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Employment protection and labour market adjustment in OECD countries: Evolving institutions and variable enforcement

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Foreword

It is often argued that differences in employment protection play an important role in explaining differences in labour market outcomes. In particular, the poor employment performance of European countries with respect to the North American one is often attributed to the strictness of employment protection in Europe. Economic theory provides little guidance when assessing this statement insofar as most models show that employment protection tends to negatively affect both layoffs and hirings, job creation and destruction, unemployment inflows in outflows, one effect dominating the other depending on the values of the parameters. It follows that the role played by employment protection in aggregate labour market outcomes is mainly an *empirical* matter. However, the empirical literature on the macroeconomic effects of employment protection has to rely on highly imperfect measures of the strictness of these regulations. While previous research has circumvented measurement difficulties by using qualitative rankings of Employment Protection Legislation (EPL) stringency, recent developments, notably ongoing reforms of employment protection in most countries and the expansion of non-standard forms of employment, not only have rendered obsolete existing information, but have also called into question the methodological basis for such empirical exercises.

This report illustrates the successes and shortcomings of existing work in light of simple empirical evidence. While EPL rankings developed in the early 1990s are rather strongly correlated with employment stability in the 1980s, more recent evidence indicates that new measurement efforts are called for. What is needed is not only an update of EPL rankings capturing new legal provisions in the various countries, but also measures reflecting the increasing complexity of legal provisions in this areas, their interactions and/or inconsistencies. Against this background, this report develops an important and hitherto neglected aspect, namely enforcement procedures as a source of EPL heterogeneity across countries and over time: available information on this aspect, despite its limited and rough nature, appears highly relevant to recent empirical evidence. Hence policy recommendations should be formulated with caution, and should *not* be based on indicators available to date. Moreover, governments should try to exploit some of the meaningful linkages identified in the report between EPL and other institutional features.

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1. Executive summary

This report studies analytical and empirical issues encountered in the assessment of the influence on aggregate labour markets of legal provisions, institutional arrangements, and jurisprudence in the area of employment protection. It summarises the current state of knowledge in the field, outlines useful research directions, and offers a preliminary discussion of new relevant information.

Section 2 surveys existing theoretical work and empirical evidence on the relationship between Employment Protection Legislation (EPL) and broad labour market performance indicators. (The more complex issue of whether employment-reduction costs can directly or indirectly increase the productivity of employment relations is not directly addressed in this Report. We do note, however, that such effects and/or insurance concerns must have motivated existing legislation, and should be taken into account by any reform process). Formal models of dynamic labour demand do not yield clear-cut implications as to the relation between employment protection and main labour market aggregates, such as employment and unemployment rates and labour force participation. However, these models unambiguously indicate that employment should be more stable and individual employment relationships more durable when employment reduction is costly for employers. The set of rules governing unfair dismissals, layoffs for economic reasons, severance payments, minimum notice periods, administrative authorization for dismissals and prior discussion with representative of unions and/or labour market administrations certainly implies that employment reductions are costly for employers; it does so, however, in ways that are hard to represent quantitatively. Previous research has circumvented measurement difficulties by relating observable labour market performance indicators to qualitative rankings of EPL stringency, rather than to (unavailable) quantitative measures of firing costs. The evidence uncovered by such empirical efforts, while not as univocal as theoretical models would predict, offers much useful information as to the implications of EPL for employment dynamics and its interaction with other institutional and economic features of industrialised economies. But recent developments, notably ongoing reforms of employment protection in most countries and the expansion of non-standard forms of employment, not only have rendered obsolete existing information, but have also called into question the methodological basis for such empirical exercises. The report illustrates the successes and shortcomings of existing work in light of simple empirical evidence. While EPL rankings developed in the early 1990s are rather strongly correlated with employment stability in the 1980s, more recent evidence indicates that new measurement efforts are called for. What is needed is not only an update of EPL rankings capturing new legal provisions in the various countries, but also measures capturing the increasing complexity of legal provisions in this area, their interactions and/or inconsistencies. Reforms of EPL rarely have addressed the whole set of provisions, but addressed only specific contractual types, e.g. have expanded the scope of various kind of fixed-term contracts without reducing the protection of those under permanent contracts. This increasing dualism of labour markets (the coexistence of a large group of workers with low employment security and of a core of workers still protected against the risk of dismissals) and institutional complexity (multiplication in the number of

contractual types and ad-hoc provisions) requires substantial revisions of the methodology used in the past to compute EPL rankings. Appropriate indicators should not only try to encompass these various features of EPL, but also take into account their interactions, e.g., the fact that increasing shares of employment under fixed-term contracts may also be a *consequence* of strict employment protection for regular workers rather than a sign of greater labour market flexibility per se.

Against this background, **Section 3** focuses on an important and hitherto neglected aspect, namely enforcement procedures as a source of EPL heterogeneity across countries and over time. The discretion of policy-delivery mechanisms, such as local labour market administrations and the Public Employment Service (PES), and of jurisprudence in interpreting the rule of law is augmented by the increasing complexity of EPL provisions. In other words, too many rules would almost seem to play the same role as the absence of rules because they create many exemptions and legislative vacuums (e.g., because the new contractual types are not fully regulated and norms applicable to regular contracts cannot be readily extended to non-standard forms of employment). If greater institutional complexity endows administrations and judges with more degrees of freedom in the enforcement of EPL, it also increases their social responsibilities vis-à-vis workers and employers. The relevant empirical issue is whether the predominance of enforcement over legislative norms alters the effects of EPL and makes EPL dependent on local labour market conditions, e.g., because judges and PES officials feel that under conditions of severe labour market slack in a region or during cyclical downturns, workers should be more heavily protected against dismissals than in buoyant labour market conditions. Unfortunately little information is available on the enforcement of EPL. We find that available information on this aspect, despite its limited and rough nature, appears highly relevant to recent empirical evidence. Rankings based on the vague notion of "difficulty of dismissals" are more closely related than other available ones to job-termination probabilities, i.e., to the indicators of labour market performance which, on the basis of theory and previous evidence, are most importantly affected by EPL. Moreover, the nature and stringency of EPL enforcement does vary across countries in meaningful ways. Its behaviour over time, however, appears strongly influenced by labour market conditions in the countries for which the relevant information is available. We proceed to analyse in some detail the conceptual and practical difficulties encountered when constructing more refined indicators of EPL enforcement across countries and over time, and we collect in several Annexes much relevant information gathered in the context of this project.

Section 4 outlines the report's policy implications. In summary, the research reported here indicates:

- that EPL is indeed an important determinant of various aspects of labour market performance, and notably of the employment adjustment issues on which our report focuses;
- that while assessing the relevance of EPL is a complex endeavour, since both EPL and its effects are intrinsically multi-dimensional, measurement efforts are far from futile, since meaningful linkages can be identified along many relevant dimensions;
- that theoretical perspectives on the relevant issues deserve to be tested on the basis of improved statistical information
- that there are relevant policy implications of further work, based on enhanced statistical information.

2. Existing work

2.1 The nature and relative stringency of EPL

Legal restrictions on dismissal of redundant employees differ widely across European and American labour markets. The nature of employment protection, however, is similar in all countries. Legislation typically requires that termination of contracts of individual employees be motivated, and that workers be given reasonable notice or financial compensation in lieu of notice. In practice, enforcement is based on the worker's right to appeal against his or her termination in the case of individual dismissals. Rules regarding dismissal of individual employees can interfere with firms' decisions to adjust overall employment levels. Even in the relatively unregulated American labour market, for example, empirical evidence indicates that legal provisions meant to protect individual employees become more binding during cyclical downturns (Donohue and Siegelman, 1995).

