occupational classification, workers' age, or type of contract or pay. In some countries, labour law states explicitly different notice periods for probation. Some assumptions were necessary in order to obtain an indicator comparable across countries, they are provided below.

Valid reasons for dismissals and notice periods

In the vast majority of cases, ILO EPLex records notice periods for dismissals with a valid reason – and those are the ones reflected in the coding scheme. There are four exceptions, however, for which the codification exercise strived to align the logic of coding *valid reasons* area with the logic of coding *notice periods*. In Bangladesh, while no valid reasons for dismissal is specifically provided for in the legislation, notice period for economic dismissals and for unfair dismissals is contained in the legislation. For consistency of comparisons with other countries, only the notice period for economic dismissals is retained. In Brazil, there is no notice period for dismissals on valid grounds; only for dismissals without cause. Since the latter are permitted by law and may include economic dismissals, the "valid grounds" are coded as 0 in Brazil; and, consequently, Brazil is attributed a non-zero notice period. In Panama, there is no notice period to be observed for dismissals on valid grounds, but exceptions exist for specific categories of workers. Panama is attributed a zero notice period. In Venezuela, zero notice periods are provided in cause of just dismissals (which can only be based on workers conduct), but non-zero notice periods are spelled out for economic dismissals, which do not feature among the valid reasons for dismissals. The former value is retained.

[11] Simple averaging means that equal weights are attributed to notice periods for workers with these different tenure profiles. Ideally, it would have been preferable to use the actual distribution of workers across these tenure profiles as weights. Data available for the OECD countries suggests that indeed, such distribution is not uniform across tenure profiles; moreover, it varies significantly across counties. Appendix D shows examples of workers' distribution across different tenure profiles in Australia and Belgium. Note that this information is collected by subgroups of worker tenures which is different from the EPLex worker tenures categorization. With some approximations, given these distributions, a higher weight could be given to workers with 2 years of tenure in Australia, as compared to all others, because this worker category is over-represented among the employed. In contrast, in Belgium, a higher weight could be given to notice periods of worker profiles with 10 and 20 years of tenure. Collecting information on workers' distribution by tenure – for all countries, time periods, and with the tenure split in line with the EPLex choice - remains beyond the scope of the EPLex codification exercise. For this reason, equal weights are given to all tenure profiles. However, interested users are welcome to explore this option and construct their own weighted averages assigning different weights to different tenures. To allow for this possibility, the EPLex indicators are also provided in a disaggregated manner.

In some countries, there exist also valid grounds for termination without notice, in addition to general valid grounds of dismissal (i.e: FYR of Macedonia); they were not accounted for in the current coding.

As is the case with severance payments, numerous countries do not have statutory rules for notice period. Such rules, however, may be provided elsewhere. Examples of countries include: Italy (collective agreements), New Zealand (individual contracts or collective agreement), United States (individual contracts or collective agreement). For the purpose of the coding exercise, for Italy and New Zealand, the information on the length of notice periods has been additionally collected from the OECD Employment Outlook (2013), based on most wide-spread collective agreements. For the US, notice periods are coded as zeroes, even though a non-zero value may apply in some specific situations.

Notice period by type of worker

In countries where provisions differ by worker's occupation, the most general case is reported. In a few instances, when two very distinct general cases are available (for example, white-collar and blue-collar workers), indicators of notice periods are reported separately for both cases. All other worker categories and special cases are reported below (see the online EPLex database as well as notes below). Ideally, one would calculate a weighted average of notice periods, accounting for the distribution of workers across all possible categories, but such information is not available on a systematic basis.

The following assumptions were adopted.

- Angola: retained for coding are notice periods for all professional groups except for executives, high-level and middle-level technicians, for whom higher notice period applies.

- Austria: provisions for white-collar and blue-collar workers are reported separately;

- Belgium: provisions for white-collar and blue-collar workers are reported separately. Note that in Belgium, in addition to the statutory notice period provisions, different provisions exist in collective agreements, and notably in National Collective Agreement No. 75, covering certain blue-collar workers. This information is available in the EPLex database, but not captured in the coding.

- Burkina Faso: retained are notice periods for all types of workers except first-line supervisors, technicians, engineers, executives.

- Cameroon: all workers are divided into professional categories; depending on this category, there is a different notice period provision. Reported are notice periods for the "middle" category (see EPLex database for more details).

- Central African Republic: retained are provisions for monthly paid workers. Other provisions exist also for first-line supervisors, technicians, and managers.

- Congo, Democratic Republic of the: all workers are divided into professional categories; depending on this category, there is a different notice period provision. Indicators are provided for notice periods separately for workers (ranging from unskilled to highly skilled), and also for managerial positions. Note that different provisions also exist for first-line supervisors and technicians.

- Côte d'Ivoire: all workers are divided into professional categories; depending on this category, there is a different notice period provision. Reported are indicators for notice periods for workers of the bottom category and of the top category.

- Denmark: retained are notice periods only for white-collar workers. For blue-collar workers, the notice periods are not provided in the law, but in individual or collective agreements, which are not systematically available.

- Greece: provisions for white-collar and blue-collar workers are reported separately.

- Madagascar: all workers are divided into five professional categories; depending on this category, there is a different notice period provision. Reported are notice period indicators for workers of the bottom category and of the top category.

- Morocco: white-collars and blue-collars enjoy the same notice period (which is reported). However, different provisions exist for managerial and similar positions.

- Niger: retained are notice periods for monthly paid workers and first-line supervisors. Note that different provisions also exist for top executives.

- Senegal: retained are notice periods separately for monthly paid workers and for managers.

Notice period by reasons for dismissals

When different provisions for worker-related dismissals and for economic dismissals exist, a simple average between the two is taken. Worker-related reasons may include worker capacity and worker discipline. As Convention 158 suggests that the only exception to the obligation to give notice (or compensation in lieu thereof) is in respect of an employee's serious misconduct (Art. 11), the current coding scheme only accounted for those worker-related reasons that include worker capacity.

For example, in Armenia, as of 2011, notice in case of economic dismissals was 2 months while notice for worker-related dismissals was 2 weeks. Differences also exist in Ethiopia, Kyrgyzstan, Republic of Moldova, Mongolia, Thailand (different notice for economic and worker-related dismissals); Angola, Azerbaijan, Bangladesh, Philippines, and Venezuela (no notice for dismissals based on worker capacity); Peru or Slovenia (no notice for economic dismissals; but different notice for dismissals on worker's capacity or worker's discipline grounds). For each of these countries, in coding, an average between economic and worker-related

dismissals, excluding disciplinary dismissals, is taken. Whenever one or the other is absent, its value is treated as zero.

Notice period by age

Some countries stipulate different notice periods for workers of different age profiles. Examples include:

- Australia: the law foresees different notice periods for workers with over ten years of tenure, depending on their age. Coding reflects only notice periods for employees below the age of 45, while higher notice is available for those aged 45 and above.

- Norway: the law foresees different notice periods for workers with over ten years of tenure, depending on their age. Coding reflects only notice periods for employees below the age of 50, while higher notice is available for those aged 50 and above.

Notice period by type of procedure

In some countries, different notice procedures exist depending on the overall procedure for dismissal that is followed. In the Netherlands, an employer who intends to dismiss a worker may choose between a termination via a prior permit from the administrative authority, and a judicial rescission of the contract for "important reasons". Only the first case was retained for comparative coding purposes.

Note also special procedures in Indonesia: Indonesian termination system is not based on notice but on prior bipartite negotiations, and if they fail, on mediation by the administration and eventually judicial settlement. A value of zero was attributed to the case of notice period of Indonesia, regardless of tenure; though this may be somewhat misleading in light of very special dismissal procedures of this country.

Other types of notice period

For comparability of the coding exercise, only the case of permanent, monthly-paid workers was considered. Other provisions may exist for other types of contracts or workers (Table 3).

Table 3. Different regulations of notice periods

Non-monthly paid workers	Fixed-term contracts	Domestic workers	Disabled workers
Bangladesh	Bulgaria	Cameroon	Côte d'Ivoire
Brazil	Cambodia	Chile	Syria
Austria	Ghana	Panama	
Burkina Faso	Korea		
Central African Republic	Malawi		
Côte d'Ivoire	Switzerland		
Malawi	Ghana		
Niger	Korea (seasonsal)		
Saudi Arabia	Viet Nam (seasonal and task-specific workers)		
Senegal	Zambia		
Tanzania, United Republic of	Zimbabwe		
United Arab Emirates			
Yemen			
Zambia			

Area 4. Severance and redundancy pay

Article 12 of Convention 158 provides for a worker whose employment has been terminated to be entitled, in accordance with national law, to (a) a severance allowance or other separation benefits; (b) benefits from unemployment insurance or assistance or other forms of social security; or (c) a combination of such allowance and benefits. Note that the Convention provides flexibility by leaving it up to national governments to define the best way of protecting workers against dismissals. In this sense, it is important to assess the EPL provisions jointly with other worker protection measures that exist in various countries. The EPLex indicators can thus be seen as a building block in that direction.

In practice, separation benefits can be distinguished depending on the reasons for dismissal. At the time of construction of ILO EPLex, to use uniform language for comparative purposes, it was decided to refer to "severance payments" when speaking about all termination payments that arise from terminating a worker on worker-related grounds, such as worker conduct or worker capacity. In the ILO EPLex, "redundancy payments" refer to termination payments that arise from terminating a worker on economic grounds, such as redundancy or restructuring. With some exceptions, ILO EPLex database, and hence indicators based on it, include mainly statutory termination payments. In contrast, ILO EPLex database does not include cases of bankruptcy or business closure, which may give rise to other separation payments, and which are usually governed by other, very specific, regulations.

As with the trial period and the notice periods, constructing indicators of severance and redundancy pay involves applying normalization procedure. This procedure allows converting legal data into indicators distributed on a 0-1 scale. The sample's minimum, including zero, is attributed a coding value of 0; the sample's maximum is attributed the value of 1. Technically, normalization amounts to first converting the actual information of each country and each tenure profile into comparable units (months), and then dividing the actual amount by the maximum value of severance/redundancy pay observed for this tenure profile in the EPLex sample. Once the normalization of severance and redundancy periods

at seven different tenures is obtained, a simple average between normalized values at seven tenure profiles, the same as for notice periods, is taken to obtain severance pay and redundancy pay indicators.

In coding this area of employment termination, only additional costs for employer that arise at the time of the separation, and additional benefits to the worker related to the fact that employment is terminated at the initiative of the employer, are included into severance pay. For example, some countries have individual severance payment account schemes under which employers and/or employees pay pre-defined contributions to the employee income provision funds during the whole, or parts of, duration of the employment relationship. At the time of employment termination, accumulated funds are either provided to the employee, or carried over to a new employer, or may be transferred to a pension fund. Under such schemes, no additional cost to the employer is raised at the time of separation. For the worker, even if these payments respond to a social criterion of protection of the labourer against the income loss, they also represent a deferred remuneration, a payment of something that in any case belongs to the worker and that may even inherited in case of worker's death. In some countries like Brazil, these funds may also be used for purposes other than compensation of income loss because of the employment termination. Given these particularities, these payments are not considered as part of standard severance or redundancy pay. This list of countries with such schemes includes:

- Austria: after one contribution-free first month of the employment the employer contributes 1.53 per cent of worker's salary to the social security system, which transfers it to the assigned severance payment fund. Any employee in respect of which at least 36 monthly contributions were made by one or more employers has a choice whether to receive severance pay from the fund or save the entitlement towards a future pension, in the event of the termination of employment.

- Brazil: according to the Guarantee Fund for Time of Service system, "Fundo de Garantia por Tempo de Serviço" (FGTS), every month, the employer is required to deposit 8 per cent of the employee's monthly salary into an account managed by the Federal Savings Bank, "Caixa Econômica Federal", on behalf of the employee. For the period of employment from 01/2002 to 12/2006 additional 0.5 per cent had to be paid by the employer to the state as part of social benefits. Deposits are adjusted for inflation. The employee is entitled to withdraw the balance of the account in several situations, including the following: dismissal without cause; expiry of a fixed-term contract; closure of the undertaking; termination due to force majeure; termination by mutual agreement; death of the employer; retirement; when the worker or his/her dependent suffers from cancer or is HIV positive; in order to purchase a house, settle or amortize the debt or payment of part of housing loan instalments, etc. Note that if an employee is dismissed without cause (which includes economic reasons), in addition to the total amount deposited in his/her FGTS account, he or she will be entitled to an additional indemnity of 40 per cent of the updated value of deposits in the FGTS account. This additional payment is included in the calculation of severance pay.

- Chile: there exists a system of substitute indemnity regardless of the reason for termination, through the Administrators of Pension Funds

(Administradoras de Fondos de Pensiones). There is the possibility for an agreement to be made between the employer and the employee on a substitute indemnity, from the beginning of the seventh year of employment up to the end of the 11th year of the employment relationship. Under these agreements, a monthly contribution of 4.11 per cent of the employee's monthly wage or salary, with the salary to which this percentage applies limited to 90UF, is deposited by the employer in an insured pension fund. As of July 1, 2010, 1UF was equivalent to Ch$21,204. This indemnitity would be payable in any case of termination and also in case of death. As such, it is not included into the calculation of the severance pay.

- Italy: Trattamento di fine rapporto, or end-of-employment contract indemnity, is a certain amount of salary set aside each month to be paid to each employee upon termination of the employment contract. Since 2007, the employee can choose between leaving the employer's contributions within the enterprise or transferring them to either a state pension fund or private complementary pension funds.

- Peru: Compensacion por Tiempo de Servicios (CTS), or a seniority award, is a social benefit payable to a worker upon termination of employment irrespective of the reason for the termination, and equivalent to one monthly average salary per year of service. The CTS is deposited to a bank chosen by the employee each semester, 50 per cent at all times (in May and November). While prior to 1991, the CTS was to be paid only once the employment relationship was terminated, the employee can now freely withdraw up to 50 per cent of the CTS. Initially, this benefit was linked to the unjustified dismissal, being considered as an indemnity for dismissal. As it developed, its field of action widened, and currently the worker has the right to collect it regardless of the termination cause, including voluntary retirement and grave fault. By nature, this benefit is considered to be a deferred remuneration (ELL, 1990 in IELLIR, 2012).

- Venezuela: there is no severance payment for dismissals with just cause; redundancy payments are determined during the conciliation procedure. However, there are seniority payments, which are deposited into a fund or accrued into the company's accounts, and are not paid until the employment ends, for any reason, although part can be requested in advance to attend to certain housing, educational, or medical needs.

Conversely, for some countries, termination payments may include, in addition to severance or redundancy pay, payments for reward of service. For example, in Indonesia, these consist in adding one month's pay for every three years of employment, starting with two months' pay for 3 years, up to a maximum 10 months wages for 24 years of service. As these payments represent an additional cost to the employer, they are included into the calculation of severance and redundancy payment.

In a vast majority of cases, termination payments are also the ones for dismissals with a just cause (hence, reference is made to valid grounds). Dismissals based on unjust cause, when contested (subjected to redress), give rise to other types of remedies, such as compensation for unfair dismissal, or reinstatement, or both.

As a general rule, valid grounds for dismissal and grounds for providing (receiving) termination payments coincide. However, there are some exceptions to this rule. For example, in Venezuela, the only valid grounds for dismissal are worker's conduct, and no termination payment is foreseen for such dismissals. However, the legislation foresees a possibility for termination payments in case of redundancy, though redundancy is not featured among fair reasons for individual dismissal. The legislator states that redundancy payments should be determined during the conciliation procedures in the Conciliation Board, and no exact amount is given. Thus, zero value was assigned for redundancy payments in Venezuela during the coding, though in practice a non-zero payment may be attributed by the Conciliation Board.

But more often, rather than being broader, grounds for providing (receiving) termination payments are actually narrower than valid grounds for dismissal. This is especially true in the case of worker-related dismissals (severance pay). According to Convention 158, a lack of worker capacity, which may constitute valid grounds for dismissals, can take two forms: (a) it can result from a lack of skills or qualities necessary to perform certain tasks, leading to unsatisfactory performance (poor professional capacity); and (b) poor work performance not caused by intentional misconduct, as well as various degrees of incapacity to perform work as a result of illness or injury (poor physical capacity). In a number of countries, only the latter type of poor worker capacity may open rights for termination payments. To ensure cross-country comparability, in the coding, a full weight is given to severance payments in countries where severance payment is available for employment termination for both worker physical and professional incapacity. Half-weight to severance payments is given in counties where severance payment is available only for employment termination related to worker physical incapacity (illness). These countries are: Armenia (last data as of 2011), Bangladesh, Bulgaria, Philippines, Slovakia, Russian Federation (severance pay is provided in several cases, but none includes worker's professional capacity), Zambia.

Some countries do not have statutory termination payments. Statutory termination payments are coded as zero for these countries. However, in some cases, provisions may be provided in collective agreements or in employment contracts, for example, in Sweden, Denmark (for blue-collar workers), Japan, Central African Republic, Democratic Republic of the Congo, New Zealand, Norway, and the United States. In Singapore, while there are no statutory payments, the widely applied Tripartite Guidelines on Managing Excess Manpower provide for regulating termination payments in the contract of work or the collective agreement, and suggest negotiation between employee and employer in the absence of such provision. The values attributed to Singapore are based on the prevailing norm of paying a retrenchment benefit of 2 weeks per year of service.

In other instances, though no statutory termination payments exist, employees may be entitled to other types of indemnities from the employer. For example, in Switzerland, subject to specific conditions, upon termination of the contract by either parties, a worker who is at least 50 years old and has 20 or more or more years of service with the same employer may be entitled to a long service payment ("indemnité à raison de longs rapports de travail"). Such indemnity is not available for all other workers; it was not included into coding as it represents a special case.

