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Pros and cons of the OECD EPL Index. Measuring employment protection legislation in Poland

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Pros and cons of the OECD EPL Index. Measuring employment protection legislation in Poland

Abstract: The objective of this paper is to identify and discuss the advantages and limitations of measuring the employment protection legislation (EPL) by means of the OECD EPL Indices, using the Polish labour market as an example. It is argued that the OECD EPL Indices play an important role in measuring the strictness of the employment protection legislation. Specifically, calculating the EPL Indices enables applying quantitative methods to assess the impact of the strictness of the labour market regulations on the unemployment level and its dynamics. It also makes it possible to compare the EPL level among the OECD countries, and to track or evaluate labour market reforms. Even if as a result of modifications, the OECD Indices have become a more accurate measure of EPL, this measure should be interpreted with caution. In this context, the case of Poland reveals that regulation for employees on open-ended contracts is very lax, though the uncertainty in terms of trial length and courts decisions remains an issue. Legislation of fixed-term contracts is rather lax, however utterly flexible civil contracts and 'bogus' self-employment are being abused. From a different angle, regulations for collective dismissals and on Temporary Work Agencies seem to be moderately restrictive.
Keywords: OECD EPL Index, employment protection in Poland, dual labour markets

Introduction

The impact of employment protection legislation (EPL) on labour market outcomes is among the most extensively debated issues, both in Poland and in the European Union (EU). Several reasons have contributed to the growing interest in this topic over the past years. In the past, strict EPL was blamed for poor adaptability of European labour markets until the mid-1990s. However, the labour market adjustments during the global financial crisis revealed that a too low

EPL level might lead to excessive, ineffective layoffs during recessions. Furthermore, partial EPL reforms in many countries have resulted in the emergence of dual (or segmented) labour markets, with a large segment of precarious, temporary jobs. Another puzzle arises from the investigation of labour market adjustments to the recession of 2008-2009. GDP falls triggered extremely heterogeneous employment reactions, meanwhile differences in OECD EPL Summary Index among EU countries were not meaningful. This might suggest that either the effects of EPL stringency on employment were insignificant, or the OECD Index is a poor measure of employment protection. In view of that, the assessment of the OECD Indices as a measure of the strictness of the employment protection legislation seems to be both relevant and interesting.

The objective of this article is to identify and discuss the advantages and limitations of measuring employment protection legislation via the OECD EPL Indices. To this end, the Polish labour market will be employed as an example. The structure of the article is as follows. The first section briefly discusses the literature on the EPL outcomes for labour market. The second part presents the construction of the EPL Indices, its modifications over time and discussion of its pros and cons. The third section of the paper presents the analysis of the employment protection legislation in Poland, at first building on the OECD EPL Indices, subsequently turning to qualitative research on labour regulation and its economic outcomes. This leads to further identification of advantages and limitations of the OECD EPL Indices as a measure of employment protection legislation.

1. EPL: definition, rationality and labour market outcomes

According to the most popular and simple definition, "Employment Protection Legislation consists of the set of norms and procedures to be followed in case of dismissals of redundant workers" (Boeri and van Ours, 2008: 199). More specifically, it refers to the provisions which define the lawfulness of dismissal, formal and procedural requirements to be followed in case of individual or collective dismissals, payments to workers for early contract termination and remedies to deal with the consequences of unfair dismissal, hiring restrictions (e.g. favouring specific groups of disadvantaged workers or limiting

specific types of contracts) (European Commission, 2016). Boeri and van Ours indicate that from the standpoint of economic theory, EPL can be reduced to two key components: a transfer and a tax. The first component is a monetary transfer from the employer to the worker, similar in nature to the wage. Conceptually, it consists of severance payments. The tax component, on the other hand, corresponds to a payment to a third party, external to the worker-employer relationship. It consists of trial costs (the payments for lawyers and the like) and all the other procedural costs. It is worth noting that some rules, for instance the advance notice of dismissal and the obligation to try to find another position, include both components (Boeri and van Ours 2008; Cahuc and Zylberberg, 2004).