As regards collective dismissals, legislation often mandates administrative procedures, involving formal negotiations with workers' organizations and with local or national authorities. The US labour market again offers a useful benchmark. Unemployment insurance contributions of US employers are experience-rated, that is, are higher for employers who have reduced employment in the past. Hence, firms do face cost increases when reduce employment, albeit small ones in relation to those imposed by the more stringent EPL of European countries (Card and Levine, 1994; Anderson, 1993). Some redundancy costs also arise from the Worker Adjustment and Retraining Notification Act (WARN) of 1988 requiring covered firms to provide employees with 60 days' advance notice of plant closures and large-scale layoffs.

Most European countries feature more stringent regulation of individual and collective dismissals. Procedural details do vary substantially across countries, sectors, and time, and so does the economic impact of EP institutions on different labour markets. Quantitative measures can be readily computed for some EPL aspects, such as the number of months' notice required for individual and collective redundancies. Others aspects are more difficult to measure precisely, for example the willingness of labour courts to entertain appeals by fired workers and the interpretation placed by judges on the notion of "just cause" for termination (we analyse these issues in detail in below).

Such problems have been circumvented in previous work taking advantage of the fact that even partial and qualitative indicators of EPL provisions make it possible, when available EPL indicators are positively correlated with each other, to form qualitatively unambiguous cross-country rankings of EPL. Work along these lines found that, in the late-1980s, countries mandating longer notice periods also tended to specify larger redundancy payments and more complex procedures for authorization and implementation of collective dismissals. Such available quantitative measures were also consistent with survey assessments indicators of EPL stringency, especially those made available by the EC ad-hoc Survey of employers (Emerson, 1988 and reported in various issues of *European Economy*). Bertola (1990) used this latter evidence to form a ranked list of ten industrialised countries. Grubb and Wells (1993) developed rankings for a larger cross section of OECD countries on the basis of various aspects of individual-dismissal regulations for regular contracts, fixed term contracts, and temporary work agency (TWA) regulations. Table 1 reports several such rankings.

Table 1. Ranking of employment protection legislation indicators by 'strictness'

Country	Maximum pay and notice period (1)	OECD (2)	International Organization of Employers (IOE) (3)	Bertola	Average ranking based on the four preceding columns (4)
	1993	1989	1985	1985	1985-1993
Austria	14.8	9.0	1.5	7.6*	16
Belgium	8.5	10.5	2.5	9.0	17
Denmark	4.5	3.3	1.0	2.0	5
Finland	6.0	10.5	1.0	5.5*	10
France	3.5	9.5	2.5	8.0	14
Germany	4.5	12.0	2.5	6.0	15
Greece	13.3	11.0	2.5*	9.1*	18
Ireland	14.0	2.8	1.5	6.0*	12
Italy	13.0	14.3	3.0	10.0	21
Netherlands	4.0	7.3	2.5	3.0	9
Portugal	17.0	12.5	2.0	9.5*	19
Spain	15.0	11.3	3.0	10.0*	20
Sweden	6.0	8.5	2.0	7.0	13
United Kingdom	6.0	2.3	0.5	4.0	7
Canada	1.3	1.65*	0.6*	2.0	3
United States	0.0	0.4	0.4*	1.0	1
Australia	3.0	3.26*	0.9*	3.1*	4
New Zealand	0.3	0.72*	0.4*	1.3*	2

(1) The sum of maximum notice and severance pay, in months, see OECD 1993.
(2) For regular and fixed-term contract workers.
(3) The average of the IOE scoring of obstacles to dismissal or use of regular and fixed-term workers (scale from 1-3), see OECD (1994) for details.
(4) This 'average ranking' is the rank order of a weighted average of the indicators in the preceding columns. In the weighted average, the weight of each indicator is the inverse of the coefficient estimated when that indicator is regressed on the weighted average itself. The missing values for each indicator are estimated from these regressions.
* Figures are estimates of missing values, made by regression/extrapolation, within the table.
Source: OECD, Jobs Study 1994.

2.2 EPL and labour market adjustment: theory and evidence

This report focuses on the effects of EPL on broad labour market performance indicators, most specifically on theoretical and empirical relationships between EPL and the level and dynamics of employment and unemployment.

We should acknowledge at the outset that, of course, our narrow focus neglects several important and interrelated issues. In many models, and in reality, market interactions are not such as to ensure that *laissez-faire* employment relationships achieve complete efficiency. Thus, EPL and other institutional features of labour markets can in principle enhance productivity and efficiency. To mention but one example, stable employment relationships can foster investments in job-specific human capital, both by employers and employees. *Laissez faire* contractual arrangements might theoretically ensure an appropriate degree of job stability, but appropriate contracts are typically hard to draft and enforce, and explicit legislation may give better incentives to the accumulation of such human capital. A compressed wage structure (which, as we argue below, typically accompanies strict EPL provisions) can also foster productive investments, through similar channels: see, e.g., Acemoglu and Pischke (1998) and their references for a review of the role of *search frictions, asymmetric information* and *unobservable training investments* in the interaction of labour market institutions and labour.

An even more obvious role of Employment Protection Legislation (in conjunction with

wage-equalizing provisions, and with unemployment insurance schemes) is, indeed, the protection of individual workers against unfair labour market developments. The efficiency-enhancing effects of employment stability, or its "protective" role, or more likely both must be at the root of most EPL provision, and are certainly essential for any evaluation of reform prospects. In what follows, however, we shall not discuss such deeper issues, to better focus on the implications of EPL for employment determination rather than on its motivation or on its effects along other dimensions.

Theory suggests a number of implications in this respect (see e.g. Bertola, 1998 for more formal and detailed arguments):

1. Firing costs stabilise employment in downturns but also lead employers to refrain from hiring in upturns for a constant (and any other given) cyclical wage pattern. Hence, more stringent EPL should be associated to smoother dynamic employment patterns.
2. Since EPL has contrasting effects on employers' propensity to hire and fire, its net effect on *longer-run* relationships between wage and employment levels is *a priori* ambiguous. It may increase or decrease average employment, depending on such subtle features of formal models as the functional form of labour demand functions, the persistence of labour demand fluctuations, and the size of discount and attrition rates. A general insight holds true: since higher turnover costs reduce both hiring and firing, their effect on average employment levels over periods when both hiring and firing occur is an order of magnitude lower than that on hiring and firing separately. Such issues are studied in some detail by Bentolila and Bertola (1990) and Bertola (1990, 1992), who find that average employment effects are indeed small and of ambiguous sign in reasonable parameterizations of dynamic labour-demand problems.
3. To the extent that firing costs prevent dissolution of existing employment relationships, sharp employment reduction is less likely in countries with stringent job security provisions. At times when employment would increase in the absence of EPL, however, employers are less inclined to hire when they fear that future firing costs shall make it difficult to reverse current decisions. Hence, EPL reduces job creation as well as job destruction, and results in smoother employment dynamics. More subdued turnover implies that individuals who - like new entrants to the labour market - happen to be unemployed at any given point in time are less likely to exit into employment, and more likely to experience long-term unemployment.

In summary, theoretical models suggest that EPL need not bear on medium-and long-term employment and wage levels. Rather they indicate that employment should be more stable and individual employment relationships more durable when EPL is stricter. In other words stringent EPL reduces hirings and firings. It may also affect the character of unemployment experiences.

Empirical work has explored these implications using the above mentioned overall "rigidity ranks" as indicators of EPL, and a variety of cross-sectional indicators of labour market performance.

1. The cyclical volatility of employment is much more pronounced in the United States and the United Kingdom than in Germany, Italy, and especially France. Aggregate wages are ambiguously related to employment fluctuations in all countries (see Brandolini, 1995), and the volatility of aggregate production is similar across industrialised countries (see, e.g., Bertola and Ichino, 1995a). Hence, differential stringency of EPL is relevant to evidence of much wider cyclical employment and unemployment fluctuations in the relatively less regulated labour markets of the US (and of the UK since the 1980s) than in the continental European countries, and especially in France.
2. Markets where EPL is more stringent feature more stable employment and unemployment around levels which, in the long run, are not clearly correlated to the stringency of job security provisions. European unemployment series are closely

related to increasing wage trends, but their average long-run level is much less clearly related to their EPL ranking. In formal empirical regressions, EPL indicators are statistically significant but their coefficient is small (see, e.g., Scarpetta, 1996).