In some countries, following up recent reforms, new schemes apply only to new contracts concluded after the date of the reform. The coding takes this into account. For example, in Austria, new severance payment scheme replaced the

traditional severance payment as of January 1, 2003. While the traditional severance payment still applies to workers with contracts concluded before this date, as of 2014, these are workers who have more than 10 years of tenure. Thus, for all workers with tenure up to 10 years, the coding according to the new coding scheme is applied (i.e., zero severance), while for those with up to 20 years of tenure, the old scheme applies (9 months of severance and redundancy).

In some countries, the law explicitly offers a trade-off between notice period and redundancy/severance pay. For example, in Slovakia, as of September 2011, when an employment contract is terminated on economic grounds, the worker is entitled to either notice or severance pay but no longer both. If an employee is given notice, the employee has the right to ask the employer to terminate employment relationship by agreement before the start of the notice period and the employer must comply with this request. In such cases only, the employee must be entitled to a severance allowance equal to not less than his/her average monthly earnings multiplied by the number of months of the notice period (sec. 76(2) Labour Code of Slovakia). Where, on the other hand, there is no agreed termination, the employee is not entitled to any severance pay and the statutory notice periods apply. Lastly, if upon agreement, the employee continues to work for only a part of the notice period, he/she will be entitled to some severance payment for the time the worker has not worked (sec. 76(3) Labour Code of Slovakia). Given this, to avoid double-counting, for Slovakia, for 2011 and thereafter, redundancy payment is coded as zero; while notice periods are coded as prescribed by law.

Area 5. Avenues for redress

Articles 8 and 9 of Convention 158 deal with the right of appeal, which is considered to be an essential element of a worker's protection against unjustified dismissal. Article 8, paragraph 1, of the Convention provides that "a worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator".

Article 9 of Convention 158 provides further guidance on the procedures to be applied where a worker seeks to exercise his or her right of appeal, stating that the impartial bodies "shall be empowered to examine the reasons given for termination and the other circumstances relating to the case and to render a decision on whether the termination was justified".

Statutory legislations are indeed very diverse in presenting remedies available to a worker in case he or she wishes to contest the dismissal. Various remedies are available in case of unfair, unlawful, invalid, arbitrary, or abusive dismissals – with wording varying across countries. In other words, in the vast majority of cases, the redress provisions make explicit reference to valid grounds of dismissal, as it is the failure to have valid grounds for dismissal where required, or breach of the requirement only to terminate employment for a valid reason on the part of the employer that opens rights to claim compensation of various kinds for an employee.[12]

[12] Note, however, a few exceptions. In Cameroon, statutory regulations do not specify what grounds can be considered as valid ground for dismissal; while they do specify remedies available in case of unfair dismissal. In Denmark, no ground for dismissal is required in the law (understood in light of

Article 10 of Convention 158 further provides that if the competent bodies "find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination valid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate".

On this basis, the coding scheme of an indicator for the *redress* area would need to distinguish different types of provisions, ranging from non-existing protection against unjustified dismissal, to protection that provides for possibilities of reinstatement or compensation that can be viewed as alternative measures, to protection that provides for reinstatement as primary measure. In addition to these three main cases, it is worthwhile to distinguish countries by the intensity of protection provided by compensatory payments, regardless of whether they are viewed as alternative remedy to reinstatement, or are paid in addition to reinstatement. This need is especially evident when one considers the richness of national legislations with respect to statutory limits for compensation, which may be presented as minimums, maximums, or as intervals. In the majority of cases, these caps serve an indicative role; while the actual amount of compensation remains at the discretion of the judges (or other competent authorities) and is determined by also taking into account other factors, such as workers' age, tenure, and the scope of the abuse by employer.

Collecting data on the actual months of compensation in developing countries on a systematic yearly basis is a complicated matter. Moreover, research using data on developed countries shows that such compensations fluctuate, often together with the business cycle (Ichino, Polo, Rettore, 2003): during high unemployment, competent authorities tend to rule in favour of workers more often and more generously. Thus, incorporating information on the actual months of compensation into a coding scheme may neither be feasible nor desirable.

To facilitate cross-country comparisons, and to ensure that the coding scheme is not dependent on the phase of a business cycle, instead of focusing on the actual limit (number of months), the coding scheme rather attributes different values to countries that have a minimum or a maximum limit of compensation for unfair dismissal contained in statutory provisions.

In some countries, specific remedies may be available to special categories of workers or for dismissals on prohibited grounds (or for discriminatory dismissals). Table 4 provides the list of countries that have explicit statutory provisions for dismissals on prohibited grounds, and lists their nature. It shows that for such dismissals, reinstatement may be available, may serve as a primary remedy, or may nullify the dismissal (dismissal is considered as void) and hence require reinstatement, even if such remedy is not available to other workers. The coding scheme explicitly accounts for these cases.

prohibited grounds), though valid grounds may be established by collective agreements; but redress provisions do specify compensation for unfair dismissal.

Table 4. Remedies for discriminatory dismissals and/or dismissals on prohibited grounds

Reinstatement is available	Reinstatement is a primary measure	Dismissal is void/nullified	Only compensation is available
Belgium*	Egypt	Cameroon*	Malaysia
Chile*	Luxembourg	Greece (+backpay)	South Africa
Estonia	Portugal (+backpay)	Indonesia	
Gabon*	Spain (worker representatives)	Niger (as of Sept.2012)	
Malawi (+additional compensation)	Syrian Arab Republic	Peru*	
Nigeria*	United States* (+backpay and compensation payments)	Spain (maternity-related grounds)	
Saint Lucia*	Venezuela		
Senegal*			

Note: * - countries for which reinstatement is not available in any other case. These are the countries that received the score 0.75 for the Redress area.

With the view of the above, for an indicator measuring the degree of worker protection / ease of dismissal in the area of redress, the following coding scheme is adopted:

0 – no remedy is available as of right

0.25 – no reinstatement is available as of right; compensation determined as follows: legal text sets an exact amount or a maximum amount to be paid

0.50 – no reinstatement is available as of right; compensation determined as follows: legal text sets a minimum amount to be paid, or compensation is freely determined by competent authority

0.75 - reinstatement is available as of right but is limited to specific cases, such as terminating on prohibited grounds (or discriminative dismissals)

1 – reinstatement is available as of right and is an alternative measure to compensation; compensation is determined as follows: legal text sets an exact amount or the maximum amount to be paid

1.25 – reinstatement is available as of right and is an alternative measure to compensation; compensation is determined as follows: legal text sets a minimum amount to be paid, or compensation is freely determined by competent authority

Add 0.25 to any of these categories, if, in addition to the compensation, full back pay shall be paid by the employer even if no reinstatement takes place

1.75 – reinstatement is available in case of unfair dismissal and is the primary remedy for unfair dismissal, as prescribed by the law

2 – reinstatement is available in case of unfair dismissal and is the primary remedy for unfair dismissal; legal text explicitly mentions award of back pay and/or other additional payments

Rescale: Divide the score by two. In aggregation, assign a double weight to this Area, because it contains provisions on compensation for unfair dismissal and reinstatement; the two items being treated jointly.

Note that in the coding scheme, the choice was made to attribute lower values to cases when legal text sets an exact amount or a maximum amount of compensation to be paid, as compared to cases when legal text sets a minimum amount to be paid, or when compensation is freely determined by competent authority. While this may seem counter-intuitive, the logic for this coding is the following. In cross-country comparisons, it is not the minimum or maximum distinction that matters per se, but rather an ex-ante certainty over the amount to be paid. When a maximum is stated in the law, the actual payment to be paid cannot be more than this amount, but it can also be lower. In many instances, this maximum is reached only in very exceptional circumstances. When a minimum is stated in the law, the actual payment can also be higher than this amount, thus increasing employees' protection. The cost for the employer is also raised, because the uncertainty over the outcome of the trial is high. In addition, when a maximum compensation that can be in principle awarded is known in advance, this can provide an incentive for employers and employees to reach an agreement via mediation or conciliation and also agree on payment without going to court, thus avoiding a lengthy procedure (Skedinger, 2010). In contrast, a legislative minimum may create extra incentives to further bring the case to the competent authority in order to obtain a compensation that is higher than the minimum statutory level.

One objection to applying this logic to cross-country comparisons may be that, in some countries, statutory "maximums" may be higher than statutory "minimums" set in other countries. Table 5 examines this possibility. Among the EPLex countries, only eight have statutory minimums, with the highest minimum being 12 months (Kyrgyzstan and United Republic of Tanzania). Forty-one countries have statutory maximums (29 have only maximums, 12 have intervals), and of those countries, thirty-five countries have maximums that are 12 months or lower. This means that "maximums" of the vast majority of countries that have such statutory limits are largely comparable to "minimums" of other countries, and, given the reasoning above, the coding scheme should approximate reasonably well the cross-country differences. The only six countries with maximums above 12 months are Burkina Faso, Slovenia, and Morocco (18 months), Finland (24 months), Congo, and Serbia (36). According to the OECD (2013), in Finland, this maximum is reached only in circumstances of gross abuse; but typical compensation payments are significantly lower. Similar experience may be found in the remaining five countries. For example, in Morocco, the actual compensation paid depends on the past salary and worker's tenure; in Serbia, the "maximum" can be up to 18 months, and not up to 36 months, if it is the employee who does not wish to be reinstated. Given this, these six countries are assigned the same coding values as other countries with "maximum" provisions; though data users may assign higher value if they have strong evidence that an alternative coding is more appropriate.

Table 5. Statutory limits on compensation for unfair dismissal

Statutory minimums		Statutory maximums	
Country	**Limit, months**	**Country**	**Limit, months**
Malawi	1	Brazil	1.5
Estonia	3	Cyprus	2
Moldova, Republic of	3	Jordan*	2.5
France	6	Panama	3
Algeria	6	United Arab Emirates	3
Viet Nam	7	Denmark	4
Kyrgyzstan	12	Uganda*	4
Tanzania, United Republic of	12	Angola*	4
		Honduras	4
		Argentina*	4
		Chile	4-8
		Cameroon*	4
		El Salvador*	4
		Italy (depending on firm size)	2.5-15
		Venezuela	5
		Mexico	5.6
		Belgium	6
		Bulgaria	6
		Yemen	6
		Switzerland	6
		Rwanda*	6
		Spain	6
		Portugal*	6
		Sweden	6
		Peru	6
		Australia	6.5
		Egypt	8
		Syrian Arab Republic	8
		China	8
		Tunisia*	8
		Ethiopia*	8
		Hungary*	12
		Germany	12
		South Africa	12

Statutory minimums		Statutory maximums	
Country	**Limit, months**	**Country**	**Limit, months**
		Côte d'Ivoire	12
		Burkina Faso	18
		Morocco	18
		Slovenia	18
		Finland*	24
		Congo, Democratic Republic of the	36
		Serbia	36

Note: * - countries in which statutory intervals for compensation are set, that is, both minimum and maximum limits are available. The following countries also have tenure-dependent statutory limits: Angola, Argentina, Brazil, Cameroon, Chile, China, Cyprus, Denmark, Egypt, Ethiopia, El Salvador, Honduras, Italy (depending on firm size), Jordan, Malawi, Mexico, Morocco, Panama, Peru, Portugal, Rwanda, Spain, Sweden, Syrian Arab Republic, Tunisia, Venezuela, Zambia. These tenure-dependent variations in statutory limits do not affect the proposed coding scheme. To facilitate the comparisons of actual limits, in this Table, information for the worker profile with four years of tenure with the same employer is reported.

The coding scheme also includes the notion of back pay, which refers to payment of foregone salaries between the dismissal date and the date of the competent authority's ruling. In the majority of cases, such payments are prescribed together with reinstatement. The law may not always be explicit about this, however. The coding scheme includes an additional category for cases when the law explicitly mentions such payments. In addition, back pay may also be available even if only compensation is granted by competent authority (Table 6 provides some country examples).

Table 6. Examples of countries where back pay is explicitly provided for by law

Back pay and/or other payments must accompany reinstatement	Back pay and/or other payments must accompany compensation for unfair dismissal, even if no reinstatement is granted
Afghanistan	Angola
Angola	El Salvador
Armenia	Honduras
Bangladesh (partly)	Mexico
Estonia	Spain (in some instances)
Greece	Switzerland
Iran, Islamic Republic of	Syrian Arab Republic
Italy	Viet Nam
Japan	
Kyrgyzstan	
FYR of Macedonia	
Mongolia	
Philippines	
Portugal	
Russian Federation	
Slovakia	
Viet Nam	

The coding scheme also contains a notion of reinstatement being a "primary" remedy against unfair dismissals. National legal provisions may explicitly contain such categorization. However, when such indication is absent from the law, the coding scheme considers that reinstatement is a primary measure whenever an *employee* decides that she or he prefers reinstatement to compensation. If the decision is with the *employer*, reinstatement is rather qualified as an alternative measure to compensation.

In addition to remedies available for unfair dismissal on the basis of the breach of valid grounds, numerous countries also provide remedies for violation or breach of procedural requirements for dismissal.

The EPLex database does not systematically collect information on remedies available in case of the breach of procedures, mainly because such remedies are often contained in procedural codes, or are a matter of jurisprudence. This precludes from including the breach of procedures into the current coding scheme. Nevertheless, Table 7 highlights examples of countries where such remedies are available through statutory regulations (such as labour codes, employment acts), and which were recorded in the EPLex. From this Table, two main types of remedies are usually available:

1) Breach of procedures renders dismissal unlawful (unfair); as such, dismissal is considered as null and void. Reinstatement is the normal remedy, though it may be replaced by a compensation, but only if an employee requests so (Table 7, column 1).

2) Breach of procedures does not nullify a dismissal; remedies include fines, various types of compensations, and possibility of reinstatement as an alternative measure (Table 7, columns 2-3).

Table 7. Remedies available in case of breach of procedures

Dismissal is void/nullified	Dismissal is not nullified; reinstatement is alternative to compensation	Dismissal is not nullified; only compensation is available
Algeria Angola Romania Sri Lanka (+backpay) Greece (+backpay; compensation on request of employee is possible) Portugal (compensation can be an alternative, but only on employee's request)	Panama (alternative: max compensation 9 months) Spain (alternative: max compensation 15 months)	Burkina Faso (max 3 months) Cameroon (max 1 month) Finland (maximum 30.000EUR) France (max 1 month) Kyrgyzstan (FDCA) Luxembourg (min 1 month) Philippines (FDCA) Russian Federation (FDCA) Tunisia (1-4 months) Uganda (2-4 months) United States (max 2 months)

Note: FDCA - free determination by competent authority.

Last but not least, in some instances, statutory legislation offers several types of redress possibilities for termination of regular contracts, such as, depending on which valid ground for dismissal is breached (ex: Angola, Egypt), on type of contract (Brazil, Mexico and Spain), or on employer's compliance with the court decisions (Sweden, United Republic of Tanzania). In these and other cases, coding was done separately for each case, and the average score was retained. In addition, where different redress options exist for clearly distinct worker types, both cases are reported separately (ex: Belgium).

2.4. Some words on data aggregation

The codification scheme outlined above resulted in eight topical EPLex indicators. This scheme is summarized in Box 1. A remaining question is whether, and how, these indicators can be further aggregated to provide a single summary EPLex indicator.

Existing literature and practice offer several possibilities to aggregate a set of indicators into a composite indicator. Aggregation may be additive or multiplicative, and involves choosing weights for each sub-component. Theoretically, prior to aggregation, or any other data use, it is important to understand the nature of the data at hand. Data can be at one of the four scales of measurement: nominal, ordinal, interval, or ratio. Scales of measurement are important because they determine the statistical techniques that can be applied to the data (for definitions and an overview, see ILO, 2013).

The obtained set of EPLex indicators can be classified as indicators with ordinal scale, which means that the distance (difference in degree of protection) between any two numbers on the scale of each indicator cannot be interpreted as being exactly the same as the distance between any other pair of consecutive

numbers. This means that, theoretically, math operations such as addition or multiplication should not be undertaken with such data (Stevens, 1946), and hence neither additive nor multiplicative aggregation may be meaningful.

In social sciences, one way around the problem of aggregating ordinal data is to use the method of calculating the ranking of each country according to each individual indicator and summing the resulting rankings (Fagerberg, 2001). This method, however, results in the loss of absolute information (OECD, 2008), and also presumes that ranking makes sense, while this is rarely the case with the legal data, such as EPLex.

In practise, ordinal scale data are also often treated as interval scales data, that is, as if the distance between any two consecutive numbers on the scale is the same throughout the scale. Moreover, some researchers show that, empirically, it matters little if ordinal scale is treated as an interval scale.[13] If one is willing to assume that the EPLex indicators have an interval scale, then the set of the EPLex indicators can be subject to additive, though not multiplicative, aggregations, the most widespread being the summation of weighted and normalized individual indicators. It is thus also up to the users to decide to what extent they are willing to accept such treatment, and hence aggregation. For this reason, users are also offered a possibility of using the full set of individual EPLex indicators, reported in a disaggregated manner.

There are numerous techniques for choosing the weights for individual indicators when aggregating them into a composite one (for a complete overview, see OECD, 2008). Such weights can be defined according to statistical significance of components; assigned equally to each dimension; or be drawn from a theoretical model. Some of the most well-known techniques were considered for aggregating the EPLex indicators:

- Principal component analysis or factor analysis, which is useful in case of strong correlation between different indicators (method not retained because, as shown further, correlation between the EPLex indicators is low);

- Data envelopment analysis, which involves first establishing a benchmark to measure relative performance of countries and categorising them as “best performing” or “worst performing” (method not retained because the inherent idea of the method is not necessarily applicable to handle legal provisions that are result of social choice);

- Public opinion approach and Delphi method as its special form, which involve conducting an opinion poll on what is the most important indicator and what weight it should be given (method not retained because EPL represents a legal system in which each element may be important in its own right; different aspects of the EPL may also be more “important” as compared to others in different countries, this importance depending also on external factors such as jurisprudence, collective agreements, etc.).