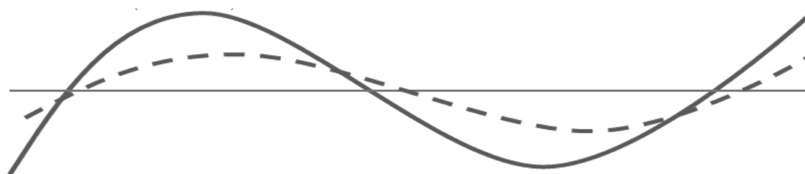
The economic rationale of EPL is to address the risks for workers associated with the lay-off process. The existence of EPL is justified by the presumption of the weak position of workers in relation to the employer. In general, a worker's income almost exclusively depends on their employment relationship, as human capital is their main asset. Hence, the termination of employment contract usually boils down to a loss of most or total of their income. The position of employers is more favourable, as they hold diverse assets (many employees, physical capital and access to capital markets). Consequently, losing a worker is relatively less costly, and they can adapt to unexpected negative shocks more easily. This asymmetry arises on imperfect labour markets, characterized by search frictions and mobility costs, as a result of which employers gain monopsony power in setting employment and wages (see e.g. Boeri and van Ours 2008). This power is even higher in a condition of low job creation during economic downturns. Another economic reason why EPL may be needed is to address the externalities associated with the break-up of employment relationships. Workers that are laid off, if not quickly re-employed, may lose skill and motivation, thus becoming hardly re-employable. Employers, when deciding about lay-offs do not take into account the fact that their decision may have implications in terms of effective labour inputs availability for the whole economy. Finally, a certain level of employment security might be beneficial from a macroeconomic perspective. Protection could bring desirable effects such as an increase and stabilization of aggregate consumption, as well as higher productivity growth as a longer working relationship is conducive to the accumulation of

firm-specific human capital. Under these circumstances, it is optimal to provide some insurance to employees (see, e.g. European Commission, 2012; Venn, 2009).

High level of employment protection affects labour market functioning by increasing the costs of workers' turnover. Costly firing procedures limit the number of job separations and decrease the number of hires as well. As a result, labour market with stringent EPL is characterised with lower labour market flows and longer unemployment duration. What is noteworthy, the effects of EPL on employment and unemployment rates is ambiguous, as they can increase or decrease depending on the relative strength of the effects on job creation and job destruction margins. This non-significant effect of EPL on employment and unemployment aggregates is confirmed by the majority of empirical research (see e.g. Addison and Teixeira, 2003; Layard and Nickell, 2011; Bassanini et al., 2010; OECD, 2013). Therefore, a remarkable comment by Nickell and Layard (1999: 3030) seems to be still valid: "By comparison [with the effects of unions and social security systems] time spent worrying about strict labour market regulations, employment protection and minimum wages is probably time largely wasted".

From the perspective of the global financial crisis and its implications, the EPL impact on cyclical changes on labour markets deserves particular attention. When considering labour markets with a higher level of protection legislation (see the dotted line in Figure 1), employment growth during booms is lower, but employment declines during recessions are less severe than in economies with a low level of EPL (Figure 1, solid line). In the end, stringent EPL smooths employment fluctuation in the economic cycle. Another result is a protracted employment response to positive and negative shocks. This might be beneficial and save many jobs during demand shocks, when employers are more prone to hoard labour. On the other hand, the pace of adjustments to reallocation shock is sluggish as well, increasing the costs of moving labour to more productive sectors. The employment growth during recovery might be delayed as well.

Figure 1. Employment in economic cycles on labour market with high (solid line) and low levels of EPL (dotted line)



Source: The Author.

2. The construction of the OECD EPL Indices: methodology and discussion

The OECD EPL Indices are the most widely used measures of strictness of employment protection legislation in policy and research circles[1]. The initial OECD measure was built on the basis of an indicator proposed by Grubb and Wells (1993), and made a substantial contribution to the recommendation presented in the influential policy report: the OECD Jobs Study (1994), which identified institutional 'rigidities' as the main obstacle for job creation in Europe. Since then, the OECD EPL Indices have applied quantitative methods to assess the impact of strictness of labour market regulations on the unemployment level and dynamics, comparing the level of EPL among OECD countries, and tracking and evaluating labour reforms. By creating the measure of employment protection and presenting country rankings, the OECD has made a contribution to the reforms deregulating employment protection and increasing labour market flexibility, undertaken by the majority of the European Countries since the 1990s.

International comparisons of employment protection regimes are carried out by the so-called method of the hierarchies. This method involves assigning a number to every country for any single feature of the protection regimes. Higher numbers denote more rigid regimes. Moreover, three versions of synthetic indicators are available, reflecting changes over time in the breadth of information incorporated into them (Venn, 2009). In version 1, Summary Indicator does not include such items as maximum to make a claim of unfair dismissal and additional provision for collective dismissals, authorisation and reporting requirements for Temporary Work Agencies (TWA) and equal treatment for TWA workers. These indicators are available since 1985 for

most countries. Version 2 of EPL Index still does not include maximum to make a claim of unfair dismissal, but entails additional provision for collective dismissals. These indicators are available since 1998 for most countries. Version 3 EPRC incorporates 21 items, presented in Table 1. The new data collected for the first time in 2008 are provided in items: 9: maximum time to make a claim of unfair dismissal, 16: authorisation or reporting obligations required when setting-up TWA, and 17: regulations ensuring equal treatment of regular and agency workers at the user firm. These are now the main indicators of employment protection. It should also be noted that the OECD has recently withdrawn one overall indicator, calculation of two summary measures instead: one concerning the regulations governing individual and collective dismissals of workers with regular, open-ended contracts, and the other for the regulation of temporary contracts (OECD, 2013). This change presumably is the OECD response to the critique that, while the weight of temporary employment in Summary Index has been fixed and amounts to 5/12, the share of temporary employment among OECD countries has been varying from a few to about 30%.