3. Unemployment is qualitatively different in labour markets characterised by different EPL stringency. In European labour markets with more stringent EPL, a larger percentage of the unemployed experiences long-term spells of joblessness; many of the unemployed are young labour market entrants; and relatively few are job losers.

Empirical evidence gives some support to theoretical implications as to the behaviour of standard macro-indicators of labour market performance: aggregate employment and unemployment levels are not strongly affected by cross-sectional indicators of EPL stringency, but seem more stable. Other evidence also supports the relevance of job-security provisions. To the extent that hiring and firing are inhibited by EPL, employers have incentives to exploit other sources of (costly) flexibility, such as overtime: indeed, aggregate employment fluctuations are relatively subdued in Europe, but hours per worker are more variable there (Abraham and Houseman, 1994). As argued by Davis and Henrekson (1997) with reference to Swedish and American evidence, labour market institutions and other forms of regulation appear relevant to a host of other empirical features in cross-country comparisons.

Empirical work has also explored the effects of EPL on the stability of employment relationships from a *disaggregated perspective*, collecting and interpreting evidence on various measures of such stability from the employees' and the employers' points of view (see Box 1 for a definition of such measures, and Table 2 for a selection of empirical results).

Table 2. Job turnover and labour turnover (a)

Country	Unit of observation for job turnover	Period for job turnover and labour turnover	Annual rates as per cent of total employment		Share of job turnover in labour turnover Per cent, (1)/(2)
			Job turnover (b) (1)	**Labour turnover (2)**	
Denmark (c)	E (d)	1984-1991	23.2	**57.9**	40.1
Finland	E	1986-1988	19.5	**77.0**	25.3
France (e)	E	1990-1991	7.2	**58.0**	12.4
Germany	E	1985-1990	16.0	**62.0**	25.9
Italy	F	1985-1991	22.8	**68.1**	33.5
Netherlands	F	1988-1990	7.0	**22.0**	31.8
Canada	F	1987-1988	22.1	**92.6**	23.8
United States (f)	E	1979-1983	53.6	**126.4**	42.5

Notes: (a) Sampling months/periods vary across countries.
(b) Job turnover in this refers to samples for which labour turnover information is also available. Consequently, the coverage of establishments varies (often limited to just continuing establishments), and so data are quite imperfectly comparable across countries.
(c) Manufacturing only.
(d) E =establishments; F = firms.
(e) For continuing establishments with at least 50 employees.
(f) Data are based on quarterly estimates which have been roughly annualized. Quarterly estimation of job turnover leads to a significantly higher rate, as the shorter the time period, the more job turnover approaches labour turnover.
Source: OECD, Employment Outlook, July 1996; Employment outlook 1994.

Box 1. Concepts used in the measurement of disaggregated employment-duration evidence (Davis, Haltiwanger)

A number of concepts are used in the analysis of job creation and job destruction. Although some of them are easily understood, meaningful measurement and interpretation of statistics require careful definitions.

- A job is defined as an employment position filled by a worker.
- An enterprise (firm) is an economic entity (that encompasses one or more plants).
- An establishment/plant is a physical location where production takes place.

Establishments may be classified into four categories:

1. Openings: establishments with zero employment at the beginning of the period and employment at the end.
2. Expansions: establishments with employment in both periods, with a higher level at the end.

   Total (1) + (2) = Job Creation (or Gains).
3. Contractions: establishments with employment in both periods, with a lower level at the end.
4. Closures: establishments with employment recorded at the beginning and none at the end.

   Total (3) + (4) = Job Destruction (or Losses)

1. Job turnover (or reallocation) is the sum of these 4 components (without regard to sign):

   Job turnover = Job creation + Job Destruction. Put another way, job turnover at time t is the sum of all plant-level employment gains and losses that occur between t-1 and t.
2. Net employment change is equal to Job Creation - Job Destruction.
3. Excess job turnover is the difference between total job turnover and the absolute value of net employment change: Excess job turnover = Job turnover - * Net employment change*.
4. Survival rate of new firms: number of firms still present in a given year, as a percent of the total number of new firms at the starting date.
5. Labour turnover (or reallocation) measures the movement of individuals into and out of jobs over a given period.

   Labour turnover = Hirings + Separations. Put another way, labour turnover at time t equals the number of persons who change place of employment or employment status between t and t-1. It is also the sum of job turnover and flows of workers into and out of existing jobs in establishments or firms.
6. Hirings: one measure of the share of positions in which there has been hiring is given by the tenure of workers (the number of persons with less than twelve months (one year) of tenure corresponds to positions in which at least one new hire has been made during this year)
7. Separations (quits or layoffs): one measure of separations is given by the currently jobless persons who were employed twelve months earlier.
8. Minimum labour turnover equals the larger of job creation or job destruction. It represents a lower bound on the amount of labour turnover required to match job turnover.

Most relevant for the current study's perspective is the fact that measures of labour turnover, especially job-loss probabilities, tend to be negatively related to EPL rankings. The information in column (2) of Table 2 displays transition probabilities computed from

surveys of individual workers. These worker-based estimates should in principle offer an accurate measure of turnover intensity, summarised in the table by the "gross" indicator which sums separations and new hires during the sample period as a percentage of average employment levels. Even though these statistics do not distinguish voluntary from involuntary separations, they do give some indication of strong associations between the stringency of EPL and labour market dynamics: in USA and Canada, for example, worker turnover is about twice as intense as in most European countries. Further, the evidence of Table 3 does indicate that job tenures are significantly longer in countries with more stringent EPL, such as Italy and France.

Table 3: Tenure length distribution of existing jobs, 1995

	< 1 year	> 10 years	Average, all jobs
Italy	8.5	45.6	11.6
Germany	16.1	35.4	9.7
France	15.0	42.0	10.7
UK	19.6	26.7	7.8
Canada*	23.5	N/A.	7.8
US	28.8	N/A.	6.7

*1991 for Canada
Source: Eurostat, OECD.

The evidence reviewed and illustrated above is usefully interpreted in light of theoretical results, but certainly not particularly strong. In other respects, the evidence does not readily conform to theoretical predictions. Recently, employer-based measures of labour market turnover have become available following Davis and Haltiwanger's (1992) work on US Census data. The statistics of Table 2, column (1) measure "job creation" as the size-weighted percentage employment increase at establishments which are expanding during the sample period; "job destruction" as the similar percentage employment decrease at establishments which are contracting during the same period; and "gross job turnover" as the sum of absolute employment changes over sampled establishments normalised by employment stocks (see Box 1 for further details). There are well-known conceptual and practical problems with this procedure. The definition of an "establishment" is theoretically unclear, as different types of jobs presumably coexist within real-life production units, and empirically ill-defined, as data are available for different definitions of "plants" and "firms" across countries. As discussed in Boeri (1996), the interpretation of these data is also made difficult by statistical problems, such as different frequency of observations and sample composition (especially with respect to the age and size of establishments) across countries.

Gross-job turnover statistics, however, may be viewed as a rough index of labour market flexibility. Recalling that stringent EPL should reduce both hiring and firing, it is quite surprising to find that job turnover statistics are very loosely related to EPL rankings. Table 4 reports some relevant evidence. Perhaps most remarkably, Italian and French estimates at 21 to 24 per cent are not only very large in absolute terms (one every five jobs is either created or destroyed every year), but also extremely close to the US and Canadian estimates despite much heavier regulation of dismissals in the European labour market. EPL does appear more relevant, however, if data refer to continuing establishments only (see Garibaldi et al, 1997).