[13] See the summary of the “liberalist” approach, which allows treating ordinal scale data as interval scale data for empirical purposes, versus “conservatives” approach, which does not; in Knapp (1990).

- Analytical hierarchy process, which presupposes that there may be a trade-off across indicators, and weights measure the willingness to forego a given variable in exchange of another (method not retained for the same reasons as above).

Given the above, the easiest possibility is to assign equal weights to each indicator, or take a simple average between them. While this may be viewed as rather simplistic, this technique has several advantages, as compared to others. In addition to being straightforward to implement and well understood, this technique is also the least subjective in choosing weights, when a priori no preference for higher weights for one or another indicator exists. Indeed, all EPL provisions may matter equally depending on the stage of the employment termination procedure. Conversely, if they do not matter equally, differences across countries may exist in the extent to which some provisions may matter more than others; but incorporating such differences into the cross-country methodology is not feasible. This method can also provide relatively good results when the correlation between indicators is low, so that the overlapping information does not create a bias of double-counting in a composite indicator. Since, as shown below, correlation between the EPLex indicators is low, this is the technique retained for the EPLex aggregation. An undesirable feature of the method is compensability, which implies that low values on some indicators are compensated for by sufficiently high values on other indicators, thus cancelling each other out in the aggregate. As discussed in the next section, this feature may actually help providing interesting interpretations to the aggregate EPLex indicator.

Lastly, one may also attempt a conceptually different approach to aggregating the very specific EPLex data, and use the legal principles to guide the aggregation. For example, since the *valid reason for dismissals* and *prohibited grounds* constitute the cornerstone of the provisions, and it is their breach that opens venues for *redress*, it is possible to imagine that the first two areas can be themselves used as weights for the *redress* area, rather than being averaged with the *redress* area. Alternatively, a weighting scheme that builds on sequencing the dismissal rules (probation-notification-severance-contestation) may also be envisaged. Clearly, the differences in the resulting composite indicators may be sizable, and will need to be tested against reality. This exercise is left to interested users.

Box 1. Methodology for coding the ILO EPLex qualitative data

Area 1. Substantive requirements for dismissal

Area 1.1. Valid grounds for dismissal, in light of prohibited grounds

0 – when there is no obligation to *have* a reason for dismissal (understood in light of prohibited grounds)

0.5 – when there is an obligation to *have* a reason for dismissal, and valid grounds (justified dismissal) are any fair reason

0.75 – when there is an obligation to *have* a reason for dismissal, and valid grounds (justified dismissal) are economic reasons, worker's conduct, and worker's capacity

1 – when there is an obligation to *have* a reason for dismissal, and valid grounds (justified dismissal) are only worker's conduct

Subtract 0.25 if there is no obligation to *give* a reason for dismissal, for a minimum of 0

Area 1.2. Prohibited grounds for dismissals

0 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that only partly meets the ILO fundamental principles and rights at work

0.25 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that at least partly meets the ILO fundamental principles and rights at work; however, it also contains at least one of the grounds listed in fundamental conventions beyond the "core" discriminatory grounds, or which are co-provided by fundamental and specific international labour standards regulating employment termination

0.5 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that at least partly meets the ILO fundamental principles and rights at work; however, it also partly meets additional principles established by specific international labour standards governing employment termination

0.75 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that fully meets the ILO fundamental principles and rights at work; and fully meets the principles established by specific international labour standards governing employment termination

1 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that fully meets the ILO fundamental principles and rights at work; and exceeds the principles established by specific international labour standards governing employment termination, by additionally containing other categories

Area 2. Maximum probationary period, including all possible renewals

Normalization: no limitation = 0; less than 1 month = 1

Area 3. Procedural requirements for dismissals

Area 3.1. Procedural notification requirements for individual dismissals

0 – when employer need only orally notify a worker of a decision to terminate his employment

0.25 – when employer must notify a worker in writing of a decision to terminate his employment

0.5 – when employer must notify a third party (such as works council or the competent labour authority)

For categories from 0 to 0.5, add 0.25 if pay in lieu of notice is not allowed

1 – when employer cannot proceed to dismissal without authorisation from a third party

Area 3.2. Notice period at different tenures

Normalization of notice periods at seven different tenures: sample minimum, including zero = 0; sample maximum = 1. Take the average of normalized notice periods over 7 tenures, to obtain area 3.2 component, scale 0-1

Area 4. Severance and redundancy pay

Normalization of severance and redundancy periods at seven different tenures: sample minimum, including zero = 0; sample maximum = 1. Take the average of normalized severance payments over 7 tenures, to obtain **A*rea 4.1*** component, scale 0-1. Take the average of normalized redundancy payments over 7 tenures, to obtain ***Area 4.2*** component, scale 0-1. Take the average between the two.

Area 5. Redress

0 – no remedy is available as of right

0.25 – no reinstatement is available as of right; compensation determined as follows: legal text sets an exact amount or a maximum amount to be paid

0.50 – no reinstatement is available as of right; compensation determined as follows: legal text sets a minimum amount to be paid, or compensation is freely determined by competent authority

0.75 - reinstatement is available as of right but is limited to specific cases, such as terminating on prohibited grounds (or discriminative dismissals)

1 – reinstatement is available as of right and is an alternative measure to compensation; compensation is determined as follows: legal text sets an exact amount or the maximum amount to be paid

1.25 – reinstatement is available as of right and is an alternative measure to compensation; compensation is determined as follows: legal text sets a minimum amount to be paid, or compensation is freely determined by competent authority

Add 0.25 to any of these categories, if, in addition to the compensation, full back pay shall be paid by the employer even if no reinstatement takes place

1.75 – reinstatement is available in case of unfair dismissal and is the primary remedy for unfair dismissal, as prescribed by the law

2 – reinstatement is available in case of unfair dismissal and is the primary remedy for unfair dismissal; legal text explicitly mentions award of back pay and/or other additional payments

Rescale: Divide the score by two. In aggregation, assign a double weight to this area.

Aggregation scheme

Area	***Weight***
Area 1: Substantive requirements	
Area 1.1 Valid grounds	1/9
Area 1.2 Prohibited grounds	1/9
Area 2: Probationary period	1/9
Area 3: Procedural requirements	
Area 3.1 Procedural notification requirements	1/9
Area 3.2 Notice periods (averaged across tenures)	1/9
Area 4: Severance and redundancy	
Area 4.1 Severance pay (averaged across tenures)	1/9
Area 4.2 Redundancy pay (averaged across tenures)	1/9
Area 5: Redress	2/9

Weighted average of all individual areas. Equal weights are assigned to all areas, except “Redress”. “Redress” is assigned a double weight because it contains provisions on compensation for unfair dismissal and reinstatement; the two items being treated jointly.

3. Results of coding

3.1 General overview

Applying the quantification scheme results in a set of eight topical EPLex indicators, each governing a specific area of employment protection for regular contracts (individual dismissals), as well as a summary EPLex indicator. These components and composite indicator, distributed on a 0-1 scale, are available for 95 countries, for the period from 2009 to 2013, in an unbalanced panel.

Table 8 provides a number of descriptive statistics for the summary EPLex indicator and for the topical sub-indicators. What stands out from Table 8 is that each of the individual components has clear minimum and maximum values, which occupy well the 0-1 scale, rendering this scale meaningful. While means and medians can differ substantially across indicators, they have a high degree of proximity within each specific indicator. For the summary EPLex indicator, the mean and the median almost coincide, which means that the obtained EPlex distribution is relatively non-skewed. The only sub-component that does not occupy the scale fully is the redundancy pay component; this is because several countries have regimes under which either low, or high, tenure is particularly rewarded, which in the aggregate gives a rather mid-range score.

Table 8. EPLex summary indicator and its components: Descriptive statistics for all years and countries

Variable	Number of Observations	Mean	Median	Standard Deviation	Minimum	Maximum
EPLex summary indicator	415	0.42	0.43	0.11	0.15	0.78
Valid grounds	415	0.44	0.50	0.26	0.00	1.00
Prohibited grounds	415	0.64	0.50	0.30	0.00	1.00
Trial period	415	0.68	0.76	0.31	0.00	0.98
Procedural requirements	415	0.36	0.25	0.24	0.00	1.00
Notification requirements	415	0.33	0.28	0.22	0.00	1.00
Severance pay	415	0.17	0.07	0.22	0.00	0.91
Redundancy pay	415	0.16	0.12	0.15	0.00	0.69
Redress	415	0.55	0.63	0.23	0.125	1.00

Table 9 further summarizes the correlations between individual components. With the exception of severance pay and redundancy pay, correlations are low, and in some cases almost inexistent. This suggests that each component is important in its own right and measures a different aspect of EPL. Being a system, employment protection legislation rests on each of its pillars, and leaving one of the pillars aside from an EPL analysis may result in a loss of comprehensiveness.

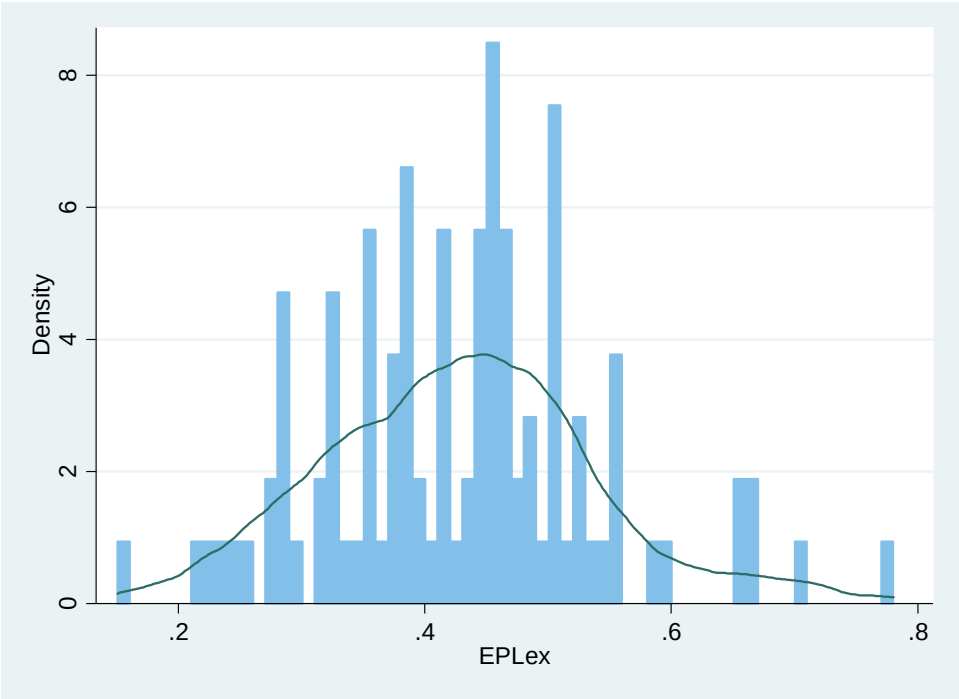
For the composite EPLex indicator, low correlations for individual components also mean that there is no double-counting in the aggregation.

Table 9. Correlations between EPLex components, all years and countries

	Valid grounds	Prohibited grounds	Trial period	Procedural requirements	Notification requirements	Severance pay	Redundancy pay	Redress
Valid grounds	1.00							
Prohibited grounds	-0.07	1.00						
Trial period	0.35	-0.02	1.00					
Procedural requirements	0.11	0.02	0.19	1.00				
Notification requirements	-0.07	0.09	0.20	0.00	1.00			
Severance pay	-0.05	-0.21	0.05	0.05	-0.08	1.00		
Redundancy pay	0.15	-0.24	0.04	0.16	-0.11	0.65	1.00	
Redress	0.12	0.08	0.03	0.24	-0.15	0.08	0.08	1.00

Several negative correlations can also be observed. They suggest that countries rarely design their employment protection systems in a way to excessively or moderately regulate all EPL aspects. Rather, different EPL areas represent trade-offs. More protective regulations of some of the EPL aspects are oftentimes compensated by less protective regulations of other aspects. Such trade-off choices are especially apparent in regulating notice versus severance or redundancy pay; grounds for dismissal versus notice, severance/redundancy, or the length of trial period; notice versus redress. Given this, policy advice should always consider different EPL aspects jointly, taking into account all aspects of EPL provisions.

Figure 1. Histogram and density estimate for the aggregate EPLex indicator, 2010



3.2 Current outlook of EPL regulations throughout the world

Focusing on the year 2010 as the one covering the largest number of countries, Figure 1 shows the distribution of EPL regulations around the world. It shows a distribution slightly skewed to the left, with the majority of countries finding themselves in the mid-range of the overall EPLex score, and with very few outliers. Rich data variability suggests that the aggregation does not result in the loss of information, as almost every country gets its own EPLex value.

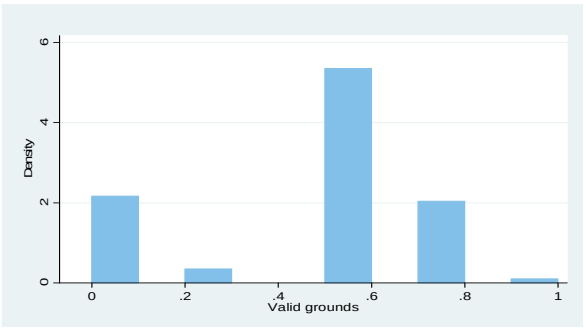
Figure 2 shows also histograms for each of the components. They exhibit a significant variability and point further to the trade-offs mentioned before. They also help understanding why, in the aggregate, EPLex indicator is less skewed than any of its parts: higher scores for regulations in one area compensate lower scores for regulations in another area. For example, the overall EPLex score in Uganda is most comparable to the score of Zambia. However, while in the case of Uganda, trial period is one year but there is no severance, in Zambia, trial period is unlimited (least protection), but severance is considerably higher than the mean or median values across all countries of the sample. Thus, the same, or similar, overall EPLex score can be reached through combination of different policy packages. The choice of these packages depends on historical and societal preferences of each individual country. In fact, this result also reflects the principle of the Convention 158 which leaves it to the ratifying States the choice between the different methods of implementation in accordance with national practice, taking account of national differences in the regulation of relations between employers and workers, thus affording considerable flexibility in applying the instrument.

Regional disparities in the composite EPLex indicator are further shown in Figure 3.[14] There is a significant variation in the overall EPL score both across and within regions. In Europe, the distribution's "peakedness" suggests that there is a high number of countries with relatively similar overall score. At the same time, Europe's EPLex distribution, based on the largest number of countries, also exhibits the highest variability. EPLex score ranges from lowest levels for Georgia (before the 2013 reform of the Labour Code), Switzerland, and Finland, to highest levels in Slovakia and Portugal. Comparable variability of the EPLex distribution can also be observed in Asia, and, to a certain extent, Africa. In Asia, highest level of the EPLex score is observed in Indonesia and the Islamic Republic of Iran, while the lowest level is in Singapore and Malaysia. In Africa, the lowest score is in Nigeria, and the highest is in Egypt. Variability within Africa could also be explained in part by the variety of legal traditions involved, which is certainly less true of Europe or Latin America, and largely not of Asia, either. In the Americas, the overall EPLex score seems to be the most homogeneous. These variations in EPL suggest that much is still to be learned from including countries from different regions, with different legal traditions, and different level of development into studies of the effects of EPL on various labour market outcomes, as well as in the overall debate on the role of legal origins.

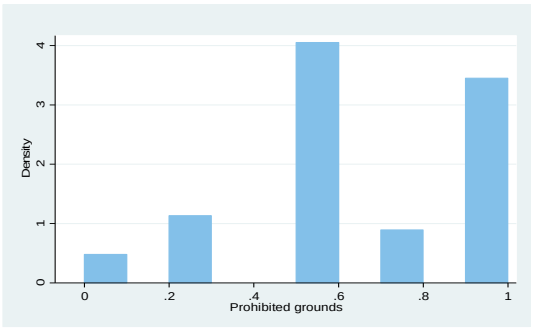
[14] For the list of countries included under each region, see Appendix C.