EPL indicators are now available for 34 OECD member states (i.a. Poland), 20 Latin American and Caribbean countries and 19 other countries. 21 basic items covering different aspects of employment protection regulations are classified in three main areas:

A. protection of regular workers against individual dismissal,

B. regulation of temporary forms of employment, and

C. additional, specific requirements for collective dismissals.

These items, and the assignment of numerical scores' procedure, are presented in details in table 1, whereas items' weights – in Table 2.

The third version of EPL Indicators reflects thorough methodological changes, conducted in response to both changing economic environment and criticism among economists. A key novelty is that the new methodology relies more intensively on a direct reading and

Table 1. Basis measures of EPL Indices and the assignment of numerical scores' procedure

Item	Assignment of numerical strictness scores
A. Individual dismissals of workers with regular contracts	
Notification Procedures	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)* × 2
Delay involved before notice can start (*days*)	0 - ≤ 2; 1 - < 10; 2 - < 18; 3 - < 26; 4 - < 35; 5 - < 45; 6 - ≥ 45
Length of the notice period at (a) 9 months, (b) 4 and (c) 20 years tenure (*months*)	(a) 0 - 0; 1 - < 0,4; 2 - < 0.8; 3 - < 1.3; 4 - <1.6; 5 - < 2; 6 - ≥ 2 (b) 0 - 0; 1 - < 0.75; 2 - < 1.5; 3 - < 2; 4 - < 2.5; 5 - < 3.5; 6 - ≥ 3.5 (c) 0 - < 1; 1 - < 2.75; 2 - < 5; 3 - < 7; 4 - < 9; 5 - < 11; 6 ≥ 11
Severance pay at (a) 9 months, (b) 4 and (c) 20 years tenure (*months*)	(a) 0 - 0; 1 - ≤ 0.5; 2 - ≤ 1; 3 - ≤ 1.75; 4 - ≤ 2.5; 5 - < 3; 6 - ≥ 3 (b) 0 - 0; 1 - ≤ 0.5; 2 - ≤ 1; 3 - ≤ 2; 4 - ≤ 3; 5 - < 4; 6 - ≥ 4 (c) 0 - 0; 1 - ≤ 3; 2 - ≤ 6; 3 - ≤ 10; 4 - ≤ 12; 5 - < 18; 6 > 18
Definition of justified or unfair dismissal	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)* × 2
Length of trial period	0 - ≥ 24 mths; 1 - > 12 mths; 2 - > 9 mths; 3 - > 5 mths; 4 - > 2.5 mths; 5 - ≥ 1.5 mths; 6 - < 1.5 mths
Compensation following unfair dismissal	0 - ≤ 3 month's pay (mp thereafter); 1 - ≤ 8 mp; 2 - ≤ 12 mp; 3 - ≤ 18 mp; 4 - ≤ 24 mp; 5 - ≤ 30 mp; 6 - > 30 mp
Possibility of reinstatement following unfair dismissal	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 (0-3)* × 2
Maximum time to make a claim of unfair dismissal (*months*)	0 - before dismissal takes effect; 1 - ≤ 1; 2 - ≤3; 3 - ≤ 6; 4 - ≤ 9; 5 - ≤ 12; 6 - >12
B. Temporary employment	
Valid cases for use of fixed-term contracts (FTC)	0 - fixed-term contracts are permitted only for "objective" or "material situation", *i.e.* to perform a task which itself is of fixed duration; 1 - if specific exemptions apply to situations of employer need (*e.g.* launching a new activity) or employee need (*e.g.* workers in search of their first job); 2 - when exemptions exist on both the employer's and employee's sides; 3 - when there are no restrictions on the use of fixed-term contracts. *6 - Scale (0-3)* × 2