Table 4. Job turnover: Average annual rates as a per cent of total employment

	Canada	France	Germany	Italy	United Kingdom	United States	United States (manufacturing)
	1983-91	1984-91	1983-90	1987-92	1985-91	1984-91	1984-88
Gross job gains	14.5	12.7	9.0	11.0	8.7	13.0	8.2
Openings	3.2	6.1	2.5	3.8	2.7	8.4	1.4
Expansions	11.2	6.6	6.5	7.3	6.0	4.6	6.7
Gross job losses	11.9	11.8	7.5	10.0	6.6	10.4	10.4
Closures	3.1	5.5	1.9	3.8	3.9	7.3	2.7
Contractions	8.8	6.3	5.6	6.2	2.7	3.1	7.7
Net employment change	2.6	0.9	1.5	1.0	2.1	2.6	-2.2
Net entry	0.1	0.6	0.6	0.0	-1.2	1.1	-1.3
Net expansions	2.4	0.3	0.9	1.1	3.3	1.5	-1.0
Job turnover	**26.3**	**24.4**	**16.5**	**21.0**	**15.3**	**23.4**	**18.6**
Continuing establishments	20.0	12.9	12.1	13.5	8.7	7.7	14.4

Notes: Net entry =Openings-Closures; Net expansion=Expansions - contractions.
Source: OECD Employment Outlook, 1996 and OECD 1997 for unemployment rates.

This can be rationalized theoretically by wage setting institutions since, as noted by Bertola and Rogerson (1997), labour-demand fluctuations are more likely to generate hiring and firing when institutional features make it difficult or impossible for wages to accommodate them. From a theoretical point of view, it is indeed far from surprising that relative wage variation should be heavily constrained in the same markets where job security provisions are most stringent. Quantitative firing restrictions, in fact, could hardly be binding if wages were completely unrestrained and employers could reduce them so as to make stable employment profitable, or to induce voluntary quits. Limiting the freedom offered to employers and workers in setting wages gives force to quantity constraints. As briefly mentioned at the beginning of this section, such labour market institutions may well address important imperfections of *laissez-faire* market interactions. The combined policies may be rationalised by "equal pay for equal work" principles, or by the belief that freely contracting parties may not be sufficiently rational or informed as to correctly evaluate the ultimate consequences of arrangements that might appear optimal at a particular moment (with, for example, detrimental effects on human-capital investments in training).

Wage and quantity rigidities, however, may also reflect a desire by organised labour to enforce monopolistic wage-setting practices by preventing underbidding by the unemployed. As noted above, firing costs do not generally reduce average employment at given wages; symmetrically, EPL *per se* need not increase the bargaining power of "insiders" relative to outsiders, since outsiders could and should in principle be able to bid down wages so as to "buy" themselves a job. If contractual arrangements make it possible to do so, competitive pressure on equilibrium wage and employment patterns should make turnover costs next to irrelevant in wage determination in a dynamic labour demand model with ongoing fluctuations. The combination of institutional wage compression and job security provisions is a powerful source of insider power, however, and their apparent association in the data with high wages and low employment is far from surprising.

Some empirical work has also related labour market performance to the time series behaviour of quantitative EPL indicators (even though such indicators are a very partial measure of EPL, rankings are, by their nature, essentially cross-sectional and cannot be used in time-series analysis). The results of such exercises are mixed. Lazear (1990) finds evidence of a positive relationship between EPL and unemployment, but Addison and Grosso (1996) find no significant evidence when using a similar but more precise set of data. This is not surprising, since while theory predicts that a given set of EPL provisions should affect the dynamic behaviour (rather than the average level) of employment, the effects of expected and unexpected changes in EPL provisions are generally ambiguous and certainly different from each other. The theoretical prediction of small average effects hinges on the fact that the firm's current and future actions offset each other along the optimal path. A more stringent employment-protection legislation implies smaller employment reductions in the face of a given labour-demand downturn or wage increase. This does not mean that employment will be higher than it would in the absence of EPL: to the extent that labour-demand downturns or wage hikes are not completely unexpected events, in fact, a rational employer should have hired less during previous upturns, and therefore avoid excessive overmanning during cyclical downturns. This offsetting mechanism can be absent, however, if legislation changes unexpectedly. For example, an unexpected increase in the stringency of EPL should be associated with ceteris paribus higher employment or wages, as firms find it difficult to shed the ex post redundant labour they have hired without expecting employment reductions to be costly or difficult. Symmetrically, an unexpected relaxation of EPL might at least initially reduce employment if firms shed labour taking advantage of currently low firing costs but – fearing future firing costs – still implement restrained hiring policies in the expectation that EPL will be tightened again (Bertola and Ichino, 1995). Available information does not generally make it possible to disentangle these effects, and time-series work on EPL and labour market performance can easily be misled by reverse-causation channels of interaction between the two if, as is likely, weak labour market performance leads political authorities to increase the stringency of EPL. This may have indeed occurred in the 1970s when, before and after the first oil shock, EPL was strengthened by a wave of synchronous restrictive reforms by European countries. In more recent times, the British labour market has undergone a flexibility-oriented institutional transformation. The conservative governments of the 1980s tried and largely succeeded to weaken unions and labour market regulations. Not surprisingly from a comparative institutional perspective, the British labour market's performance is now similar to its American counterpart in many respects (but not all, see Blanchflower and Freeman, 1993).

In summary, empirical work provides mixed results in the evaluation of the influence of labour market regulation on labour market adjustment. Studies using "rigidity rankings" as indicators of EPL does not give clear-cut results. This may be due to the elusive and complex nature of available information, and of the EPL concept itself.

Figure 1. Relationship between EPL rankings and variability rankings of employment growth rates

2.3 The need for new evidence

To the extent that it is possible to assess unambiguously (if only qualitatively) the relative stringency of job security constraints, theoretical and empirical work has successfully correlated aspects of labour market performance to EPL indicators. Available EPL measures, however, are based on institutional information dating back to the end of the 1980s, and no longer display cross-country covariation with various aspects of labour market performance in line with the predictions of theoretical models.

For example, Bertola (1990) found a negative correlation between the variance of employment growth and job security rankings using his data, which ranged from the 1960s to the mid 1980s. This is consistent with theoretical predictions if the countries considered are similar in all respects other than the stringency of EPL (in particular, if the dynamic volatility of labour demand and wages is similar in all countries). In diagrams like those of Figure 1, similar to those in Bertola (1990), country-specific points should be aligned along a downward-sloping line if a country with stringent EPL also features low employment-growth volatility: Italy, for example, has the most stringent EPL (ranked 1) and has also a low employment-growth variability (ranked 8 for the whole period, graph 1 of Figure 1).

In the whole period 1969-97, the empirical relationship is indeed negative, but not very pronounced. Interestingly, the evidence displayed in the graph 2 of Figure 1 for the 1969-86 period is fully consistent with theoretical predictions, and with previous findings. In that period, when the countries considered experienced similar shocks (from the oil shocks to restrictive monetary policies), employment volatility is very significantly and negatively related to the stringency of EPL as measured in the mid-1980s.

In the more recent 1985-97 period the correlation is essentially absent instead (graph 3 of Figure 1). This quite possibly reflects more varied shocks across countries (note, for example, the obviously peculiar case of German unification). More importantly for our purposes, however, lack of correlation in the more recent period also might also indicate that EPL rankings developed on the basis of late-1980s information are obsolete. Reforms in the 1970s were synchronized across countries, so the rankings were to a large extent unaffected by these reforms. In the 1980s, and even more so in the 1990s, reforms may have changed the extent to which individual components of EPL covary with each other and, especially, are much more country-specific - consider, for example, the UK sudden and for a long time isolated move from stringent EPL and strong unionization to a largely deregulated labour market. Table 5 summarizes other recent changes in legislation.