Figure 2. Histograms for EPLex components, 2010

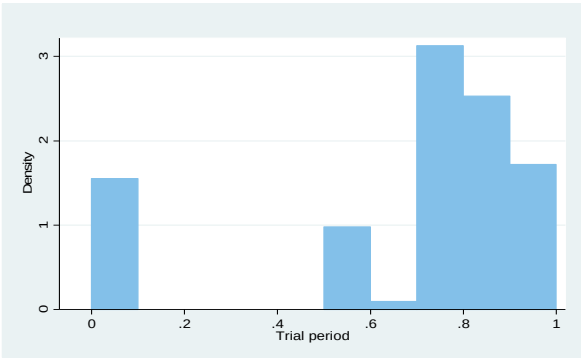
Valid grounds



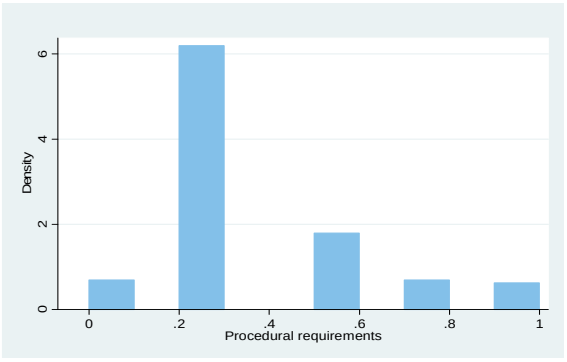
Prohibited grounds



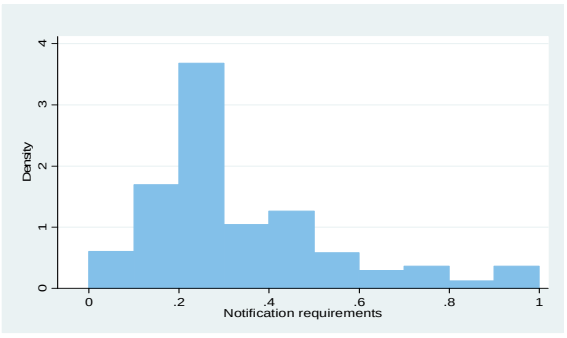
Trial period



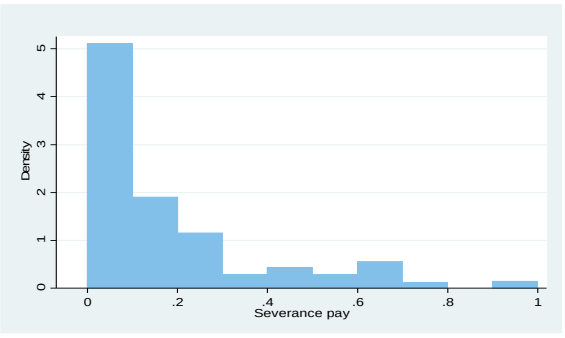
Procedural requirements



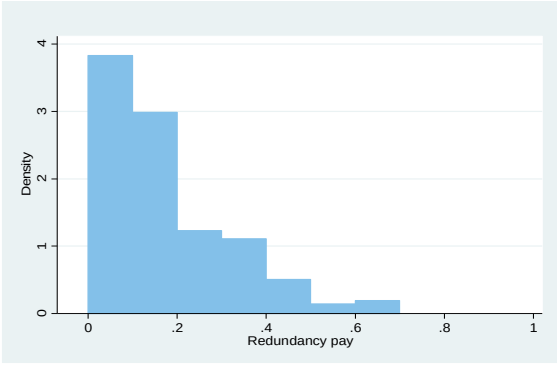
Notification requirements



Severance pay



Redundancy pay



Redress

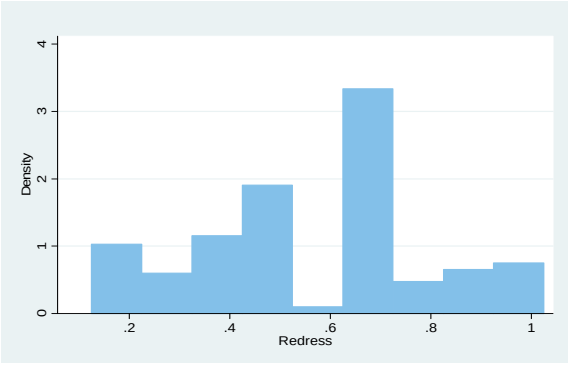
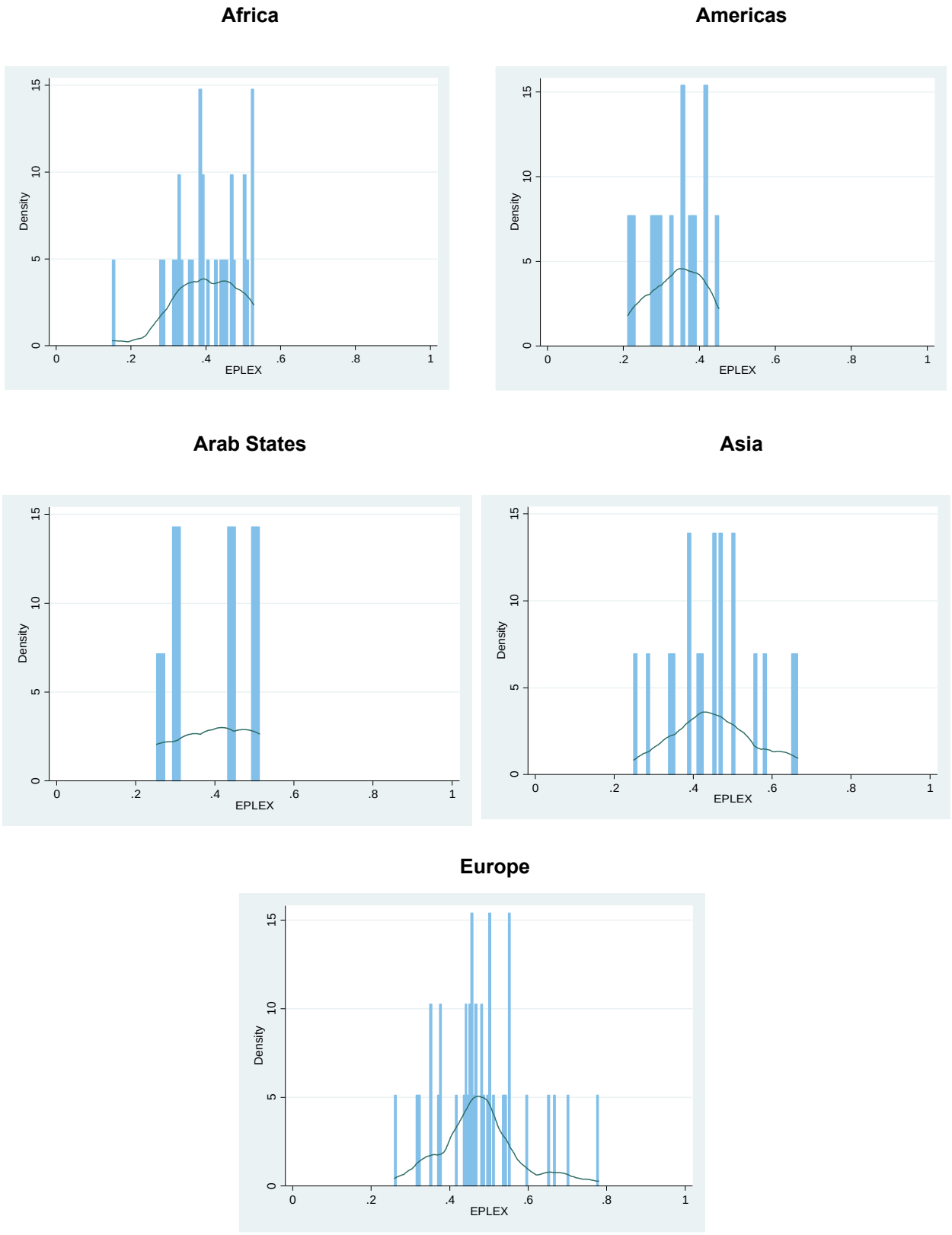
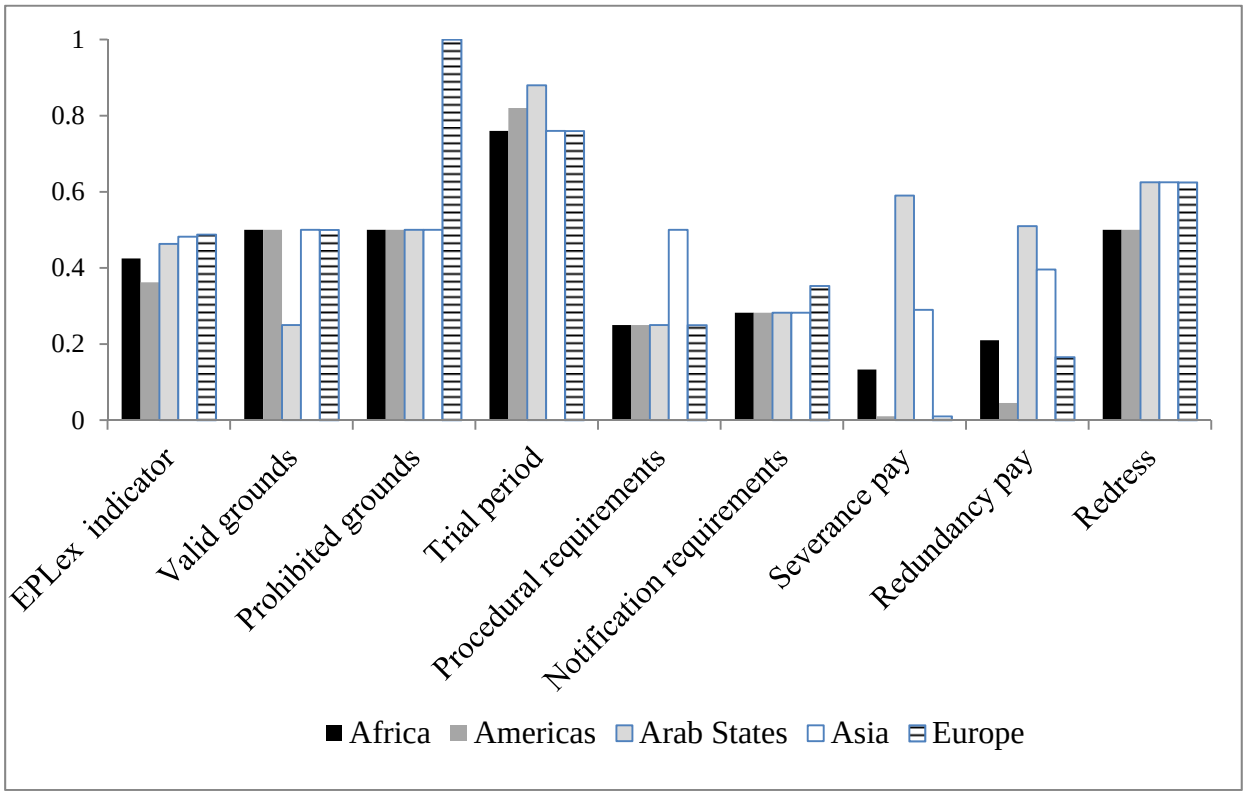


Figure 3. Histograms and density estimates for EPLex, regional disparities, 2010



Note: Definitions of regions follow the ILO regional cut. See Appendix F for the list of countries under each group.

Figure 4. EPLex Summary indicator and its components: Medians by region

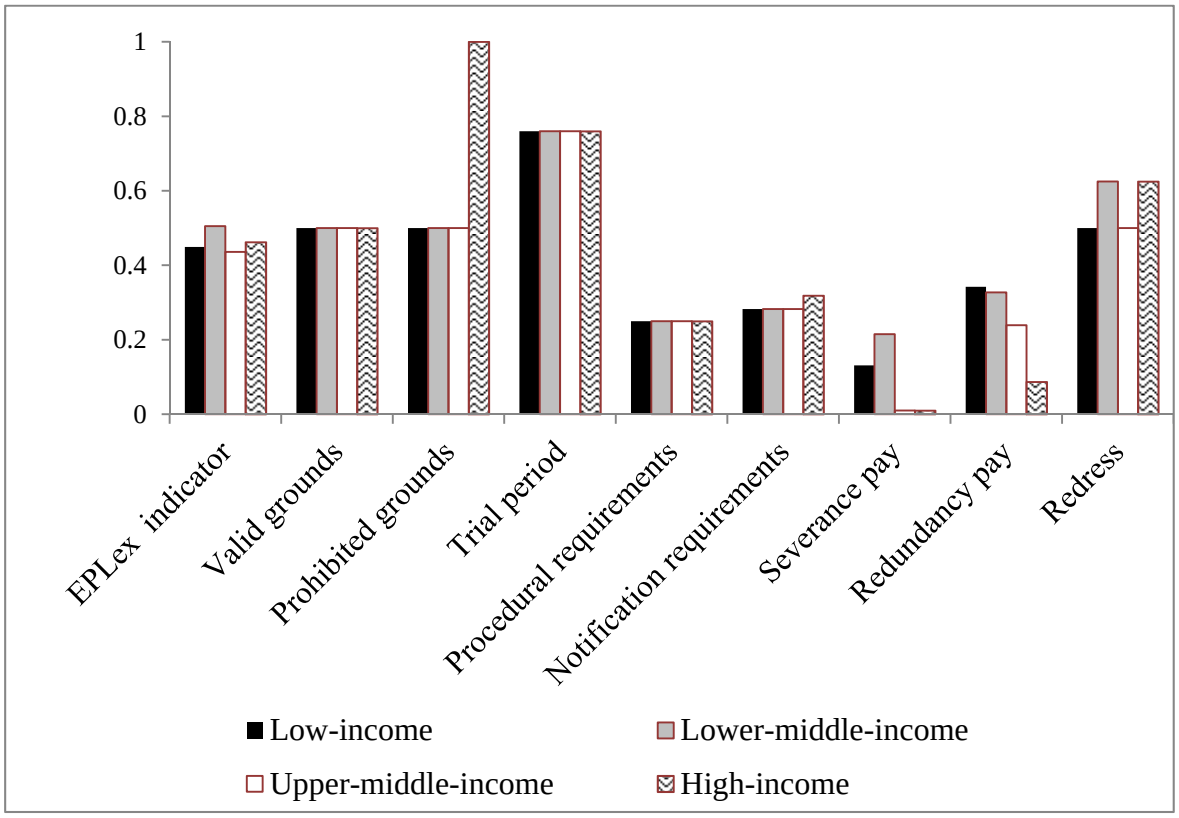


For meaningful comparisons of these distributions, it is also helpful to examine their median values, which are the most informative and robust statistics in skewed distributions. Figure 4 confirms that, generally, EPLex medians are relatively similar across regions, though the Americas' median EPLex value is the lowest. Some disparities, however, are exhibited in topical indicators: median scores for trial periods and severance/redundancy pay are the highest in the Arab States, median scores for prohibited grounds and notification requirements are the highest in Europe, while median scores for procedural requirements are the highest in Asia. In the Arab States, valid grounds get the lowest scores as compared to other parts of the world. In Americas, the lowest scores on severance and redundancy are observed. African EPLex scores are found in the mid-range for all components.

In Figure 5, countries are grouped by income level, using the World Bank classification.[15] Valid grounds, trial periods, and procedural requirements exhibit the same medians across all income groups. In contrast, regulation of prohibited grounds is the area clearly more developed in high-income countries, while severance pay is higher in low-income and lower-middle income countries. The latter observation may reflect the fact that in these countries, unemployment benefit schemes are less developed, and worker protection is primarily achieved through payments by an employer at the time of separation. The biggest variation can be observed in the regulation of redundancy pay.

[15] For the list of countries included under each group, see Appendix F.

Figure 5. EPLex summary indicator and its components: Medians by income group



3.3 Understanding provisions for different types of workers and firms

In many countries, different provisions exist for different types of workers or firms. When clearly distinct groups of regulations exist, averaging those provisions to obtain one country-level indicator may not be meaningful, especially if the actual number of workers or firms in each category is not taken into account.

To address this issue, in the case of Austria, Belgium, Denmark,[16] Greece, Côte d'Ivoire, Madagascar, Senegal, Tunisia, and the Democratic Republic of the Congo, composite EPLex indicator was computed for two worker categories. Classifications vary by country and include: blue-collar vs white-collar workers; workers with managerial responsibilities versus all others; "bottom" versus "top" categories of workers (see Appendix C for further details).

For Italy, EPLex indicator was computed separately for enterprises employing 15 or more workers, and enterprises with fewer than 15 workers.[17] Likewise, for Australia, EPLex indicator was computed separately for enterprises employing 15 workers or more, and for enterprises with fewer than 15 workers. For Portugal,

[16] For Denmark, composite EPLex indicator was computed only for white-collar workers; provisions for blue-collar workers are contained mainly in collective agreements.

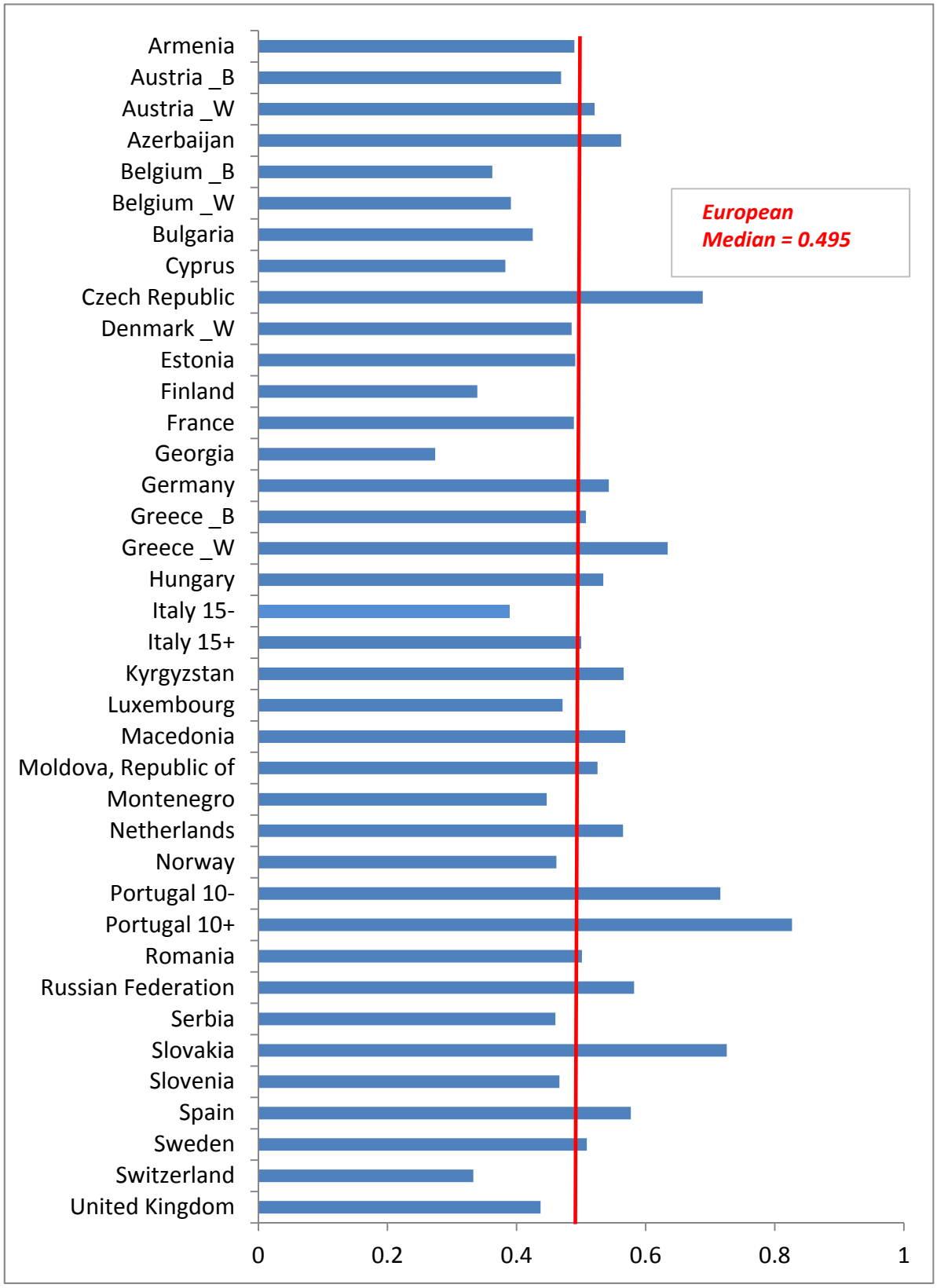
[17] Available data show that, in Southern Italy, over 44 per cent of salaried workers are employed in firms with less than 15 workers; in Northern Italy, this figure is around 27.5 per cent (Naticchioni et al., 2006). Research also shows that the Italian EPL threshold does affect the distribution of dismissal rates by plant size (Boeri and Jimeno, 2005).

different provisions exist for enterprises with 10 workers or fewer as compared to larger enterprises; specific EPLex indicators were computed for each of these cases. Two other EPLex countries that contain different provisions for different types of firms are Honduras and Peru. These provisions are different only in the area of redress, but the differences do not affect the coding scheme; hence only one EPLex indicator per country is presented.[18]

The value of this approach is shown in Figure 6, which presents the summary EPLex indicator for European countries. While EPLex scores for Austrian blue-collar workers are below the European median, the scores for white-collar workers are above the median. Similarly, EPLex scores for larger companies in Italy are higher than scores for lower companies, but also than the European median level. Given this, policy recommendations should clearly be different, and nuanced, for these categories of workers and firms.