Maximum number of successive FTC	0 - no limit; 1 - ≥ 5; 2 - ≥ 4; 3 - ≥ 3; 4 - ≥ 2; 5 - ≥ 1,5; 6 - < 1,5
Maximum cumulated duration of successive FTC (*months*)	0 - no limit; 1 - ≥ 36; 2 - ≥ 30; 3 - ≥ 24; 4 - ≥ 18; 5 - ≥ 12; 6 - < 12
Types of work for which temporary work agency (TWA) employment is legal	0 - when TWA employment is illegal; 1 - only allowed in specified industries; 2 - only allowed for 'objective reasons'; 3 - generally allowed, with specified exceptions; 4 - generally allowed, no (or minimal) restrictions. 1/12 *Scale (0-4) × 6/4*
Restrictions on number of renewals	2 = No; 4 = Yes
Maximum cumulated duration of TWA assignments (*months*)	0 - no limit; 1 - ≥ 36; 2 - ≥ 24; 3 - ≥ 18; 4 - ≥ 12; 5 - > 6; 6 - ≤ 6
Does the set-up of a TWA require authorisation or reporting obligations	0 - no authorisation or reporting requirements; 1 - requires special administrative authorisation; 2 - requires periodic reporting obligations; 3 - both authorisation and reporting requirements. *Scale (0-3) × 2*
Do regulations ensure equal treatment of regular and agency workers at the user firm?	0 - no requirement for equal treatment; 1 - equal treatment regarding pay or working conditions; 2 - equal treatment regarding pay and working conditions. *Scale (0-2) × 3*
C. Additional regulations for collective dismissals	
Definition of collective dismissal	0 - if there are no additional regulations for collective dismissals; 1 - if specific regulations apply from 50 dismissals upward; 2 - if specific regulations apply from 20 dismissals onward; 3 - if specific regulations apply at 10 dismissals; 4 - if specific regulations start to apply at below 10 dismissals. Scale (0-4) × 6/4
Additional notification requirements (*to employee representatives, and to government authorities*)	0 - no additional requirements; 1 - when one more actor needs to be notified; 2 - when two more actors need to be notified. *Scale (0-2) × 3*
Additional delays involved before notice can start (*days*)	0 - 0; 1 - < 25; 2 - < 30; 3 - < 50; 4 - < 70; 5 - <90; 6 - ≥ 90
Other special costs to employers (*severance pay requirements, social compensation plans – e.g. retraining, outplacement*)	0 - no additional requirements; 1 - additional severance pay or social compensation plans required; 2 - additional severance pay and social compensation plans required. *Scale (0-2) × 3*

Source: The Author, based on OECD (2014) *Calculating summary indicators of EPL strictness: methodology*, June 2014, https://www.oecd.org/els/emp/EPL-Methodology.pdf.

Table 2. Summary EPL Indicators' weights

Level 1	Level 2 (weight)	Level 3 (weight)	Level 4	
			Item	Weight
Individual and collective dismissals – regular workers (EPRC)	Regular contracts (5/7)	Procedural inconveniences (1/3)	1	(1/2)
			2	(1/2)
		Notice and severance pay for no-fault individual dismissals (1/3)	3 (a)	(1/7)
			3 (b)	(1/7)
			3 (c)	(1/7)
			4 (a)	(4/21)
			4 (b)	(4/21)
			4 (c)	(4/21)
		Difficulty of dismissal (1/3)	5	(1/5)
			6	(1/5)
			7	(1/5)
			8	(1/5)
			9	(1/5)
	Collective dismissals (2/7)		18	(1/4)
			19	(1/4)
			20	(1/4)
			21	(1/4)
Temporary contracts (EPT)	Fixed term contracts (1/2)		10	(1/2)
			11	(1/4)
			12	(1/4)
	Temporary Work Agency Employment (1/2)		13	(1/3)
			14	(1/6)
			15	(1/6)
			16	(1/6)
			17	(1/6)

Notice: For item names see Table 1.

Source: The Author's own elaboration, based on Venn, D. (2009) 'Legislation, Collective Bargaining and Enforcement: Updating the OECD Employment Protection Indicators', *OECD Social, Employment and Migration Working Papers*, No. 89, Paris: OECD Publishing; OECD (2014) 'Calculating summary indicators of EPL strictness: methodology', *Employment Policy and Data*, June 2014, https://www.oecd.org/els/emp/EPL-Methodology.pdf (accessed 2016-09-06).

interpretation of legislation, collective bargaining agreements, and case law under the responsibility of the OECD Secretariat. In previous versions, key information used for the construction of the OECD EPL was collected from a detailed questionnaire completed by government

authorities of OECD member and accession countries, which was criticised for the lack of adequate degree of cross-country comparability. In addition, the OECD Secretariat undertook an effort to incorporate employment protection provided through collective bargaining, and the ruling of labour and civil courts, the latter being crucial for the law enforcement. All changes are exhaustively explained in Venn (2009), and OECD (2013). As a result of this revision, 23% of items for the year 2008[2] were modified, though the revision to the value of the overall summary EPL indicator was greater than 0.2 point only in ten countries, with a maximum change of 0.32 for Sweden (OECD, 2013).