Table 5. Major changes in employment regulations

Country	Year	Changes
Australia	1984	a case law introduced greater employment security through a definition of unfair dismissal ("harsh, unjust, unreasonable or discriminatory grounds") and the development of minimum standards relating to notice period; the Commission had power to reinstate or award compensation.
	1993	- introduction of provisions which gave the arbitral power for reinstatement much broader scope and which constrained the ability of employers in terminating the employment of his employees. - a case law established standards relating to information, consultation and severance pay in collective redundancy situations.
	1994	compensation was limited to 6 months salaries; access to the provisions of the 1993 Act was limited to employees covered by federal or state awards or employees earning less than a certain amount; fixed-term, casual workers, probationary employees and trainees were excluded.
	1996	- changes were introduced to restrict the scope of the unfair dismissals provisions. - employees were encouraged to push out of award regulation into a sphere of single-employer bargaining.
Austria	1997	new law on working time increased working time flexibility on the basis of collectively agreed provisions at sectoral level.
Denmark	1990	TWA were deregulated.
	1993	introduction of three comprehensive leave schemes (child care, educational, sabbatical).
	1995/96	introduction of lower compensation rates for employees wishing to take advantage of the leave schemes, restrictions on the use of sabbatical leave, abolishment of the early retirement scheme, reduction of the benefit entitlement period.
France	1982	reduction of the statutory working week from 40 to 39 hours.
	1983/84	introduction of a series of non-standard employment contracts with the aim to make easier the entrance of young people in the working world.
	1986	- administrative authorization for dismissal for economic reasons was abolished. - the list limiting the circumstances in which the use of fixed-term contract and temporary staffing is permissible was abolished.
	1989	collective redundancies must be accompanied by social plan.
	1990	the list limiting the circumstances in which the use of fixed-term contract and temporary staffing is permissible was restored.
	1993	a new law reinforced the power of administrative authority through a right to control the quality of the social plan.
	1998	reduction of the statutory working week from 39 to 35 hours (if it is collectively agreed).
Germany	1985	fixed-term contracts possible without specifying an objective reason.
	1990s	number of permissible renewals as well as overall duration of fixed-term and temporary agency contracts progressively widened.
	1993	statutory notice periods for blue-collar and white-collar workers are equalized. This increases average notice periods for workers with over 10 years tenure.
	1996	the employment threshold at which protection against "socially unwarranted" dismissal applies, is raised from 5 to 10 full-time employees per establishment.
Ireland	1991	a law increased job security for part timers, insuring that more of them qualify for a wide range of benefits.
	1997	a new law replaced nearly all existing working time legislation and

Country	Year	Changes
	7	implemented the 1993 EC Directive on the organization of working time.
Italy	1970	in case of unfair dismissal the employer must reinstate the employee and also pay a compensation (for employers of commercial companies with more than 15 employees in the same production unit).
	1987	fixed-term contracts can be used more widely by sectoral collective agreements.
	1990	- in case of unfair dismissal the remedies of reinstatement and compensation were extended to employers of non-commercial organizations employing more than 15 employees in the same production unit and to those employees in enterprise with 60 or more employees in total. - in case of unfair dismissal the remedies of re-employment or compensation apply to firms with fewer than 15 employees in the same production unit or fewer than 60 employees in total.
	1991	a law regulated collective redundancies, establishing standards relating to information and consultation.
	1997	- in case of violation of fixed-term contracts legal discipline, a new Act limited the drastic sanction (conversion of the fixed term contract into an open-ended one) only to serious cases. - TWA were legalized. - reduction of the statutory working week from 48 (fixed in 1923) to 40 hours.
New Zealand	1987	the aim of a new law was to encourage enterprise-based bargaining, but only unions, and not employers, were given the right to choose.
	1991	a law replaced the multi-employer bargaining with an enterprise-based bargaining or individual employment contracts (both employee and employers were given the right to choose).
Spain	1984	the law increased the range of permissible fixed-term contracts.
	1994	- TWA were legalized. - increased restrictions on fixed-term contracts. - objective grounds for collective redundancies extended from economic and technological exigencies to organizational and production causes; labour authority decision on authorization for collective redundancies to come within 15 days instead of 30 days; collective redundancies to apply when at least 10% of workers in enterprises with more than 100 employees instead of the previous threshold for collective dismissal of two or more employees.
United Kingdom	1985	the period of service to claim unfair dismissal increases to two years.
United States	1980s	the employer's right to dismiss at-will employees has been diminished by State court rulings in several jurisdictions.

2.4 Directions of progress

In the late 1980s and through the 1990s, European labour markets reforms have been relatively frequent, but piecemeal in character. Such evidence of institutional variability along the time-series dimension calls for economic and political studies of reform processes, rather than of institutions at each point in time. As shown in Coe and Snower (1997), various labour market policies strengthen each other's effects on the labour market's productive efficiency, to imply that comprehensive reforms should be preferred to marginal adjustments. The timing and credibility of reforms are also important in a dynamic and heterogeneous environment, where expectations have an important role and policy reforms affect different groups of market participants in different ways. Saint-Paul (1997a) notes that introduction of more flexible contracts should increase employment along a two-tiered adjustment path: as employers take advantage of new, more flexible hiring opportunities at the same time as they still hoard

protected employees, employment increases during the transition to the new steady state. Job security provisions have generally remained in force for standard employment contracts; to decrease overall EPL stringency, less protected (part-time and temporary) forms of employment have been allowed. This presumably reflects the political importance of distribution considerations, and the role of such atypical forms of employment is not always captured by the standard EP measures.

Eligibility requirements have often become tighter for unemployment benefits and, especially, for early retirement and invalidity pensions. Not only EPL but also benefit systems, wage determination, pensions, extent of part-time work matter for labour market performance (see Annex A for a presentation of some of these different schemes and institutions in the selected countries). Some of these aspects are *substitutable* to each other; others are *complementary*, as in the already mentioned case of administrative constraints on relative-wage variability. Labour market institutions aim at protecting workers from dismissal and wage losses, and/or at offering unemployment compensation to job losers. Protection from job loss is all the more desirable when only scant unemployment insurance is available, and unemployment insurance is very much appreciated when weak job security provisions make joblessness likely. Indeed job security, notably jurisprudence in favour of the employees, does appear, in some countries, to be inversely correlated to the coverage and level of unemployment insurance (for example, in Denmark, Italy or Spain) or other adjustment tools such as early retirement provisions (see also Auer, 1999).

Ideally, one should try to develop monetary-equivalent measures of the various aspects. This is obviously impossible, but our own analysis below of particularly hard-to-measure EPL aspects (such as administrative requirements and enforcement processes) and of the character and scope of reform processes sheds some light on possible directions of progress in the wider area of interest.

3. The enforcement of EPL

The existing indicators of EPL are ill-suited to track asymmetries across countries and over time in the degree of enforcement of employment protection. Yet, there are several important indications that such asymmetries may be more marked than differences in regulations per se and that they may play a crucial role in affecting the work of labour markets, notably the extent of job loss and the incidence of unemployment.

3.1. Does enforcement matter?

The more or less restrictive interpretation given by the jurisprudence to employment protection regulations - e.g., to the definitions of “just cause” and “justified reason” for a dismissal - and the credibility of the threat to employers of being forced to reinstate workers involved in unfair dismissals, would seem to have been the single most important feature of EPL affecting labour market flows. As recalled in the previous section, economic theory unambiguously predicts that EPL should be negatively correlated with the incidence of unemployment (inflows as a percentage of the labour force) and with the extent of job loss (workers becoming non-employed as a result of dismissals). Table 6 displays correlation coefficients between, on the one hand, various features of EPL and, on the other hand, the two above mentioned flow magnitudes (INCIDENCE and JOBLOSS) for which there is a clear-cut prediction of economic theory. In particular, three sub-rankings of the overall OECD (OECD, 1994) measure of employment protection are provided, which capture respectively:

1. *procedural inconveniences* (translating into a ranking a qualitative assessment of the complexity of procedures to be activated when issuing a dismissal notice);
2. *notice and severance pay requirements* (the number of months elapsing between a decision to dismiss and the time at which the notice becomes effective plus the number of months of severance pay to be granted to individuals at different tenures in the firm), and
3. *difficulty of dismissal* (translating a qualitative assessment of the strictness of the legal definitions of unfair dismissal, the frequency of verdicts involving the reinstatements of employees and of the monetary compensations typically required in the case of unfair dismissals)[1].