[18] Note also that some types of workers and firms may be excluded from EPL regulations. While it may be argued that in such cases EPL provisions for them should be coded as zero, this is rather the matter of legal coverage of provisions, which is different from the notion of explicitly different provisions for different groups of workers/firms.

Figure 6. EPLex indicator in Europe, 2010: Distinguishing by types of workers and firms



Notes: _W – white collar; _B – blue collar, 15- - less than 15 workers, 15+ -15 workers or more; 10- - 10 workers or less, 10+ - more than 10 workers.

3.4 Evolution over time and understanding reforms

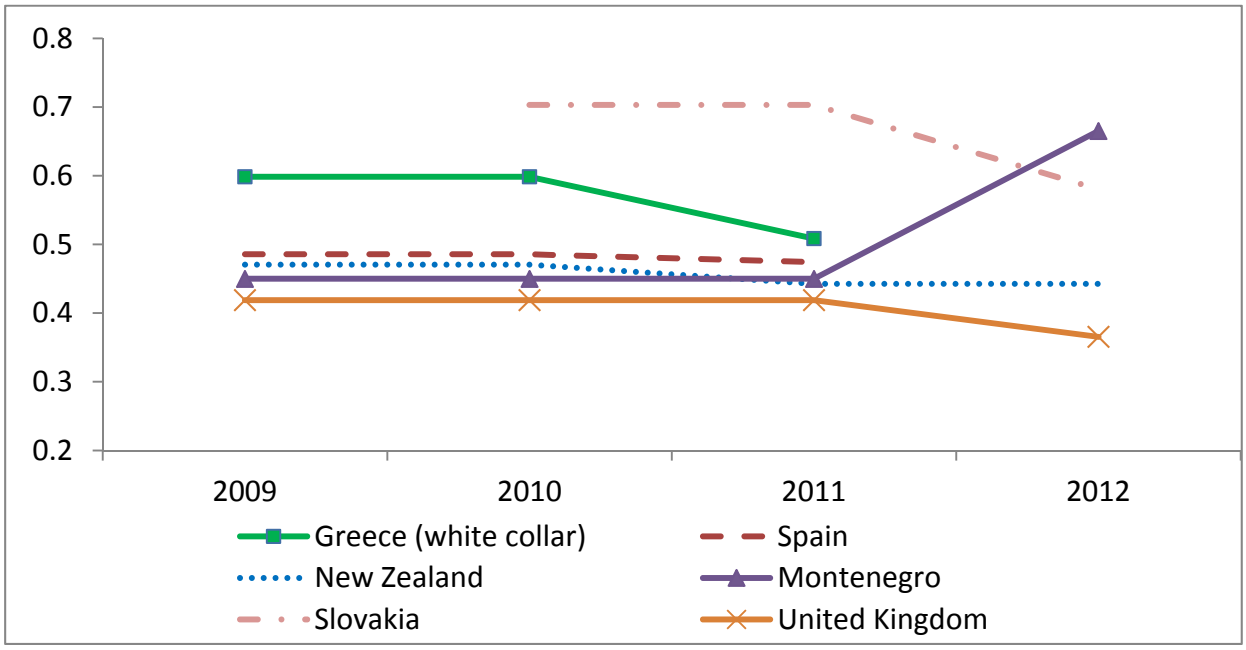
In this first release, EPLex indicators cover only 4 years of data, between 2009 and 2013. Despite its relatively short span, this period was quite rich in the number of EPL reforms that countries undertook. The composite EPLex indicator allows tracking the EPL evolution over time, as well as understanding the nature and the timing of the reforms.

Table 10. Examples of countries that introduced changes to the EPL, regular contracts individual dismissals, 2009-2013

Substantive requirements	Probation period	Notification requirements	Notice period	Severance / redundancy pay	Redress
France	Greece	Greece	Georgia	Georgia	FYR of Macedonia
Georgia	New Zealand	Slovakia	Greece	Greece	Montenegro
Montenegro	Romania		Montenegro	Montenegro	New Zealand
Niger	Slovakia		Slovakia	Slovakia	Niger
Slovakia	United Kingdom		Spain	Spain	Spain
Spain				Romania (changes due to social processes)	United Kingdom
United Kingdom					

Table 10 contains examples of such reforms and reforming countries. Most of these countries introduced reform packages that substantially reshaped their EPL. While in some countries (such as Greece or Spain), the reforms were undertaken in response to the economic crisis, in others (such as Georgia or Romania), changes were introduced as a reflection of longer-term political, social, and legal processes. Figure 7 tracks how these changes affected the overall EPL score for some selected countries. The score was decreased in Greece (for white-collar workers), Spain, Slovakia, New Zealand and the UK. It was raised considerably in Montenegro.

Figure 7. Evolution of the EPLex indicator in some selected countries



3.5 Coverage

In understanding the regulations and their role, the knowledge of regulations' coverage is paramount. Legal coverage defines those categories of workers and firms that are concerned by the provisions. Coupled with the extent of formality of labour markets and enforcement of provisions, legal coverage helps determining effective coverage of provisions and also the extent to which regulations actually matter.

The ILO EPLex database collects information on legal coverage of provisions that it records, which is summarized in Tables 11 and 12. In some countries, legal coverage of the general EPL regime, the one recorded in the EPLex database, is complete (ex: Afghanistan, Armenia, or Romania), while in others it is relatively low (ex: Turkey, which excludes enterprises with less than 30 workers, but also domestic workers, civil/public servants, agricultural workers, managers/executive, and some other worker categories).

Table 11. Legal coverage/scope of the general EPL regime: Excluded enterprises

Firm size	Country
none	Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bangladesh, Brazil, Burkina Faso, Cambodia, Cameroon, Canada (Federal only), Central African Republic, Chile, China, Comoros, Democratic Republic of the Congo, Côte d'Ivoire, Egypt, El Salvador, Estonia, Ethiopia, Gabon, Georgia, Ghana, Honduras, Indonesia, Islamic Republic of Iran, Japan, Jordan, Lesotho, Luxembourg, FYR of Macedonia, Madagascar, Malawi, Malaysia, Mexico, Republic of Moldova, Mongolia, Namibia, Netherlands, New Zealand, Niger, Nigeria, Norway, Panama, Peru, Philippines, Romania, Russian Federation, Rwanda, Saint Lucia, Saudi Arabia, Senegal, Singapore, South Africa, Spain, Sweden, Syrian Arab Republic, United Republic of Tanzania, Thailand, Tunisia, Uganda, United Arab Emirates, United Kingdom, Viet Nam, Yemen, Zambia
≤5	Austria, Korea
≤10	France, Germany, Morocco, Portugal, Venezuela
≤15	Australia, Italy, Kyrgyzstan, Sri Lanka
≤20	Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, Greece, Hungary, Montenegro, Serbia, Slovakia, Slovenia, Switzerland
≤30	Turkey
≤50	United States

Note: When EPL information is collected from several legal sources, for this table, the "largest" enterprise size is retained. Thus, for example, in the case of the US, enterprises with 50 workers or less are not covered by the Family and Medical Leave Act. Other Acts may contain exclusions for firms of lower size; in addition, in case of mass layoffs, which are not covered by current coding, higher firm-size thresholds may apply.

Coverage of employment protection legislation has its particularities. For example, some firms or workers may be fully excluded from all provisions of the general EPL regime, while others may be excluded only from some provisions (ex: the US). Yet some other countries may have different provisions for different groups (such as firms of different sizes in Australia, Honduras, Peru, Italy, or Portugal). The rationale for these differences varies across countries. The fact that some workers are excluded from the general EPL regime does not necessarily mean that they are unprotected: in fact, for many of them, special regimes apply, which may be either more, or less, advantageous, as compared to the general regime recorded in the EPLex.

Another particularity of EPL coverage is that, by excluding some specific categories of workers or firms, it may create labour market segments, the existence of which, in turn, may have diverse social cohesion and distributional effects (Freeman, 2000; Betcherman, 2012; 2014). Thus, both the extent of coverage and its definitions (for example, firm-size threshold levels) have implications for the way EPL reforms should be designed and the effect of EPL and its reforms tested. As suggested by Boeri and Jimeno (2005), "studies not acknowledging the role played by exemptions of small firms may be looking for the "wrong" type of effects or give little guidance on interpreting results obtained in a neighbourhood of the exemption thresholds." Given this, to the extent possible, EPLex users are highly encouraged to incorporate coverage information in their research analysis based on EPLex.

Table 12. Legal coverage/scope of the general EPL regime: Excluded workers

None	Afghanistan, Armenia, Georgia, Malaysia, Republic of Moldova, Montenegro, Romania, Serbia
Domestic workers	Austria, Bangladesh, Brazil, Cambodia, Chile, Denmark, Egypt, Greece, Indonesia, Italy, Jordan, Republic of Korea, Morocco, the Netherlands, Saudi Arabia, Singapore, Sweden, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United States, Venezuela, Yemen, Zambia
Judiciary	Algeria, Azerbaijan, Bulgaria, Burkina Faso, Cambodia, Cameroon, Central African Republic, Democratic Republic of the Congo, Czech Republic, Ethiopia, France, Hungary, Italy, Switzerland, Viet Nam, Yemen, Zambia
Seafarers	Bangladesh, Belgium, Cambodia, Denmark, Finland, Germany, Greece, Japan, FYR of Macedonia, Madagascar, Morocco, Nigeria, Norway, Saudi Arabia, Senegal, Singapore, Slovakia, South Africa, Tunisia, Turkey, United Kingdom
State security corps	Ghana, Lesotho, Namibia, South Africa, United Arab Emirates, Venezuela, Yemen, Zambia
Diplomats	Angola, Antigua and Barbuda, Yemen
Mine workers	Morocco
Clergy	Denmark, Netherlands
Members of political organizations	Viet Nam
UN employees	Angola, Antigua and Barbuda
Civil/public servants (69 countries)	Algeria, Angola, Antigua and Barbuda, Argentina, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Chile, China, Comoros, Democratic Republic of the Congo, Cyprus, Czech Republic, Côte d'Ivoire, Denmark, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Central African Republic, Germany, Greece, Honduras, Hungary, Indonesia, Islamic Republic of Iran, Italy, Japan, Jordan, Republic of Korea, Lesotho, Luxembourg, Madagascar, Mexico, Mongolia, Morocco, Netherlands, Niger, Nigeria, Norway, Panama, Peru, Philippines, Portugal, Rwanda, Saint Lucia, Senegal, Slovakia, Slovenia, Spain, Sri Lanka, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Turkey, United Arab Emirates, United States, Venezuela, Viet Nam, United Republic of Tanzania, Yemen
Police	Antigua and Barbuda, Austria, Belgium, Bulgaria, Cambodia, Cameroon, Democratic Republic of Congo, Cyprus, Czech Republic, Ethiopia, France, Ghana, Hungary, Italy, Lesotho, Malawi, Namibia, Netherlands, Nigeria, Slovenia, Switzerland, United Republic of Tanzania, United Arab Emirates, United Kingdom, Venezuela, Viet Nam, Zambia
Managerial/ executive positions	Angola, Austria, Bangladesh, Canada, Chile, Estonia, Ethiopia, Germany, Italy, Kyrgyzstan, Nigeria, Portugal, Russian Federation, Singapore, Slovenia, Sweden, Turkey, United States, Viet Nam, Zambia
Sportsmen	Italy, Saudi Arabia, Turkey
Employers' family members	Angola, Bangladesh, Egypt, Islamic Republic of Iran, Jordan, Republic of Korea, Nigeria, Saint Lucia, Saudi Arabia, Spain, Sweden, Syrian Arab Republic, Turkey, Uganda, Yemen
Actors	Morocco, New Zealand
Auxiliary administrative employees	Cameroon
Teachers	Bangladesh, Belgium, Denmark, Greece, Netherlands

Flying personnel	Cambodia, FYR of Macedonia, Nigeria, Turkey
Agricultural workers	Argentina, Austria, Bangladesh, Brazil, Greece, Honduras, Jordan, Rwanda, Saudi Arabia, Syrian Arab Republic, Thailand, Turkey, United Arab Emirates, United States, Yemen
Army	Algeria, Antigua and Barbuda, Austria, Azerbaijan, Belgium, Bulgaria, Burkina Faso, Cambodia, Cameroon, Central African Republic, Democratic Republic of Congo, Cyprus, Czech Republic, Ethiopia, France, Germany, Ghana, Hungary, Italy, Kyrgyzstan, Lesotho, Malawi, Namibia, Netherlands, Nigeria, Norway, Russian Federation, Slovenia, South Africa, Switzerland, United Republic of Tanzania, Uganda, United Arab Emirates, United Kingdom, Venezuela, Viet Nam, Yemen, Zambia
Members of cooperatives	Angola, Greece, Panama, Sri Lanka, Viet Nam
Prison personnel	Cameroon, Ghana, Lesotho, Malawi, Namibia, United Republic of Tanzania, Zambia
Apprentices	Denmark, Lesotho, Morocco, Turkey,
Journalists	Bangladesh, Italy, Morocco
Non-federally regulated workers	Australia, Canada (Federal only)
Dock workers	Belgium
Blue-collar workers	Denmark*

Note *: in Denmark, blue-collar workers enjoy different EPL provisions than those presented in the current report.

4. How do the ILO EPLex summary indicators compare to other indicators of employment protection?

Creation of the quantitative set of EPLex indicators contributes to the growing field of producing quantitative data that measure various aspects of labour market institutions. The past two decades witnessed a surge in institutional and academia-led efforts to create various indicators of labour market institutions, and of employment protection legislation more specifically.[19] Most relevant indicators include the OECD Summary Indicators of Strictness of Employment Protection Legislation, the World Bank Employing Workers Indicators, and the Cambridge Center for Business Research Labour Regulation Index. This section overviews these indicators and the way the ILO EPLex indicators articulate with them.

4.1 OECD Summary indicators of strictness of Employment protection legislation

The OECD summary indicators are by far the most comprehensive, regularly updated, well known and widely used indicators in the area of EPL.[20] At the time of writing, these indicators are available for the period 1985-2013 for over 40 countries, including non-OECD countries, in an unbalanced panel (OECD, 2013). These indicators are available in three areas of EPL: regulation of regular contracts, regulation of temporary contracts, and regulation of collective dismissals. The ILO composite EPLex indicator is most comparable to the first area, i.e., the OECD composite indicator of strictness of employment protection for regular employment. The latter is based on eight items (components), ranging from notification procedures to reinstatement (OECD, 1999, Chapter 2, Annex 2.B). Each item is measured on a 0-6 scale, with higher values indicating stricter regulations.

The OECD EPL indicators are based on legal provisions, but also, to a significant extent, on estimates of the EPL practise, such as delays before notice can start, or estimated months of compensation for unfair dismissal. On the one hand, this has advantage of reflecting practice, jurisprudence, and to a certain extent the role of the courts (especially in determining reinstatement and compensation for unfair dismissals). On the other hand, challenges may arise if

[19] Some related indicators have also been developed by independent think-tanks. See, for example, Labour Market Efficiency Index developed by the World Economic Forum, the Government Efficiency Index and its labour regulation components developed by the International Institute for Management Development, and the Fraser Institute Labor Market Regulations Index. Critical overview of these indicators is provided in Aleksynska and Cazes (2014). For a comprehensive list of labour market regulations data prior to 2005, see Chataigner (2005). For the evolution of thinking related to construction of aggregate indices in the area of labour regulations, see also Eichhorst et al. (2008).

[20] Inspired by pioneering work by Lazear (1990) who used months of notice and severance pay to measure the strength of employment protection, Grubb and Wells (1993) developed an employment regulation indicator that became the basis for the OECD EPL indicator (OECD, 1999). Blanchard and Wolfers (2000) used the OECD methodology to construct a series for 26 OECD countries between the 1960s and 1999, in five-year intervals. Allard (2005) went back as far as 1950 to construct yearly OECD EPL series for 21 OECD countries. Muravyev (2013) further used the OECD methodology to compute EPL indicators for former USSR countries, CIS and Baltic States, between 1985 and 2009.

some of the information is business-cycle dependent or systematically unavailable in some countries.