Significant improvement in collecting data and constructing a new version of the Indices made many critical arguments against the EPL Index obsolete, though some problems remain unsolved. Many authors stressed that an important design feature of EPL concerns, more than the legal norms themselves, the unpredictability of law enforcement and the involvement of third parties (see e.g. Boeri and van Ours, 2008 or European Commission, 2016). This problem was, at least partly, resolved by incorporating court jurisdiction into EPL measures, though the efficiency of the process of dispute resolution is still not included in the OECD indicators. Another critique was that costs of dismissals depended not only on national legislation, but also on industrial relations (see e.g. Hall and Soskice, 2001). Countries with relatively high union and bargaining coverage might therefore be characterised by higher dismissals costs than those with low union density, as collective agreements often include provisions more generous to employees than a minimum standard set in legislation. Incorporating collective bargaining for the countries where bargaining takes place on an industry, regional or national level seems an answer to this issue. Boeri and Jimeno (2005) point out that some problems in measuring the impact of EPL on labour market functioning stem from the fact that there is a quite substantial within-country variation in the actual enforcement of regulations, which is not captured by a cross-country analysis. However, recent modifications of the EPL Indices partly tackle this problem as well[3].

Nevertheless, when regulations differ between large and small firms, the indices' values are still based on regulations prevailing for large firms (with the partial exception of the definition of collective dismissal, where the lowest threshold is taken into account). As a con-

sequence, countries with a large share of small firms and significant differences in dismissal restrictions by firm size (such as Italy) exhibit in fact a lower level of EPL than that measured by the OECD Indices. Another problem, disregarded in the Indicator, concerns exemptions targeted at groups with less attachment to labour market (e.g. apprentices undertaking training), and enforced protection for others (e.g. pregnant women, workers nearing retirement age). Another arguable feature is subjectivity in the measurement and weighting of the subcomponents (e.g. European Commission, 2012). However, it should be stressed that some level of subjectivity in constructing quantitative indicators for such complex and partly qualitative phenomena is inevitable. Moreover, as Venn (2009) proves, recalculating the indices with a different weight barely changes the OECD countries' ranking. Finally, not all changes in the legislation on employment protection modify the OECD EPL indicators. This may occur either because a change is insufficient to modify the scoring given to a particular regulation, or because one change offsets impact of another on aggregate indicators.

Probably the most fundamental problem relates to the interpretation of the Indicator. The OECD EPRC Index captures only regulatory aspects that firing costs incurred by companies. In turn, the EPT Index measures restrictions on their use, not specifically costs related to the termination of those contracts. Therefore, the OECD Indices should not be regarded as an indicator of overall labour market flexibility. Giving an example, labour market flexibility might be enhanced e.g. via working time elasticity or 'dependent self-employment'. Labour market flexibility is actually shaped by many other labour market institutions, and their interactions. The OECD aggregate measures should not be used as a proxy for job security for employees, as they reflect a perspective of employers. In addition, the difference between EPRC and EPT cannot be interpreted when capturing the labour market duality[4], because the comparison of these indices does not allow us to gauge the existing disparities in the protection of permanent and temporary workers from dismissal. Finally, it should be pointed out that employment protection law is only one of many sources of costs incurred as a consequence of workers' turnover. Others, and perhaps more important are hiring costs, especially expenditures on recruiting and training, and lower productivity of a new employee.

3. Employment protection legislation in Poland

In terms of EPL stringency measured with the OECD indices, Poland is close to the EU average and slightly above the average for the OECD countries (see Table 3). The EPRC Index of 13 EU countries is higher than the value for Poland, and 10 have a higher EPT Index. It should also be mentioned that differences in the OECD EPL summary index among EU countries are not meaningful: the EPRC Index in 23 out of 24 EU countries differs between 2 and 3 (in 0-6 scale). However, when considering detailed items representing various aspects of labour law (see Figure 2), strictness of regulations appears to be very heterogeneous. Regulations for employees on open-ended contracts are very lax, especially those concerning the definition of justified or unfair dismissal, and compensation following unfair dismissal. Another regulation favourable for the employer is an exceptionally short period for an appeal against a notice of termination: seven (calendar) days from the delivery date of the letter terminating the contract of employment. Employees are usually not entitled to severance pay except when the contract is terminated due to reasons not attributable to employees (predominantly job destruction). The length of a notice period is moderate: 2 weeks for job tenure less than 6 months, 1 month for tenure between 6 months and 3 years, and 3 months for tenure equal to 3 years or longer. The ceiling of three months on trial-period contracts is one of the shortest among OECD countries, but it does not limit hiring and the quality of matching, as employers frequently use lax fixed-term or civil-contracts when testing new employees.