Clearly the third feature (difficulty of dismissals) is the one offering the closest approximation of the interpretation given by jurisprudence of EPL. Interestingly, the sub-index "difficulty of dismissal" bears the strongest (and negative, as predicted by economic theory) correlation with JOBLOSS and INCIDENCE. As the correlation between the other two features of EPL and labour market flows is not significant, it would seem that the measure which best captures the enforcement of EPL drives the overall negative correlation between, on the one hand, employment protection and, on the other hand, unemployment inflows and the percentage of the workforce having lost a job.

Table 6. Employment protection and labour market performance (rank correlation coefficients)

	JOBLOSS	N. obs	INCIDENCE	N. obs
Overall EPL ranking	-0.49**	12	-0.52**	13
sub-indexes:				
procedural inconveniences	-0.27	12	-0.20	13
notice and severance req.	-0.39	12	0.07	13
difficulty of dismissals	-0.78***	12	-0.50*	13

Notes: one asterisk denotes significance at 90, two at 95, three at 99 confidence levels. The 12 countries are EC12 (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and UK) plus Canada for the incidence only.
JOBLOSS= % of currently non-employed who left their job due to a layoff (average over the 1990s).
INCIDENCE= unemployed with tenure shorter than one-month as a % of total employment (average 1990-96).

Moreover, the role of jurisprudence on terminations of employment contracts in the work of labour market may have increased in importance over time. As discussed in Section 2 and documented in table 5, partial reforms of EPL undertaken in most European countries in the last decade significantly increased the institutional complexity of labour markets. The very fact that such reforms were piecemeal has amplified the *duality* of labour markets, creating a large segment with short-tenures and low protection which goes hand-in-hand with a stable-jobs segment offering long-tenures, and high employment security. On the one hand, the protection on regular contracts is still there

[1] The methodology behind the OECD ranking of employment protection is discussed in detail in Grubb and Wells (1993).

and, on the other hand, a widespread use of non-regular contracts is being made[2]. New contracts and, more broadly, atypical forms of employment often do not have a well-defined juridical status and the process defining "charters of rights" for atypical workers is still far from being completed. Under such conditions of increasing institutional complexity (a broader range of contractual types) and legislative vacuum (rights of workers under new contractual types not yet fully defined), national administrations and the labour courts have objectively a more determinant role in the enforcement of employment protection.

3.2. How is EPL enforced?

There is significant cross-country variation in the enforcement of employment protection legislation (some administrative procedures for individual dismissal are presented in Table 7). Some of the cross-country differences have to do with the source itself of regulations. Legal protection against unjustified dismissal is provided:

9. by laws of general scope -- such as labour codes, labour acts, or civil codes;
10. by specific legislation -- e.g., dealing with individual employment contracts or individual and collective dismissals; and
11. by constitutional provisions (in particular regarding non-discrimination or equality of opportunities)[3].

While these three layers of legislation do provide employment protection in most countries, collective agreements tend to supplement basic legislative provisions. In some countries -- such as Denmark,[4] the United States or Canada -- collective agreements are the main source of protection against dismissal[5]. However, their scope is often limited to a part of the workforce, with the remaining part being subject to the principles of common law, custom and practice. Indeed, collective agreements are most relevant for collective dismissals, while constitutional or legislative provisions on the protection of human rights and protection against unfair labour practices provide protection in case of individual dismissals.

Depending on the source of the rules, enforcement will rely more on administrative bodies (e.g., labour inspectorates), or on voluntary dispute settlement procedures, or on court proceedings. A common denominator of the various countries is, however, the reliance on case-law, particularly in defining grounds for dismissal; in countries like Italy, jurisprudence plays a very important role in the interpretation of laws and agreements in the case of disputes over contract termination; in Ireland and the United Kingdom, case law is a fundamental characteristic of the legal system.

In all countries the right to lodge complaints is indeed an essential element of a worker's protection: a worker who considers that her/his employment has been wrongfully terminated may present a grievance to an *impartial body*. In most countries,

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[2] There are indications that this duality is increasing in the strictness of the protection of regular contracts. If one plots the share of employment under temporary contracts vs. measures of the protection for regular contracts for the countries which have reformed their EPL, one gets a strikingly positive association between the two measures. This suggests that countries which liberalised temporary contracts have had a growth of temporary employment that is proportional to the rigidity of the employment protection on regular contracts (see Boeri, 1999: "Enforcement of employment security regulations, on-the-job search and unemploymnet duration" , which shows that protection of regular contracts gooes hand-in-hand with duality in the tenure distribution: the first two columns of table 3, for example, indicate that the share of fixed-term contracts in total employment is positively correlated with the duality of the tenure distribution).

[3] This, clearly, makes it very difficult to get a full picture of EPL. For instance in Germany, dismissals are regulated by the "Protection against Dismissal Act" (1969), the Civil Code, various individual Acts and the Works Constitution Act (1972). Moreover, there are approximately 4500 framework collective agreements, 13000 agreements for most branches and regions and 3200 works agreements dealing with this issue (ILO, 1995).

[4] Main agreement between the Danish confederation of Trade unions, LO, and the Danish Employers Confederation, DA.

[5] The US have not adopted any general legislation against unjustified dismissal and there is no general statutory prohibition against unfair dismissal in Denmark.

trade unions may provide assistance to their members or act on behalf and in place of their members. In many countries the worker may appeal to labour courts[6] or an arbitration committee or arbitrator. In other countries, it is generally the ordinary courts which are competent to hear appeals against unjustified dismissal.

Yet, the competent body may vary according to different criteria:

12. the category of worker (private or public sector; white-collar or blue collars);
13. the type of dismissal (with or without notice, with or without prior authorization) or
14. the provisions invoked (labour law, civil law, basic rights[7], rights resulting from a collective agreement).

For countries in which the provisions or practices do not require justification in all cases of dismissal, the situation varies depending on whether the worker may invoke specific forms of protection, the clauses of a collective agreement or the principles of common law: in the United States for example, which has not adopted general legislation against wrongful dismissal, proceedings based on common law concerning wrongful dismissal are brought before the courts; employees covered by collective agreements may use arbitration procedures before private arbitrators (after internal grievance procedures), whose decision is final; if protected by the National Labour Relations Act, American workers may also present a complaint to an administrative law judge; yet, other dispute settlement procedures are still available for workers protected by other statutes (for example, they may present a complaint before the Equal Employment Opportunities Commission, EEOC, for discriminatory actions at the workplace). It may also be the case that, depending on the nature of the complaint, the complainant may choose the appeal procedure he or she considers more appropriate: in Ireland, the worker may apply first to a Rights Commissioner, then to the Employment Appeals Tribunal for settlement, or refer directly to the latter. Finally, a worker may generally, after the first instance, refer the dispute to the appeal bodies, such as the appeal courts or the Supreme Court. This right to appeal must generally be exercised within a certain time limit. Such time limits should not be too short to allow the workers to find out their rights (in particular when they are not helped by any representative). Yet, deadlines for challenging dismissal or for taking legal proceedings vary considerably from one country to another. In some countries, the courts may even allow an appeal after the time limit if there is a valid reason for the late application (e.g., in the United Kingdom).