While the ILO EPLex can be considered as largely comparable to the OECD composite indicator of strictness of employment protection for regular employment, the ILO EPLex indicator also has the following distinct features:

- It is based on the ILO Standards in the sense that indicators are constructed by reference to these standards;

- It incorporates additional key information, such as prohibited grounds for dismissals, or explicit distinction between severance and redundancy pay;

- It has a different treatment of valid grounds for dismissal and redress items; does not contain categories based on estimates of legal practice; does not contain jurisprudence / statistical estimates related to procedures, with pros and cons discussed above;

- Wherever relevant, topical EPLex indicators are based on a normalization procedure, rather than on an assigning-scale procedure. This allows reducing categorisation based on pre-established thresholds for notice, severance, or trial period, and also allows increasing data variability.

Appendix G contains an item-by-item comparison of the two methodologies.

Figure 8. Comparing ILO EPLex and OECD EPL (regular contracts individual dismissals) composite indicators, year 2010

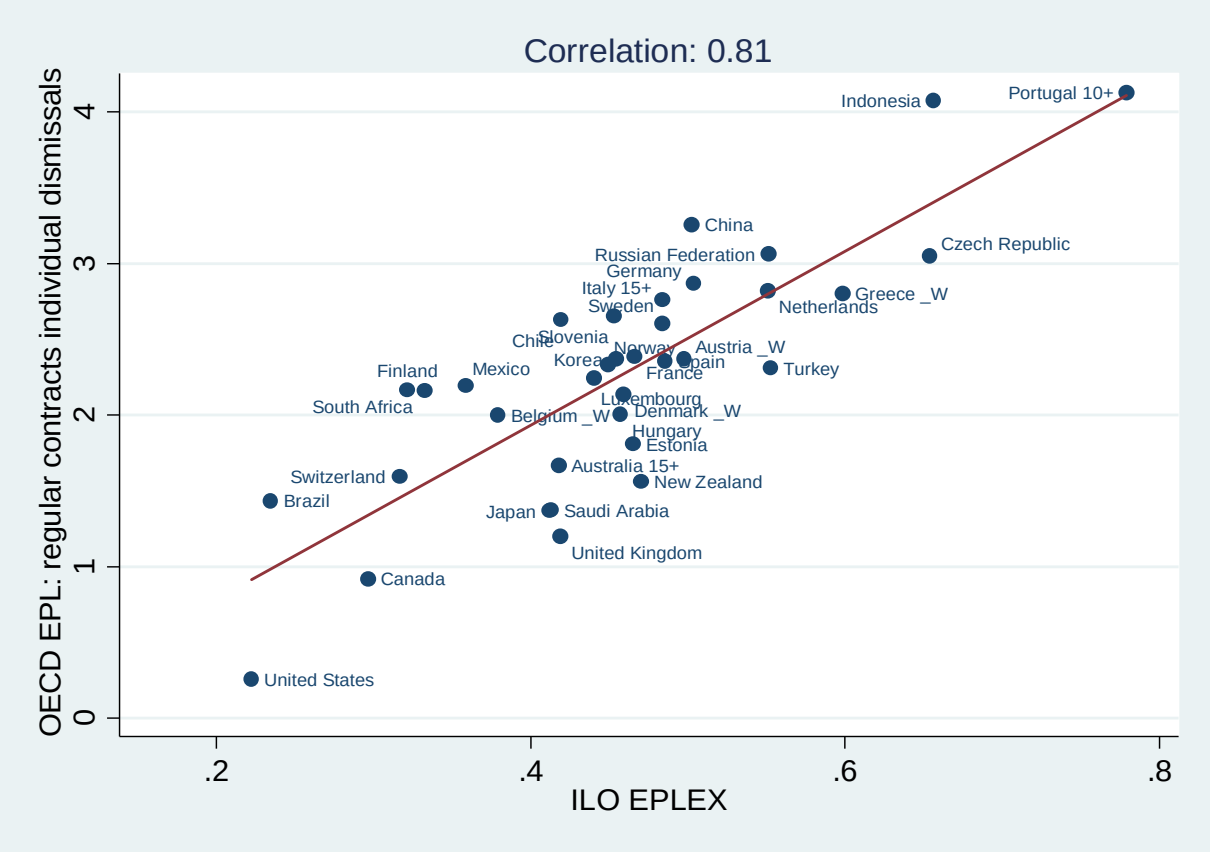
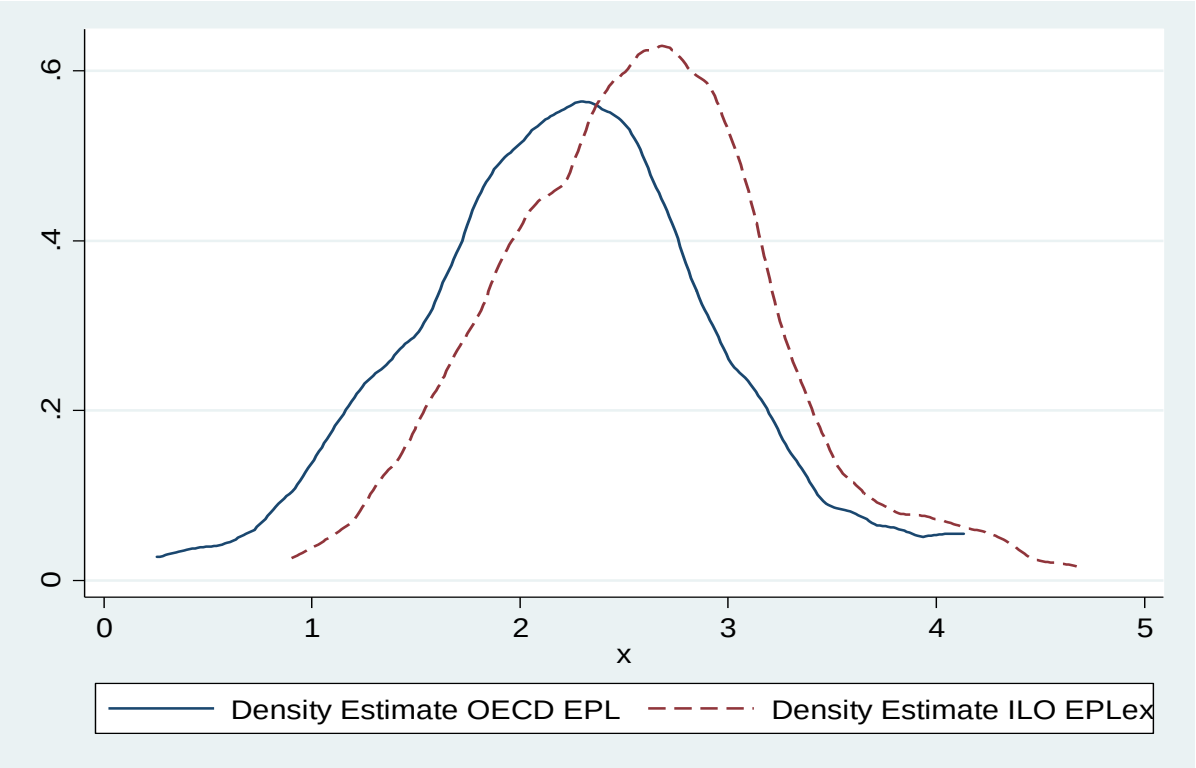


Figure 8 compares ILO EPLex indicator with the OECD composite indicator of strictness of employment protection for regular employment, for the overlapping ILO-OECD sub-sample of countries. For Australia, the EPLex value for companies employing 15 workers or more is used; for Italy, the EPLex value for companies with over 15 workers is used; for Portugal, the EPLex value for companies with over 10 workers is used; for Austria, Belgium, Denmark, and Greece, values for white-collar workers are used; those are contrasted with the overall OECD EPL values for these countries.

Figure 9. Comparing ILO EPLex and OECD EPL distributions



The correlation between the two indicators is quite high. Both indicators consistently assign highest values to Indonesia, the Czech Republic, and Portugal, and lowest values to the US. However, there are some considerable differences in country orderings. Countries above the fit line in Figure 8 are attributed a higher ordering value by the OECD indicator, while countries below the fit line are attributed higher ordering value by the ILO indicator. The orderings within the same sample are particularly different for countries such as the UK, Saudi Arabia, Japan, New Zealand, but also China, Indonesia or South Africa. These differences are attributable to methodological differences highlighted above, and mainly to different treatment of compensation and reinstatement as a remedy for unfair dismissals, as well as the inclusion of “prohibited grounds for dismissals” item in case of the ILO EPLex. For example, accounting for prohibited grounds allows attributing a considerably higher score to the UK, but a somewhat lower score to Mexico. The inclusion of “prohibited grounds for dismissals” also shifts the overall ILO EPLex distribution outwards, as compared to the OECD EPL distribution (Figure 9: for a comparable scale, ILO EPLex is multiplied by 6). This is because in the considered sample the majority of countries have a relatively high score on this item, driving upwards the overall EPLex score. The value of this shift can be especially appreciated in a larger sample, when more countries with a low score on “prohibited grounds” item are included (compare Figure 9 with Figure 1). The spreads of both distributions within the overlapping sample, are, however, highly similar.

4.2 World Bank employing workers indicators

Within the Doing Business project, the World Bank has been collecting data on several aspects of labour regulations since 2006. Initially inspired by Botero et al. (2004),[21] this effort witnessed numerous changes throughout the past decade, both in terms of type of data collected, of phrasing questions, of aggregating, presenting, interpreting and using the information. These changes were shaped in a large part by the critique that the project received from academia, civil society, and other international organizations (see notably Berg and Cazes, 2008; Lee at al., 2008), as well as by a series of subsequent independent evaluations (World Bank, 2011, 2013b) and consultations with labour lawyers, employers' and employees' representatives, civil society, private sector, and other international organizations. In response to the concerns raised, the World Bank took a decision not to use the collected data on labour regulations for ranking countries nor for aggregating with other variables that make part of the Ease of Doing Business indicator.

In the latest Doing Business (2014) edition, the World Bank Employing Workers Indicator appears in the appendix, and is structured as follows. It contains an aggregate indicator *Rigidity of Employment*, which is based on three aggregate sub-indicators: *Difficulty of Hiring, Rigidity of Hours*, and *Difficulty of Redundancy*. It also contains a separately reported indicator *Redundancy Cost.*

The most relevant items for comparison with the ILO EPLex are *Redundancy Cost* and *Difficulty of Redundancy. Redundancy Cost* is the average value of notice requirements and severance payments (in weeks of salary), applicable to a worker with 1 year tenure, 5 years tenure, and 10 years tenure. *Difficulty of Redundancy* includes 8 binary (yes-no) questions: (i) whether redundancy is disallowed as a basis for terminating workers; (ii) whether the employer needs to notify a third party (such as a government agency) to terminate 1 redundant worker; (iii) whether the employer needs to notify a third party to terminate a group of 9 redundant workers; (iv) whether the employer needs approval from a third party to terminate 1 redundant worker; (v) whether the employer needs approval from a third party to terminate a group of 9 redundant workers; (vi) whether the law requires the employer to reassign or retrain a worker before making the worker redundant; (vii) whether priority rules apply for redundancies; and (viii) whether priority rules apply for reemployment. Thus, the Employing Workers Indicator concerns mainly notification procedures, notification requirements, and severance pay, for individual and certain group dismissals,[22] and partly touches upon valid ground for termination. The binary method of recording information limits the

[21] Campos and Nugent (2012) extended Botero et al. (2004) index back to the 1960s. They do not report disaggregated indicators, only a composite indicator, the construction of which involves some extrapolations of legal data and does not seem to account for the previous critiques of Botero et al. (2004). Parts of the Employing Workers Indicator are also used in the Labour Market Efficiency Index developed by the World Economic Forum, in the Government Efficiency Index developed by the International Institute for Management Development, and in the Fraser Institute Labor Market Regulations Index. Labor Freedom Index by Heritage Foundation draws fully on the World Bank Employing Workers Indicator. Despite the fact that the World Bank discontinued computing Employing Workers Index and using it for ranking countries, the index is annually reconstructed by Heritage Foundation according to the methodology used previously by the Doing Business project.

[22] "Group" dismissal is a more appropriate term than "collective dismissals" in this context, as national laws usually contain precise definitions of what constitutes collective dismissals. Those may include more, or less, than 9 workers, and oftentimes also include a period of time over which the dismissals are made.

possibility of capturing cross-country richness of the data, as well as distinguishing relative importance of provisions captured by each of the questions. Compared to this, the ILO EPLex indicators contain comprehensive information and coding in the areas of individual dismissals, including also valid and prohibited grounds for dismissals, redundancy pay, and redress. They do not contain information on group dismissals.

In addition, while collecting this information, the World Bank introduces specific assumptions about workers and firms, while generally no such specific assumptions are adopted in the EPLex. Instead, to the extent possible, indicators are reported separately for largest distinct groups of workers and companies, and additional information on coverage is contained in the "Scope of regulations" section on the EPLex database.

4.3 Labour Regulation Index, Cambridge Center for Business Research

Deakin, Lele and Siems (2007) is an academia-led effort to produce a numeric Labour regulation index, which includes the following sub-indicators: alternative employment contracts, regulation of working time, regulation of dismissal, employee representation, industrial action, for a selection of countries, between 1970 and 2006.[23] Developed by legal specialists, these indicators capture the extent to which regulations protect the interests of workers as opposed to those of employers. Among the main features of these indicators is accounting for both formal laws and self-regulatory mechanisms, including collective agreements, which play a functionally similar role to that of the law in certain systems. They also incorporate information on the extent to which rules are mandatory and whether modifications by parties are possible. The composite indicator avoids making prior assumptions about the impacts of legal rules and seeks to be a pure measure of the content of the rule, including laws, collective agreements, and other legal practices. The indicators are distributed on a 0-1 scale.

The ILO EPLex indicators are comparable in several areas to the Deakin, Lele and Siems (2007) *regulation of dismissal* sub-indicator, but are also different in numerous respects. Item-by-item methodological differences and similarities are highlighted in Appendix H, and can be summarized as follows:

- Deakin, Lele and Siems (2007) contain the normalization procedure that was adopted in the current EPLex coding;
- ILO EPLex contains information on several tenure profiles in the areas of probation, notice periods, and severance pay;
- ILO EPLex explicitly distinguishes between severance and redundancy pay (dismissals for worker-related and for economic reasons);

[23] For a related work covering some other developing countries, see Cooney et al. (forthcoming).

- ILO EPLex contains a more detailed component on compensation for unfair dismissals and a differently framed component on procedural requirements; it includes information on prohibited grounds;

- Deakin, Lele and Siems (2007) include information on whether breach of procedures renders dismissals unjust. This possibility was considered in coding the ILO EPLex, but data were not collected systematically for all countries. For details, see “Redress” section.

- Deakin, Lele and Siems (2007) include information pertinent to collective dismissals, while ILO EPLex indicators currently concern only the regulation of regular contracts, individual dismissals.

- Deakin, Lele and Siems (2007) cover fewer countries, but contain longitudinal data spanning back to the 1970s; thus allowing to better track the evolution of the labour law for the covered countries.

Currently, there are only four countries for which Deakin, Lele and Siems (2007) and ILO EPLex have comparable information: France, Germany, the UK, and the US. Comparing composite indicators for these countries (using year 2009 for the ILO EPLex and 2005 for Deakin, Lele and Siems, 2007), the same orderings can be obtained: the US gets the lowest score, while Germany gets the highest score.

4.4 Other related data

Other important data sources that include information on employment protection, and thus have certain overlaps with the ILO EPLex database in general are:

- The European Commission Labour Market Reform Database (LABREF). It contains legal provisions (texts, though not quantitative data) on procedural requirements, notice and severance pay, definition of fair dismissal for EU member states, since 2000.

- FRDB-IZA Social Reforms Database. Developed by both legal and economic specialists from 20 OECD countries, this qualitative database contains indicators that track reforms in the areas of EPL and other labour market institutions. Instead of providing indicators of legal provisions in place, the database features a detailed overview of the dates on which new provisions entered into force, and qualifies reforms as being “marginal”, “incremental”, “structural”, “decreasing” or “increasing” the flexibility of regulations.

5. Concluding remarks

This report laid down a novel coding methodology for employment protection legislation on the basis of the International Labour Standards and the qualitative information contained in the ILO EPLex database. It presented coding results for 95 countries, over the period 2009-2013.

The coding exercise allows the visualization of the fact that the legal institution of employment protection became a global phenomenon. In many developed countries, current EPL is a reflection of long historical developments and, in some cases, of recent changes brought about by the economic crisis. In many developing countries, such as in Africa or Asia, recent instauration of EPL and its recent reforms are often a reflection of emerging labour market developments, and of the necessity to build sustainable labour market institutions that reply to these modern needs.

The EPLex indicators may be used in a variety of ways, providing new insights on the role of employment protection legislation in the functioning of labour markets specifically, and of economies more generally, fostering our understanding of its developmental functions (Deakin, 2014; Deakin, Fenwick, and Sarkar, 2014), as well as of its role in providing better employment, ensuring equity and equality. At the same time, any such use should strive at placing EPL into a broader context of other labour market institutions, such as collective bargaining or social security provisions.

Obtained EPLex indicators are based exclusively on available current de jure information, and this has been done deliberately. Adding more time dimension, expanding country coverage, and building legal indicators of collective dismissals are further necessary directions of work. Clearly, further work also needs to complement these legal indicators with de facto indicators of compliance and enforcement (Bertola et al., 2000), efficiency of the court system measured, for example, by easiness of access and resources devoted to it (Fagernäs, 2010), transparency and predictability of redress procedures, extent of awareness about EPL among workers (Lee and McCann, 2011), as well as EPL's effectiveness in the presence of large informal economies.