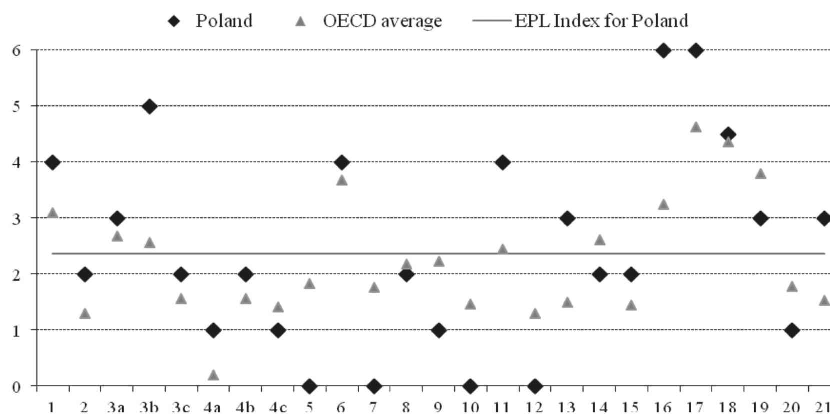
Table 3. EPL Indices for Poland, OECD and EU

Country	Protection of permanent workers against individual and collective dismissals (EPRC)	Regulation on temporary forms of employment (EPT)
Poland	2.39	2.33
OECD (34) average	2.27	2.03
EU (24) average	2.47	2.28

Notes: EU average covers all EU member states except Cyprus, Malta, Romania and Bulgaria. Data for 2013 except Slovenia and the United Kingdom (2014), and Lithuania and Croatia (2015).

Source: The Author's calculations based on the OECD indicators on Employment Protection Legislation, http://www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm

Figure 2. Detailed items' scores used to compile Summary Indices for Poland and the OECD



Notes: EPL Index for Poland has been calculated as a weighted average of EPRC (weight: 7/12) and EPT (5/12), similarly to the OECD procedure used when OECD overall indicators were calculated. For item numbers – see Table 1.

Source: The Author, based on the OECD Employment Protection Legislation Database.

Moving beyond the OECD EPL Indices, a qualitative analysis of the labour code and its enforcement in Poland leads to two main comments. Firstly, employers complain on legal procedures in disputed separations. Generally, when judges are involved in assessing the reasonability and fairness of a dismissal, their decision might be arbitrary, making the costs of layoffs highly uncertain. The assessment of fairness and justification of termination is made by specialised courts, and there is no universal set of guidelines specifying an improper performance of the employee's duties. On the other hand, Labour Courts regard termination with a notice period as a normal instrument of personnel policy, accepting such causes as: negligent performance of duties, loss of confidence, stirring conflicts, lack of skills, repeated offences of minor misconducts, frequent or prolonged absences (justified) disorganising work (see e.g. Liszcz, 2014; Sawa, 2008). However, as the Supreme Court of Poland stated in one of its judgements, a condition of giving specific reasons for the termination of the contract is fulfilled when the employer indicates specific facts and circumstances relating to an employee or his behaviour in the workplace[5]. Overall, the courts' approach has moved much towards easing the reasons for the termination of an open-ended contract in the recent years. It should

also be noted that termination of fixed-term contracts does not, in practice, require giving any reason.

Employers' objections are more justifiable in terms of the length of a court trial. Although somewhat obsolete, international comparison ranked Poland among the countries with the lowest average length of a court trial (Venn, 2009: 33). Since then, the average length of a court trial has been growing steadily and reached 8.4 months in 2015 (see Table 4). What is more, only 28.3% of cases were completed within 3 months, despite a falling number of labour law cases. The number of cases in relation to the number of employees has fallen and is comparable to the earlier results for the majority of the OECD countries, which are collected in Venn (2009).

Table 4. Selected data on the functioning of Labour Courts in Poland

	2014	2015
Annual inflow of labour law cases (ths)	156.6	105.7
Including: termination cases (ths)(1)	14.1	14.3
Average length of court trial (mth)(2)	6.9	8.4
Share of cases completed within 3 months (%)(2)	45.5	28.3
Court cases per 1000 employees(3)	10.8	7
Termination cases per 1000 employees(3)	1.0	1.0

Notes: (1) both with and without a notice period; (2) district courts only; (3) data on the number of employees for 2014.