According to national laws and practice, provision may be made for recourse to a procedure of conciliation *before or during appeal* proceedings against dismissal. Conciliation gives each party an opportunity to review, in presence of a third party, the question of justification of the dismissal, to assess the probability of winning or losing the case before the competent court and the possibility of reaching an agreed solution (withdrawal of the complaint, reinstatement or compensation). This enables the number of cases to be heard by the competent court to be reduced. Again, it is crucial to understand institutional differences across countries; differences may arise from: a) the role and timing of the conciliation procedure: it may take place before or instead of a contentious procedure (for example, conciliation is a stage of the appeal procedure, in France and Germany); b) the nature of the conciliation procedure (it may be compulsory, for example in New-Zealand or voluntary, with sometimes differences within the country: in Italy, for example, conciliation is compulsory prior to the proceedings, in enterprise with less than sixty workers while it is voluntary within the framework of judiciary dispute settlement); c) the conciliation service may be provided by the State, by an agency independent of the State but funded by the State such as, the Advisory

[6] This is the case of France, Germany, New-Zealand and the UK.

[7] In the US appeals against discrimination are very frequent.

Conciliation and Arbitration Services (ACAS) in the United Kingdom, the Federal Mediation and Conciliation Services (FMCS) in the United States or the Australian Industrial Relations Commission (AIRC), or by private institutions: for example the American Arbitration Association (AAA). The importance and the nature of the conciliation procedure may give information on the uncertainty and the costs involved in the process: as conciliation is a low risk process, usually expeditious, generally with a very high rate of compliance with the outcome, parties may prefer it -when choice is available-to court's settlement. Data on conciliation are therefore undoubtedly important, but quite scarce. So it is important to interpret the data in light of the different litigation procedures, since differences may affect the outcome of the process.

In many EU member states the burden of proof is incumbent to the employer, which is in line with the rationale of the requirements of justification or grounds for the employer's decision to dismiss; in other countries, it is placed on the complainant or on neither the employer nor the worker. Again, this may differ within a country, according to the category of worker involved or the reason invoked for dismissal.[8]

3.3. Measuring the enforcement of EPL

Once established that enforcement matters, notably that jurisprudence on unfair dismissal is often more important than the nominal strictness of regulations per se, it still remains to decide how to properly measure this crucial feature of employment protection. This task is complex for at least three reasons.

First, there is little information on the jurisprudence concerning the termination of employment contracts. As discussed more in detail in Annex A, some data are often (though by no means always) available from administrative records on the number of cases brought before the competent tribunals and on court rules. Even if labour court cases are not necessary the best indicator of enforcement, they constitute a good proxy variable. Yet, like all administrative statistics, such data are affected by changes in regulations: hence, their meaning changes along with the features they are supposed to measure. To give an example, the coverage of labour disputes offered by administrative records is likely to increase when arbitration services are offered by national administrations, as there may be a stronger incentive in such a case to notify the existence of a labour dispute from both parties. Moreover, data are affected by confidentiality rules, especially when employees choose to use private arbitrators for litigation procedures, as in the United States. Finally, information is sometimes not centralised especially in countries -- such as Australia, Canada or the United States -- where several institutional levels interfere (provincial, state, federal) and/or different sources of information should be referred to (ministries, labour dispute settlement institutions, etc.). For instance, there are no systematic sources available in the United States.

Second, such statistics are seriously affected by selection bias. For example, only relatively clear-cut cases may be brought in court, to imply that data sampled from court records are not representative. Selection bias operates in directions which are often not predictable even on the basis of in-depth analyses of procedural obligations to be fulfilled before appealing to courts in the various countries; of existence of impartial bodies specialised in appeals; of the extent and effectiveness of litigation procedures; of the average delay between the start of the procedure and the verdict; and of the likelihood of rules favourable to employees.

For instance, when conciliation and arbitration procedures are compulsory, court ruling may be rather infrequent and hence provide a very inaccurate basis to measure the

[8] For example, in Quebec, two types of appeal are available: in the case of "wrongful dismissal" (pratique interdite), burden of the proof is placed on the employer, but not in the case of *just cause+ (cause juste et suffisante).

costs of unfair dismissals. The issue is that procedural obligations vary substantially across countries and sometimes within each country. Some countries give more importance to procedures to be followed before the contract termination while others rely on workers' claims against the termination. To give a few examples, the right to defence of the worker before contract termination does not apply in Germany or in the United States, which therefore seem to rely much on rulings after termination. However, in Germany the work councils must be informed and consulted before termination of employment. This is also the case in Austria, where work councils may also take legal action. In some countries, the employment of a worker should not be terminated, unless the employer has given the worker appropriate (repeated) warning(s), generally in writing and specifying the reasons for dismissal. Clearly, in all countries relying on procedures intervening before the termination of contracts, any information on labour disputes settled by conciliation of the parties is hardly available. Finally, the likelihood of rules favourable to employees may induce the employers to go for conciliation prior to referring to the court, if not to give up altogether to the dismissal, in which case court rules are also not representative of the actual costs of unfair dismissals[9].

Third, jurisprudence may be affected by the underlying labour market conditions. There is evidence, for example, that in western Germany court rules have been particularly unfavourable to employers during downswings as if jurisprudence was playing the role of a stabiliser (Berger, 1997). By the same token, there are some indications that court ruling has been more on the part of employees in the high unemployment Mezzogiorno than in the northern part of Italy (Ichino et al., 1997). Put in another way, jurisprudence may not be fully exogenous, but may be itself affected by labour market conditions. Two crucial dimensions likely to affect the verdict - namely the costs of job loss for the employees and the cost of reinstatement for the employer - may deeply be affected by the way in which the labour market operates. The more dynamic the labour market is, the easier is it to find another job after the dismissal, the less weight is (more or less implicitly) given by the Courts to the case of the worker. Another way in which the labour market affects jurisprudence is via the degree of unionization of the workforce. The stronger the union within the firm, the more likely that disputes are solved before going to the tribunals.

Thus, in principle, when using administrative records one should control for cyclical and regional labour market conditions, the degree of unionization of the workforce and institutional features related to the way in which labour courts operate.

Surveys of employers and employees are likely to offer better measures of the enforcement of EPL. Employers form expectations about the actual costs of dismissals whenever they decide whether to layoff or not a worker. The first question that they are likely to ask themselves is how much such an action will ultimately cost to the firm. Similarly, a worker has to weight the pros and cons of going to the court rather than accepting the offers made by the employer in the course of the pre-litigation procedures. Unfortunately, we are not aware of the existence of surveys designed to offer such information. The European Commission's ad-hoc questionnaire asks employers to provide a qualitative assessment of the overall costs of dismissals. No monetary assessment are required (e.g., questions on the willingness to pay of employers to avoid going before a tribunal). Another important survey on these issues - the survey administered by the ISR (International Survey Research) - collects information on employees' perceptions about job security, but again no question specifically deals with

[9] See Priest and Klein (1984), Eisenberg and Farber (1996) for a thorough discussion of these forms of self-selection.

jurisprudence and there is no attempt to discern evaluations of the likelihood of favourable outcomes of labour disputes taken to courts.

3.4. Preliminary evidence

With the above caveats in mind, Table 7 provides information on the number of cases brought before the tribunals and on the percentage of verdicts favourable to the workers in the countries for which data are available. Standard indicators of the strictness of EPL and measures of the coverage of unemployment benefits are also reported on the last three columns on the right-hand-side in order to ease the interpretation of data.

Data on jurisprudence come from national sources collected by ILO correspondents. In particular, a questionnaire was sent (see Annex B) to experts operating in thirteen OECD countries (mostly European countries, the United States, Canada, Australia and New Zealand). The most striking fact revealed by the table is the very wide cross-country variation in the number of cases brought to courts. In Spain 1 employee in 200 hundred appealed to the courts in 1995 compared with 1 employee in 15 thousand in Austria. There is also significant cross-country variation in the percentages of cases won by the workers with Spain again and France at one extreme and Ireland at the other. Cross-country differences of a similar magnitude can only come from a variety of factors, and some of the most serious ones may simply be related to the coverage of statistics. Yet, it is tempting to try to make some inferences on economic factors which may also have played a role in the cross-country variation in the incidence of jurisprudence in labour disputes.