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Appendix A. Convention 158 – Termination of Employment Convention, 1982 (No. 158)

Convention concerning Termination of Employment at the Initiative of the Employer
Entry into force: 23 November 1985
Adoption: Geneva, 68th ILC session 22 June 1982
Status: No conclusions (Technical Convention)

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Noting the existing international standards contained in the Termination of Employment Recommendation, 1963, and

Noting that since the adoption of the Termination of Employment Recommendation, 1963, significant developments have occurred in the law and practice of many member States on the questions covered by that Recommendation, and

Considering that these developments have made it appropriate to adopt new international standards on the subject, particularly having regard to the serious problems in this field resulting from the economic difficulties and technological changes experienced in recent years in many countries,

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two the following Convention, which may be cited as the Termination of Employment Convention, 1982:

PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

Article 1

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations.

Article 2

1. This Convention applies to all branches of economic activity and to all employed persons.

2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:

(a) workers engaged under a contract of employment for a specified period of time or a specified task;

(b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;

(c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organizations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organizations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

For the purpose of this Convention the terms ***termination*** and ***termination of employment*** mean termination of employment at the initiative of the employer.

PART II. STANDARDS OF GENERAL APPLICATION

DIVISION A. JUSTIFICATION FOR TERMINATION

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 5

The following, inter alia, shall not constitute valid reasons for termination:

(a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

(b) seeking office as, or acting or having acted in the capacity of, a workers' representative;

(c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

(e) absence from work during maternity leave.

Article 6

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

DIVISION B. PROCEDURE PRIOR TO OR AT THE TIME OF TERMINATION

Article 7

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

DIVISION C. PROCEDURE OF APPEAL AGAINST TERMINATION

Article 8

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

Article 9

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

(a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;

(b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

DIVISION D. PERIOD OF NOTICE

Article 11

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

DIVISION E. SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

Article 12

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to-

(a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or

(c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

PART III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

Article 13

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

(a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;

(b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term ***the workers' representatives concerned*** means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

DIVISION B. NOTIFICATION TO THE COMPETENT AUTHORITY

Article 14

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a

written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

PART IV. FINAL PROVISIONS

Article 15

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 16

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 17

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 20

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 21

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

> (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;
>
> (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 22

The English and French versions of the text of this Convention are equally authoritative.

Appendix B. Recommendation 166 - Termination of Employment Recommendation, 1982 (No. 166)

Recommendation concerning Termination of Employment at the Initiative of the Employer
Adoption: Geneva, 68th ILC session, 22 June 1982
Status: No conclusions

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Termination of Employment Convention, 1982;

adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two, the following Recommendation, which may be cited as the Termination of Employment Recommendation, 1982:

PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, works rules, arbitration awards or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions.

2.

(1) This Recommendation applies to all branches of economic activity and to all employed persons.

(2) A Member may exclude the following categories of employed persons from all or some of the provisions of this Recommendation:

(a) workers engaged under a contract of employment for a specified period of time or a specified task;

(b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;

(c) workers engaged on a casual basis for a short period.

(3) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof categories of employed persons whose terms and conditions of

employment are governed by special arrangements, which as a whole provide protection that is at least equivalent to the protection afforded under the Recommendation.

(4) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

3.

(1) Adequate safeguards should be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention, 1982, and this Recommendation.

(2) To this end, for example, provision may be made for one or more of the following:

(a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;

(b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;

(c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.

4. For the purpose of this Recommendation the terms ***termination*** and ***termination of employment*** mean termination of employment at the initiative of the employer.

PART II. STANDARDS OF GENERAL APPLICATION

JUSTIFICATION FOR TERMINATION

5. In addition to the grounds referred to in Article 5 of the Termination of Employment Convention, 1982, the following should not constitute valid reasons for termination:

(a) age, subject to national law and practice regarding retirement;

(b) absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice.

6.

(1) Temporary absence from work because of illness or injury should not constitute a valid reason for termination.

(2) The definition of what constitutes temporary absence from work, the extent to which medical certification should be required and possible limitations to the application of

subparagraph (1) of this Paragraph should be determined in accordance with the methods of implementation referred to in Paragraph 1 of this Recommendation.

PROCEDURE PRIOR TO OR AT THE TIME OF TERMINATION

7. The employment of a worker should not be terminated for misconduct of a kind that under national law or practice would justify termination only if repeated on one or more occasions, unless the employer has given the worker appropriate written warning.

8. The employment of a worker should not be terminated for unsatisfactory performance, unless the employer has given the worker appropriate instructions and written warning and the worker continues to perform his duties unsatisfactorily after a reasonable period of time for improvement has elapsed.

9. A worker should be entitled to be assisted by another person when defending himself, in accordance with Article 7 of the Termination of Employment Convention, 1982, against allegations regarding his conduct or performance liable to result in the termination of his employment; this right may be specified by the methods of implementation referred to in Paragraph 1 of this Recommendation.

10. The employer should be deemed to have waived his right to terminate the employment of a worker for misconduct if he has failed to do so within a reasonable period of time after he has knowledge of the misconduct.

11. The employer may consult workers' representatives before a final decision is taken on individual cases of termination of employment.

12. The employer should notify a worker in writing of a decision to terminate his employment.

13.

(1) A worker who has been notified of termination of employment or whose employment has been terminated should be entitled to receive, on request, a written statement from his employer of the reason or reasons for the termination.

(2) Subparagraph (1) of this Paragraph need not be applied in the case of collective termination for the reasons referred to in Articles 13 and 14 of the Termination of Employment Convention, 1982, if the procedure provided for therein is followed.

PROCEDURE OF APPEAL AGAINST TERMINATION

14. Provision may be made for recourse to a procedure of conciliation before or during appeal proceedings against termination of employment.

15. Efforts should be made by public authorities, workers' representatives and organisations of workers to ensure that workers are fully informed of the possibilities of appeal at their disposal.

TIME OFF FROM WORK DURING THE PERIOD OF NOTICE

16. During the period of notice referred to in Article 11 of the Termination of Employment Convention, 1982, the worker should, for the purpose of seeking other employment, be entitled to a reasonable amount of time off without loss of pay, taken at times that are convenient to both parties.

CERTIFICATE OF EMPLOYMENT

17. A worker whose employment has been terminated should be entitled to receive, on request, a certificate from the employer specifying only the dates of his engagement and termination of his employment and the type or types of work on which he was employed; nevertheless, and at the request of the worker, an evaluation of his conduct and performance may be given in this certificate or in a separate certificate.

SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

18.

(1) A worker whose employment has been terminated should be entitled, in accordance with national law and practice, to-

(a) a severance allowance or other separation benefits, the amount of which should be based, inter alia, on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or

(c) a combination of such allowance and benefits.

(2) A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in subparagraph (1) (a) of this Paragraph solely because he is not receiving an unemployment benefit under subparagraph (1) (b).

(3) Provision may be made by the methods of implementation referred to in Paragraph 1 of this Recommendation for loss of entitlement to the allowance or benefits referred to in subparagraph (1) (a) of this Paragraph in the event of termination for serious misconduct.

PART III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

19.

(1) All parties concerned should seek to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned.

(2) Where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated.

CONSULTATIONS ON MAJOR CHANGES IN THE UNDERTAKING

20.

(1) When the employer contemplates the introduction of major changes in production, programme, organisation, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned as early as possible on, inter alia, the introduction of such changes, the effects they are likely to have and the measures for averting or mitigating the adverse effects of such changes.

(2) To enable the workers' representatives concerned to participate effectively in the consultations referred to in subparagraph (1) of this Paragraph, the employer should supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have.

(3) For the purposes of this Paragraph the term **the workers' representatives concerned** means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

MEASURES TO AVERT OR MINIMIZE TERMINATION

21. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.

22. Where it is considered that a temporary reduction of normal hours of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, financed by methods appropriate under national law and practice.

CRITERIA FOR SELECTION FOR TERMINATION

23.

(1) The selection by the employer of workers whose employment is to be terminated for reasons of an economic, technological, structural or similar nature should be made according to criteria, established wherever possible in advance, which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria, their order of priority and their relative weight, should be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation.

PRIORITY OF REHIRING

24.

(1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given a certain priority of rehiring if the employer again hires workers with comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.

(2) Such priority of rehiring may be limited to a specified period of time.

(3) The criteria for the priority of rehiring, the question of retention of rights-particularly seniority rights-in the event of rehiring, as well as the terms governing the wages of rehired

workers, should be determined according to the methods of implementation referred to in Paragraph 1 of this Recommendation.

MITIGATING THE EFFECTS OF TERMINATION

25.

(1) In the event of termination of employment for reasons of an economic, technological, structural or similar nature, the placement of the workers affected in suitable alternative employment as soon as possible, with training or retraining where appropriate, should be promoted by measures suitable to national circumstances, to be taken by the competent authority, where possible with the collaboration of the employer and the workers' representatives concerned.

(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.

(3) In assisting the workers affected in obtaining suitable alternative employment or training or retraining, regard may be had to the Human Resources Development Convention and Recommendation, 1975.

26.

(1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.

(2) The competent authority should consider providing financial resources to support in full or in part the measures referred to in subparagraph (1) of this Paragraph, in accordance with national law and practice.

PART IV. EFFECT ON EARLIER RECOMMENDATION

27. This Recommendation and the Termination of Employment Convention, 1982, supersede the Termination of Employment Recommendation, 1963.

Appendix C. General coding assumptions

The following principles were systematically applied in coding:

1. Coded data mainly record what is considered as a "general rule" in the ILO EPLex database. When clearly distinct provisions exist for clearly distinct mainstream types of workers or firms, separate indicators were created.

- Countries with worker-specific indicators are:
  - Austria (blue-collar versus white-collar workers)
  - Belgium (blue-collar versus white-collar workers)
  - Congo, Democratic Republic of the (worker categories 1-5 versus managerial and similar positions)
  - Côte d'Ivoire (monthly paid workers in categories 1-5 versus workers in categories 6-10 as well as engineers, managers, high-level technicians and similar workers)
  - Denmark (white-collar workers)
  - Greece (blue-collar versus white-collar workers)
  - Madagascar (skilled and unskilled blue-collar workers and white-collar workers who do not have managerial responsibilities (category 1); versus high-ranking executives and workers (category V))
  - Senegal (monthly paid workers versus workers with managerial and similar positions)
  - Tunisia (workers or "agents d'exécution", versus executives)

- Countries with firm-specific indicators are:
  - Australia (enterprises employing 15 workers or more versus enterprises with fewer than 15 workers)
  - Italy (enterprises employing over 15 workers versus enterprises with 15 or fewer workers)
  - Portugal (enterprises with 10 workers or fewer versus enterprises with over 10 workers)

For the full list of "special cases", consult country details in the online EPLex legal database.

2. As a general rule, no specific assumptions on worker gender, family, or tenure profile are put. Seven tenure profiles are taken into account for notice, severance, and redundancy pay. When legal provisions contain reference to age, codification is done for workers below 45 years of age (only three countries are concerned: Australia, Norway, Switzerland); specific provisions for other age groups are available either in this document or in the online EPLex legal database.

3. For comparability, all data expressed in time values are converted into months, using the following assumptions:

- working day: 8 hours

- working week: 40 hours

- working month: 30 days or 4 weeks

- working year: 52 weeks, 12 months

4. Each number and symbol in the quantified data has a meaning:

0 – means either genuine zero value, or no legislation in place

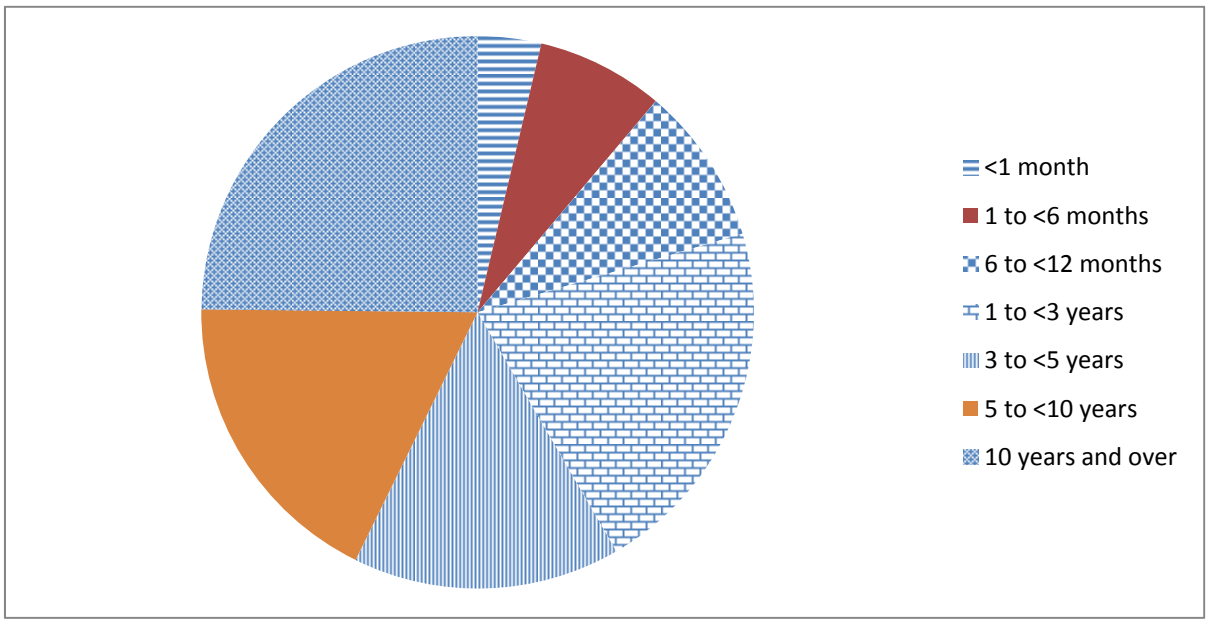
. – means missing value: legislation is in place but the information is not available

There are no “empty” cells.

5. Consistency in data recording: the data are provided at comparable time points, as of July 1 of each year. For the exact timing of legal changes, consult country details in the online EPLex legal database.

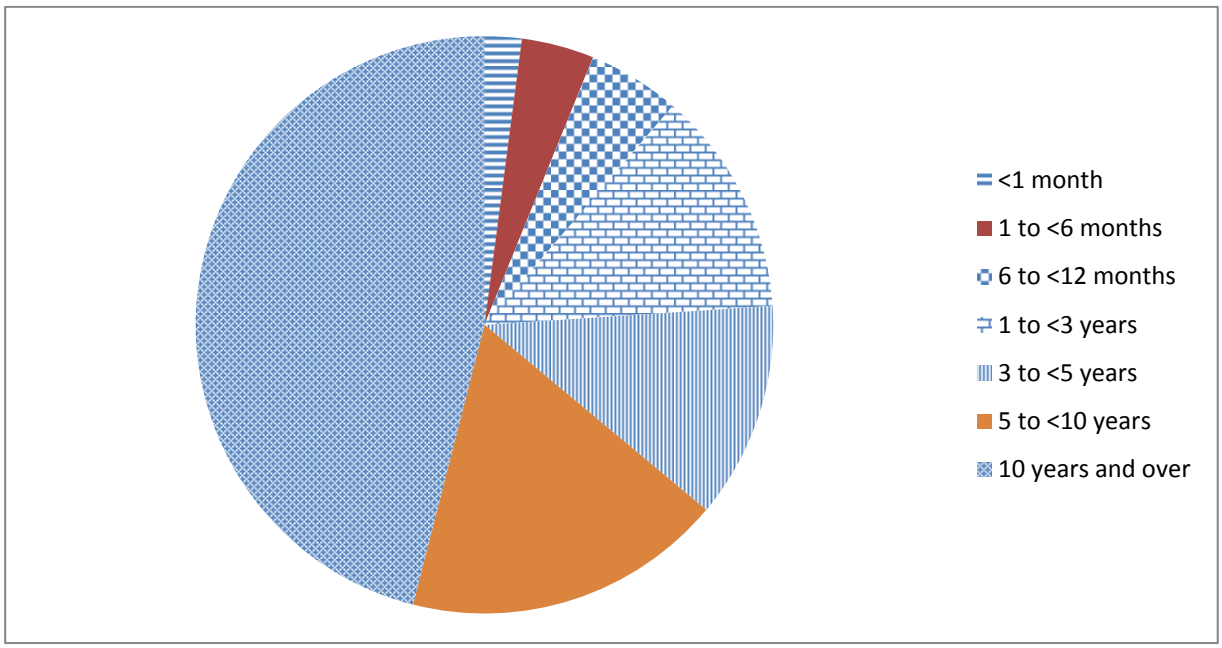
Appendix D. Examples of distribution of employed individuals by tenure

Australia, 2010



Source: OECD Statistical Database, Employment by job tenure intervals – persons. Accessed: November, 2013.

Belgium 2010



Source: OECD Statistical Database, Employment by job tenure intervals – persons. Accessed: November, 2013.