Source: The Author's calculations based on the data available on the websites of the Ministry of Justice in Poland and the Central Statistical Office of Poland (CSO, 2015a).

Secondly, consultation procedure should not be considered as an important source of costs and uncertainty for most firms. Before giving notice, the employer must establish whether the employee is represented by a trade union. If so, the employer must consult the trade union, giving the union 5 days to respond. The union's opinion is not binding, though not following the consultation procedure usually renders the dismissal invalid. Actually, consultation procedure is often a non-issue, as union density in Poland is one of the lowest among EU countries, and amounted to 12.7% in 2012 (Visser, 2015). This obscures significant cross-sectoral differences, as the unionisation level in public companies in 2007 was 62%, 37% in private enterprises with foreign capital, and only 8% in with domestic capital (Gardawski, 2012).

Additional regulations for collective dismissals seem to be more restrictive for firms. When calculating indices, the highest score has been given to the definition of collective dismissals (see Figure 2). It should be noticed that the definition of collective dismissal is actually somewhat different (and perhaps less restrictive) than that attributed by the OECD. Specific regulations apply to 10 dismissals only in firms with 20-99 employers. The threshold for companies with employment ranging from 100 to 300 people amounts to 10% of employees, and 30% of employees for larger firms. Given low union density and a relatively large share of micro and small firms in Poland in comparison to other EU countries[6], collective dismissal does not seem to be an important instrument of personnel policy.

Assessment of the stringency of EPL regulating temporary employment seems to be particularly difficult. Overall, the summary EPT Index is higher than the EU average, suggesting rather strict regulations. Meanwhile, the share of temporary employment is the highest among EU member states, and twice the EU average. Labour market in Poland is deeply segmented (see IBS, 2014), despite relatively lax regulations on permanent contracts and seemingly strict rules of temporary contracts. Solving this puzzle requires further insight into EPL legislation and complex labour market structural issues.

Legislation over fixed-term contracts in Poland is, in fact, rather lax. There are no restrictions in terms of valid cases for the use of fixed-term contracts. A strict limit of 2 successive fixed-term contracts is easily avoided, as employers frequently offer fixed-term contracts with a long duration[7]. Moreover, this limit was suspended by the law of 1 July 2009 on Mitigating Effects of the Economic Crisis for Employees and Entrepreneurs (Chancellery of the Sejm, 2009), which was effective until 31 December 2011. Perhaps the main reason for the popularity of fixed-term contracts is that, unlike permanent agreement, their termination does not require giving any reason for dismissal, nor is the subject of Labour Courts' verification. However, on top of temporary contracts governed by the Labour Code, employment relations often take the form of a lightly regulated contract under civil-law provisions, which is a far more extreme symptom of labour market segmentation. The number of people, with whom the mandate contract and contract of specified work was concluded within 2014 and who were not employed elsewhere on the basis of an employment contract, was

965.9 thousand and 202.8 thousand respectively (CSO, 2015a). Many of them are in fact dependent employees: according to the inspection results of the National Labour Inspectorate – NLI (2015), 15% of workers employed on civil contracts actually met the criteria of dependent employment. The most relevant reason for the popularity of this type of contract does not refer to employment protection legislation, but to limited social protection. Civil-law employment is less costly for employers, as it is subject to limited social-protection requirements: social security contributions are usually lower, there is no holiday or sick leave[8], and minimum-wage standard is not applied[9]. Another symptom of labour market duality is 'bogus' self-employment. This expression describes a situation of a 'false' self-employment, when a self-employed person provides services for an employer, but de facto their relation is a relation of subordination (dependent employment). This practice results in increased labour market flexibility, but is accompanied by lower social security for the self-employed. It is worth noticing that the OECD EPL Indices ignore this issue. Nonetheless, incorporating this phenomenon to the EPL methodology is rather unfeasible, as measuring the number of self-employed, but actually dependant workers across countries is extremely difficult. In the case of Poland, what we do know is that the number of non-agricultural self-employed people with no employees in Poland is approx. 1.1 million (CSO, 2015b). However, this group is seemingly quite heterogeneous, and not all of those self-employed are 'bogus'.

In contrast, regulations of Temporary Work Agencies (TWA) seem to be rather strict. The set-up of TWA in Poland requires special administrative authorisation and entails periodic reporting obligations, and a temporary employee working for a user firm cannot be treated less favourably with regard to working conditions and other terms of employment than employees employed by the user firm at the same or similar work station. On the other hand, Polish labour law can be characterised with rather lax regulations on the number of renewals, types of work for which TWA employment is legal, and minimum cumulated duration of TWA assignment. The total number of TWA workers at the end of 2014 was only 92.5 thousand (GUS, 2015a), but this is more the result of a flexible regulation on civil contracts than stringent law in the field of TWA's. Interestingly, the largest TWA associated in "Polish HR Forum" have recently opted for even more

stringent regulation, like introducing financial guarantees and trial certificates, or additional reporting duties on the timely payment of social contributions.

In view of the discussion on the construction and interpretation of the EPL Indices, at least three additional remarks deserve an attention. First, there is actually no difference in employment protection regulations between large and small firms in Poland. Secondly, labour regulations set an increased protection for pregnant women, which might be a source of additional costs. The most relevant cost is associated with the rule that an employer cannot dismiss an employee while she is pregnant and during her maternity leave. This, of course, does not apply when the employer discontinues business activities, or when the contract is terminated without notice due to the fault of the employee, e.g. when the employee substantially fails to perform his basic duties. The costs for firms arise, because employers have to find and train another worker who temporarily replaces the pregnant. Women's absence usually lasts one year (maximum parental leave) plus a few months of sick leave related to pregnancy. To mitigate a negative impact of maternity leave on women's employment prospects, temporary (36 months) exemption from the contribution to the Labour Fund and the Guaranteed Employee Benefit Fund has been introduced. Overall, restrictions regarding maternity in Poland do not exceed the standard set in ILO Maternity Protection Convention (2000), and should not be considered as an important source of costs for the employers. Thirdly, the aggregate cost of employee turnover in the economy has been steadily growing in the recent years, reaching approx. 0.35% of the yearly GDP in 2014 (NBP, 2015). Nonetheless, this is the result of a substantial growth of costs related to hires (recruitment costs and workplace equipment), as costs of severance packages have been decreasing. In 2014, costs related to severance pay due to job destruction and retirement accounted for half of the total turnover costs. Recruitment costs rise both from an increasing number of hires and a more expensive recruitment process. It needs to be highlighted that NBP estimates do not include the costs of training, which have been presumably rising as well.

Conclusions

The analysis confirms an important role of the OECD EPL Indices in measuring the strictness of employment protection legislation. Specifically, calculating the EPL Indices enables the application of quantitative methods to assess the impact of the strictness of labour market regulations on the unemployment level and dynamics. It also allows for comparing the level of EPL among OECD countries, and tracking or evaluating labour reforms. The recent modifications, particularly involving court ruling and collective bargaining, have made the OECD Indices a more accurate measure of Employment Protection Legislation. Thus, many critical arguments against the OECD Indices have become obsolete. However, this measure should be interpreted with caution, as certain regulations are still not taken into account. The OECD Indices capture only regulatory aspects that affect the firing costs companies incur and of the use of temporary contracts. Indicators should not be used as a proxy for job security for employees, nor measures of overall labour market flexibility. Finally, the gap between the two OECD Indices capturing the costs referring to permanent and temporary workers, is of limited use in recognising the sources of labour market duality.

The research on EPL in Poland confirms that the OECD Indices, and especially their items in details, might be a useful tool for recognising the general sources of regulatory costs for the employers. Nonetheless, certain important aspects of EPL and its labour market outcomes are revealed only after qualitative research that goes beyond the OECD EPL Database. The investigation revealed that regulations for employees on open-ended contracts in Poland are very lax, though the uncertainty in terms of trial length and court decisions remains an issue. Legislation over fixed-term contracts is rather lax, however utterly flexible civil contracts and ‘bogus’ self-employment are being abused. Polish labour market stands out as a case of extreme dual labour market, though EPL contributed to this only in part. On the other hand, additional regulations for collective dismissals and Temporary Work Agencies seem to be moderately restrictive. Overall, the employment protection legislation in Poland should not be regarded as an important source of costs for the employers.

Endnotes

1 For comprehensive discussion on other measures, see European Commission (2016).
2 2009 for France and Portugal.
3 For more information on the issue of law enforcement, see: European Commission (2016).
4 For an in-depth analysis of the impact of EPL on labour market segmentation, see Boeri (2011).
5 Supreme Court Judgment from the 14th of May, 1999. (I PKN 47/99, OSNP 2000/14/548).
6 In 2014, only 0.8% of firms in Poland employed 50 employees or more, which is one of the lowest shares in the EU.
7 Since January 2016, maximum cumulated duration of successive fixed-term contracts is 33 months, and maximum 3 successive contracts are allowed.
8 Paid annual leave in Poland for employees with a contract under Labour Law is 26 days, whereas the average time spent on sick leave – 13.4 days.
9 It is worth noticing that the government has recently announced the introduction of hourly minimum wage for civil contracts.

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