Appendix E. EPLex regional coverage

Africa	Americas	Arab States	Asia	Europe
• *Algeria* • *Angola* • *Burkina Faso* • *Cameroon* • *Central African Republic* • *Comoros* • *Congo, Democratic Republic of the* • *Côte d'Ivoire* • *Egypt* • *Ethiopia* • *Gabon* • *Ghana* • *Lesotho* • *Madagascar* • *Malawi* • *Morocco* • *Namibia* • *Niger* • *Nigeria* • *Rwanda* • *Senegal* • *South Africa* • *Tanzania, United Republic of* • *Tunisia* • *Uganda* • *Zambia*	• *Antigua and Barbuda* • *Argentina* • *Brazil* • *Canada (Federal only)* • *Chile* • *El Salvador* • *Honduras* • *Mexico* • *Panama* • *Peru* • *Saint Lucia* • *United States* • *Venezuela, Bolivarian Republic of*	• *Jordan* • *Saudi Arabia* • *Syrian Arab Republic* • *Tunisia* • *United Arab Emirates* • *Yemen*	• *Afghanistan* • *Australia* • *Bangladesh* • *Cambodia* • *China* • *Indonesia* • *Iran, Islamic Republic of* • *Japan* • *Korea, Republic of* • *Malaysia* • *Mongolia* • *New Zealand* • *Singapore* • *Sri Lanka* • *Thailand* • *Viet Nam* • *Philippines*	• *Armenia* • *Austria* • *Azerbaijan* • *Belgium* • *Bulgaria* • *Cyprus* • *Czech Republic* • *Denmark* • *Estonia* • *Finland* • *France* • *Georgia* • *Germany* • *Greece* • *Hungary* • *Italy* • *Kyrgyzstan* • *Luxembourg* • *Macedonia, the Former Yugoslav Republic of* • *Moldova, Republic of* • *Montenegro* • *Netherlands* • *Norway* • *Portugal* • *Romania* • *Russian Federation* • *Serbia* • *Slovakia* • *Slovenia* • *Spain* • *Sweden* • *Switzerland* • *Turkey* • *United Kingdom*

Note: Categorization based on ILO regions.

Appendix F. EPLex coverage by income groups

Low-income economies	Lower-middle-income economies	Upper-middle-income economies	High-income economies
• *Afghanistan* • *Bangladesh* • *Burkina Faso* • *Cambodia* • *Central African Republic* • *Congo, Democratic Republic of the* • *Ethiopia* • *Ghana* • *Kyrgyzstan* • *Madagascar* • *Malawi* • *Niger* • *Rwanda* • *Senegal* • *Tanzania, United Republic of* • *Uganda* • *Viet Nam* • *Yemen* • *Zambia* • *Zimbabwe*	• *Angola* • *Armenia* • *Azerbaijan* • *Cameroon* • *China* • *Côte d'Ivoire* • *Egypt* • *El Salvador* • *Georgia* • *Honduras* • *Indonesia* • *Iran, Islamic Republic of* • *Jordan* • *Lesotho* • *Maldives* • *Moldova, Republic of* • *Mongolia* • *Morocco* • *Nigeria* • *Pakistan* • *Philippines* • *Sri Lanka* • *Syrian Arab Republic* • *Thailand* • *Tunisia*	• *Algeria* • *Argentina* • *Belarus* • *Brazil* • *Bulgaria* • *Chile* • *Gabon* • *Macedonia, The Former Yugoslav Republic of* • *Malaysia* • *Mexico* • *Montenegro* • *Namibia* • *Panama* • *Peru* • *Romania* • *Russian Federation* • *Saint Lucia* • *Serbia* • *South Africa* • *Turkey* • *Venezuela, Bolivarian Republic of*	• *Antigua and Barbuda* • *Australia* • *Austria* • *Belgium* • *Canada (Federal only)* • *Cyprus* • *Czech Republic* • *Denmark* • *Estonia* • *Finland* • *France* • *Germany* • *Greece* • *Hungary* • *Italy* • *Japan* • *Korea, Republic of* • *Luxembourg* • *Netherlands* • *New Zealand* • *Norway* • *Portugal* • *Saudi Arabia* • *Singapore* • *Slovakia* • *Spain* • *Sweden* • *Switzerland* • *United Arab Emirates* • *United Kingdom* • *United States*

Note: Categorization based on the World Bank classification.

Appendix G. Comparison of the ILO EPLex methodology with the OECD EPL methodology

OECD EPL (indicator of strictness of employment protection for regular employment) methodology	ILO EPLex methodology
Item 1. Notification procedures Scale 0-3 0 – when an oral statement is enough 1 – when a written statement of the reasons for dismissal must be supplied to the employee 2 – when a third party (such as works council or the competent labour authority must be notified) 3 – when the employer cannot proceed to dismissal without authorisation from a third party Scale (0-3)x2	***Area 3.1. Procedural notification requirements for individual dismissals*** 0 – when employer needs only orally notify a worker of a decision to terminate his employment 0.25 – when employer must notify a worker in writing of a decision to terminate his employment 0.5 – when employer must notify a third party (such as works council or the competent labour authority) For categories from 0 to 0.5, add 0.25 if pay in lieu of notice is not allowed 1 – when employer cannot proceed to dismissal without authorisation from a third party
Item 2. Delay before notice can start Days Estimates time includes, where relevant, the following assumptions: 6 days are counted in case of required warning procedure; 1 day when dismissal can be notified orally or the notice can be directly handed to the employee; 2 days when a letter needs to be sent by mail and 3 days when this must be a registered letter. Grid applies	Omitted
Item 3. Length of the notice period at 3 tenures 9 months 4 years 20 years Grid applies	***Area 3.2. Notice period at 7 tenures*** 6 months, 9 months, 2 years, 4 years, 5 years, 10 years, 20 years. No grid, but normalizations are applied
Item 4. Severance pay at 3 tenures 9 months 4 years 20 years	***Area 4.1. Dismissals for economic reasons: redundancy pay at 7 tenures*** ***Area 4.2. Dismissals for worker-related reasons: severance pay at 7 tenures***

Grid applies	6 months, 9 months, 2 years, 4 years, 5 years, 10 years, 20 years No grid, but normalizations are applied
Item 5. Definition of justified or unfair dismissal Scale 0-3 0 – when worker capability or redundancy of the job are adequate and sufficient ground for dismissal; 1 – when social considerations, age or job tenure must when possible influence the choice of which worker(s) to dismiss 2 – when a transfer and/or a retraining to adapt the worker to different work must be attempted prior to dismissal 3 – when worker capability cannot be a ground for dismissal Scale (0-3)x2	***Area 1.1. Valid grounds for dismissal, in light of prohibited grounds*** 0 – when there is no obligation to *have* a reason for dismissal (understood in light of prohibited grounds) 0.5 – when there is an obligation to have a reason for dismissal, and valid grounds (justified dismissal) are any fair reason 0.75 – when there is an obligation to have a reason for dismissal, and valid grounds (justified dismissal) are economic reasons, worker's conduct, and worker's capacity 1 – when there is an obligation to have a reason for dismissal, and valid grounds (justified dismissal) are only worker's conduct (specific case of some Spanish-speaking countries) Subtract 0.25 if there is no obligation to *give* a reason for dismissal, for a minimum of 0.
Item 6. Length of trial period Months Period within which, regular contracts are not fully covered by employment protection provisions and unfair dismissal claims can usually not be made Grid applies	***Area 2. Maximum probationary period, including all possible renewals*** No grid, but normalization: no limitation = 0; less than 1 month= 1

Item 7. Compensation following unfair dismissal Months pay Typical compensation at 20 years of tenure, including back pay and other compensation (e.g. for future lost earnings in lieu of reinstatement or psychological injury, but excluding ordinary severance pay) Grid applies	***Area 5. Redress: compensation and reinstatement are treated jointly*** 0 – no remedy is available as of right 0.25 – no reinstatement is available as of right; compensation determined as follows: legal text sets an exact amount or a maximum amount to be paid 0.50 – no reinstatement is available as of right; compensation determined as follows: legal text sets a minimum amount to be paid, or compensation is freely determined by competent authority 0.75 - reinstatement is available as of right but is limited to specific cases, such as terminating on prohibited grounds (or discriminative dismissals) 1 – reinstatement is available as of right and is an alternative measure to compensation; compensation is determined as follows: legal text sets an exact amount or the maximum amount to be paid 1.25 – reinstatement is available as of right and is an alternative measure to compensation; compensation is determined as follows: legal text sets a minimum amount to be paid, or compensation is freely determined by competent authority Add 0.25 to any of these categories, if, in addition to the compensation, full back pay shall be paid by the employer even if no reinstatement takes place 1.75 – reinstatement is available in case of unfair dismissal and is the primary remedy for unfair dismissal, as prescribed by the law 2 – reinstatement is available in case of unfair dismissal and is the primary remedy for unfair dismissal; legal text explicitly mentions award of back pay and/or other additional payments Rescale: Divide the score by two. In aggregation, assign a double weight to this Area.
Item 8. Possibility of reinstatement following unfair dismissal Scale 0-3 0-no right or practice of reinstatement 1- reinstatement rarely or sometimes made available 2 – reinstatement fairly often made available 3 – reinstatement (almost) always made available Scale (0-2)*3	
Item 9. Maximum time to make a claim of unfair dismissal (New item as of 2013) Months Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	Omitted Comparisons can be made with the OECD version 1 & 2, that is, when this item is excluded from the aggregate index.

No information	***Area 1.2. Prohibited grounds for dismissals*** 0 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that only partly meets the ILO fundamental principles and rights at work 0.25 - when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that at least partly meets the ILO fundamental principles and rights at work; however, it also contains at least one of the grounds listed in fundamental conventions beyond the “core” discriminatory grounds, or which are co-provided by fundamental and specific international labour standards regulating employment termination 0.5 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that at least partly meets the ILO fundamental principles and rights at work; however, it also partly meets additional principles established by specific international labour standards governing employment termination 0.75 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that fully meets the ILO fundamental principles and rights at work; and fully meets the principles established by specific international labour standards governing employment termination 1 - when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that fully meets the ILO fundamental principles and rights at work; and exceeds the principles established by specific international labour standards governing employment termination, by additionally containing other categories

OECD EPL aggregation scheme

Level 1 Scale 0-6	Level 2 Scale 0-6	Level 3 Scale 0-6	Weights
Regular contracts	Procedural requirements (1/3)	Notification Procedures	1
	Notice and severance pay for no-fault individual dismissals (1/3)	Notice period after 9 months	1/7
		Notice period after 4 years	1/7
		Notice period after 20 years	1/7
		Severance pay after 9 months	4/21
		Severance pay after 4 years	4/21
		Severance pay after 20 years	4/21
	Regulation of unfair dismissal (1/3)	Definition of unjustified or unfair dismissal	1/4
		Length of probationary (trial) period	1/4
		Compensation following unfair dismissal and reinstatement (if Version 2 is retained; weights of ¼ and ¼ if items kept separately)	1/2

ILO EPLex aggregation scheme

Area	Weight
Area 1: Substantive requirements	
Area 1.1 Valid grounds	1/9
Area 1.2 Prohibited grounds	1/9
Area 2: Probationary period	1/9
Area 3: Procedural requirements	
Area 3.1 Procedural notification requirements	1/9
Area 3.2 Notice periods (averaged across tenures)	1/9
Area 4: Severance and redundancy pay	
Area 4.1 Severance pay (averaged across tenures)	1/9
Area 4.2 Redundancy pay (averaged across tenures)	1/9
Area 5: Redress	2/9

Note: Weighted average of all individual Areas. Equal weights are assigned to all Areas, except "Redress". "Redress" is assigned a double weight because it contains provisions on compensation for unfair dismissal and reinstatement; the two items being treated jointly within the "Redress" Area.

Appendix H. Comparison of the ILO EPLex methodology with Deakin et al. (2007) methodology for indicators governing employment termination

Deakin et al. (2007) methodology (Area C: Regulation of Dismissal)	ILO EPLex methodology
Item 16. Legally mandated notice period (all dismissals): measures the length of notice, in weeks, that has to be given to a worker with 3 years' employment. Normalize the score so that 0 weeks = 0 and 12 weeks =1	***Area 3.2. Notice period at 7 tenures*** 6 months, 9 months, 2 years, 4 years, 5 years, 10 years, 20 years. Normalizations are applied
Item 17. Legally mandated redundancy compensation: measures the amount of redundancy compensation payable to a worker made redundant after 3 years of employment, measured in weeks of pay. Normalize the score so that 0 weeks = 0 and 12 weeks = 1.	***Area 4.1. Dismissals for economic reasons: redundancy pay at 7 tenures*** ***Area 4.2. Dismissals for worker-related reasons: severance pay at 7 tenures*** 6 months, 9 months, 2 years, 4 years, 5 years, 10 years, 20 years Normalizations are applied
Item 18. Minimum qualifying period of service for normal case of unjust dismissal: measures the period of service required before a worker qualifies for general protection against unjust dismissal. Normalize the score so that 3 years or more = 0, 0 months =1	***Area 2. Maximum probationary period, including all possible renewals*** Normalization: no limitation = 0; less than 1 month= 1
Item 19. Law imposes procedural constraints on dismissal 1 if a dismissal is necessarily unjust if the employer fails to follow procedural requirements prior to dismissal. 0.67 if failure to follow procedural requirements will normally lead to a finding of unjust dismissal. 0.33 if failure to follow procedural requirement is just one factor taken into account in unjust dismissal cases. 0 if there are no procedural requirements for dismissal. Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	Item absent; potential inclusion of the item, as well as limitations, are discussed in the methodology part

Item 20. Law imposes substantive constraints on dismissal	***Area 1.1. Valid grounds for dismissal, in light of prohibited grounds***
1 if dismissal is only permissible for serious misconduct or fault of the employee. 0.67 if dismissal is lawful according to a wider range of legitimate reasons (misconduct, lack of capability, redundancy, etc.). 0.33 if dismissal is permissible if it is "just" or "fair" as defined by case law. 0 if employment is at will (i.e., no cause dismissal is normally permissible). Scope for gradations between 0 and 1 to reflect changes in the strength of the law.	0 – when there is no obligation to *have* a reason for dismissal (understood in light of prohibited grounds) 0.5 – when there is an obligation to have a reason for dismissal, and valid grounds (justified dismissal) are any fair reason 0.75 – when there is an obligation to have a reason for dismissal, and valid grounds (justified dismissal) are economic reasons, worker's conduct, and worker's capacity 1 – when there is an obligation to have a reason for dismissal, and valid grounds (justified dismissal) are only worker's conduct (specific case of some Spanish-speaking countries) Subtract 0.25 if there is no obligation to *give* a reason for dismissal, for a minimum of 0.
Item 21. Reinstatement normal remedy for unfair dismissal	***Area 5. Redress: compensation and reinstatement are treated jointly***
1 if reinstatement is the normal remedy for unjust dismissal and is regularly enfororced. 0.67 if reinstatement and compensation are, de jure and de facto, alternative remedies. 0.33 if compensation is the normal remedy. 0 if no remedy is available as of right. Scope for further gradation between 0 and 1 to reflect changes in the strength of the law.	0 – no remedy is available as of right 0.25 – no reinstatement is available as of right; compensation determined as follows: legal text sets an exact amount or a maximum amount to be paid 0.50 – no reinstatement is available as of right; compensation determined as follows: legal text sets a minimum amount to be paid, or compensation is freely determined by competent authority 0.75 - reinstatement is available as of right but is limited to specific cases, such as terminating on prohibited grounds (or discriminative dismissals) 1 – reinstatement is available as of right and is an alternative measure to compensation; compensation is determined as follows: legal text sets an exact amount or the maximum amount to be paid 1.25 – reinstatement is available as of right and is an alternative measure to compensation; compensation is determined as follows: legal text sets a minimum amount to be paid, or compensation is freely determined by competent authority

	Add 0.25 to any of these categories, if, in addition to the compensation, full back pay shall be paid by the employer even if no reinstatement takes place 1.75 – reinstatement is available in case of unfair dismissal and is the primary remedy for unfair dismissal, as prescribed by the law 2 – reinstatement is available in case of unfair dismissal and is the primary remedy for unfair dismissal; legal text explicitly mentions award of back pay and/or other additional payments Rescale: Divide the score by two. In aggregation, assign a double weight to this Area.
Item 22. Notification of dismissal 1 if by law or binding collective agreement the employer has to obtain the permission of a state body or third body prior to an individual dismissal. 0.67 if a state body or third party has to be notified prior to the dismissal. 0.33 if the employer has to give the worker written reasons for the dismissal. 0 if an oral statement of dismissal to the worker suffices. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	***Area 3.1. Procedural notification requirements for individual dismissals*** 0 – when employer need only orally notify a worker of a decision to terminate his employment 0.25 – when employer must notify a worker in writing of a decision to terminate his employment 0.5 – when employer must notify a third party (such as works council or the competent labour authority) For categories from 0 to 0.5, add 0.25 if pay in lieu of notice is not allowed 1 – when employer cannot proceed to dismissal without authorisation from a third party
Item 23. Redundancy selection 1 if by law or binding collective agreement the employer must follow priority rules based on seniority, marital status, number of dependants, etc., prior to dismissing for redundancy. 0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	Item absent (in EPLex, this type of information is only available in case of collective dismissals; this will be treated in a separate sub-indicator)
Item 24. Priority in re-employment 1 if by law or binding collective agreement the employer must follow priority rules relating to the re-employment of former workers.	Item absent (in EPLex, this type of information is only available in case of collective dismissals; this will be treated in a separate sub-indicator)

0 otherwise. Scope for further gradations between 0 and 1 to reflect changes in the strength of the law.	
No information	***Area 1.2: Prohibited grounds for dismissals*** 0 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that only partly meets the ILO fundamental principles and rights at work 0.25 - when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that at least partly meets the ILO fundamental principles and rights at work; however, it also contains at least one of the grounds listed in fundamental conventions beyond the “core” discriminatory grounds, or which are co-provided by fundamental and specific international labour standards regulating employment termination 0.5 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that at least partly meets the ILO fundamental principles and rights at work; however, it also partly meets additional principles established by specific international labour standards governing employment termination 0.75 – when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that fully meets the ILO fundamental principles and rights at work; and fully meets the principles established by specific international labour standards governing employment termination 1 - when national labour legislation contains a list of prohibited grounds for dismissal / discrimination cases that fully meets the ILO fundamental principles and rights at work; and exceeds the principles established by specific international labour standards governing employment termination, by additionally containing other categories
Aggregation: simple average of these items	Aggregation: weighted average of these items