Significantly, the countries where tribunals are the most frequently involved in labour disputes arising from the termination of contracts tend also to be those to have the highest percentage cases favourable to employees. Spain is a case in point. Here almost 72 per cent of cases were in 1995 won by the workers compared with less than 50 per cent in North-American countries and a low 16 per cent in Ireland,[10] all countries where tribunals seem to intervene rather infrequently in labour disputes concerning contract termination. The high incidence of judicial procedures in France may also be partly explained by a large share (74 per cent) of cases favourable to the workers.[11] As argued above, the likelihood that the court rulings are favourable tends to play an important role in inducing workers to bring their case to the courts, although it may, on the other hand, also encourage employers to reach extra-judicial agreements. Insofar as available statistics on cases brought to courts well capture the first steps of a judicial procedure, we would, however, expect appeals to courts to be more frequent in the country with a tradition of sentences favourable to the employees and this is consistent with the evidence produced in Table 7.

[10] First year unfair dismissal cases referred was only 1977.

[11] This is likely to be the case of Germany where anecdotal evidence suggests that most cases are won by the workers. Unfortunately, it was not possible to collect statistics on the number of cases won by workers in this country.

Table 7. The role of tribunals in the enforcement of EPL: Preliminary evidence
(1995 data unless otherwise specified)

	Nr of cases brought before the tribunal / employees (%)	% cases won by workers	Strictness of definitions (1)	Extent of reinstatement (2)	Unemployment benefit coverage rate (3)
EU					
Austria	0.007	n.a.	1	1	n.a.
Denmark	0.004	n.a.	0	1	85
France	0.510	74%	1.5	0	44
Germany	0.510 (4)	n.a.	2	1.5	64
Ireland	0.110	16%	0	1	69
Italy	0.050	51%	0	2	19
Netherlands	n.a.	n.a.	1.5	1	38
Spain	0.545	72%	2	0	29
UK	0.180	38%	0	0	62
North America					
Canada(5)	0.080	48%	0	1	n.a.
US	0.021(6)	48 % (7)	0	0.5	n.a.
Oceania					
Australia	0.150	57%	0	1.5	n.a.
New Zealand	0.060	62%	0	1	n.a.

Notes: (1) Score (0-3) from OECD Employment Outlook 1999: scored 0 when worker capability or redundancy of the job are adequate and sufficient grounds 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 retraining to adapt the worker to different work must be attempted prior dismissal, and 3 when worker capability cannot be a ground for dismissal.
(2) From OECD Employment Outlook 1999: the extent of reinstatement is based upon whether, after a finding of unfair dismissal, the employer has the option of reinstatement into his previous job even when this is against the wishes of the employer. The indicator is 1 when this option is rarely made available to the employee, 2 when it is fairly often made available and 3 when it is always made available.
(3) Percentage of unemployed people reporting receipt of unemployment benefit in the EC Labour Force Survey (see OECD Jobs Study).
(4) 1990 for Germany
(5) Quebec only
(6) 1991 for US
(7) Based on a national survey of plaintiff's awards regarding wrongful discharge from 1988 to 1995 *(The Bureau of National Affairs, 1998).*
Sources: Australia, total claims finalized *(Annual Report of the Industrial Relations Court of Australia);* Austria, total claims filed *(Ministry of Justice);* France, total claims finalized *(Ministry of Justice);* Germany, total claims finalized *(A.G Statistics, Ministry of Justice);* Ireland, total claims filed *(The Employment Appeals Tribunal);* Italy, total claims filed *(ISTAT);* New-Zealand, total claims finalized *(The Employment Tribunal);* Quebec, total claims brought before the arbitrator (CNT); Spain, total claims finalized (Ministry of Labour and Social Affairs); UK, total claims filed (Employment Tribunals Service); US, total claims filed in the Federal courts (in Dunlop and Zack, 1997); OECD (LFS).

Rather vague legal definitions of unfair dismissals, attributing many degrees of freedom to Labour Courts in interpreting employment protection regulations, may also have been an important factor behind the quite impressive caseload of Tribunals highlighted by Table 7 in countries like France, Germany and Spain. In Germany, the Protection Against Dismissal Act of 1951 gave much discretion to Labour Courts in interpreting existing regulations, quite in striking contrast with the German legal tradition which is often placing strong restrictions on the discretionary power of judges (Berger, 1997). Indeed Labour Court activity would seem to have declined in more recent years, due to reforms of this Act,

which reduced the degrees of freedom of Labour Courts, e.g., by establishing that the applicability of social plans (allowing for rather generous compensation of workers made redundant) were to be related to objective parameters like the size of firms and the number of employees affected by the redundancies. Similarly, in Spain the extension and clarification of definition of unfair dismissals (allowing, inter alia, for economic, technological, organizational as well as cyclical factors to be considered as reasons for "justifiable dismissals") has been de facto provided only with the labour reform of 1997; before that date, Labour Courts had more discretion than in other countries to set arbitrarily when the grounds for an unfair dismissals were met. Unfortunately, available EPL rankings consider legal definitions only along one-dimension, namely whether or not workers' capability is considered a valid ground for dismissals, e.g., as in the ranking displayed in the third column of Table 7. The above argument suggests that the precision, the transparency and the consistency used by legislators in defining justified reasons for dismissals are also very important (see Tables 1 and 2 in Annex B).

Sanctions applicable to employers in the case of unfair dismissals are also candidates to explain the cross-country variation in the incidence of court rules, although the toughness of sanctions may play a twofold role: on the one hand should encourage workers to appeal (in which case the caseload increases), but, on the other hand, it should also encourage employers to reach extra-judicial agreements before the worker's appeal (which should play against an involvement of Tribunals in Labour Disputes). The fourth column of Table 7 summarises information on perhaps the strongest deterrent to dismissals for employers, namely the option offered to the employee to request the reinstatement in the firm. In many countries, the employer may be empowered to refuse reinstatement, choosing instead to pay compensation[12]; in some other countries, the competent body can decide to award both reinstatement and financial compensation simultaneously. The information provided in the table is, however, based just on national regulations, while it should be noted that the effectiveness of the reinstatement depends on several factors, such as the length of proceedings (if there are years of delay between the start of the procedure and the verdict, reinstatement probably does not occur), the size of the undertaking (being reinstated in a larger enterprise is easier than in a small unit), and on the sanctions on employers who do not reinstate the worker. There are also moral damages, as distinct from compensation, which may be awarded in some countries: for example, in New Zealand, compensation can be paid for "humiliation, loss of dignity and injury to feelings". When the body is free to set the amount, it plays a particularly important role in determining the criteria to be taken into account: in the United States, discriminatory reasons may, for example, involve high compensation. So, the criteria on which the choice between reinstatement and financial compensation is based vary widely as well as the amount of monetary sanctions. The decision may refer to legislation, which sometimes details a list of cases in which reinstatement can be ordered or proposed (the application of the principle of reinstatement is particularly important for staff representatives), or a list of cases in which it is not feasible or appropriate; decision may also be established by way of collective agreement.

Another factor which is likely to affect - this time unambiguously - the incidence of Courts rulings relates to the costs of legal procedures. A combination such that prevailing for many years in Germany (Berger, 1997) of low court fees, possibility to call unions before the courts, and low legal costs charged on the defeated party tends to clearly play in favour of a stronger involvement of Tribunals in labour disputes.

Finally, the coverage offered by unemployment insurance may play a role in affecting court rules. The last column on the right-hand-side of Table 7 documents that the countries with a high percentage of cases favourable to workers tend also to be characterised by a low

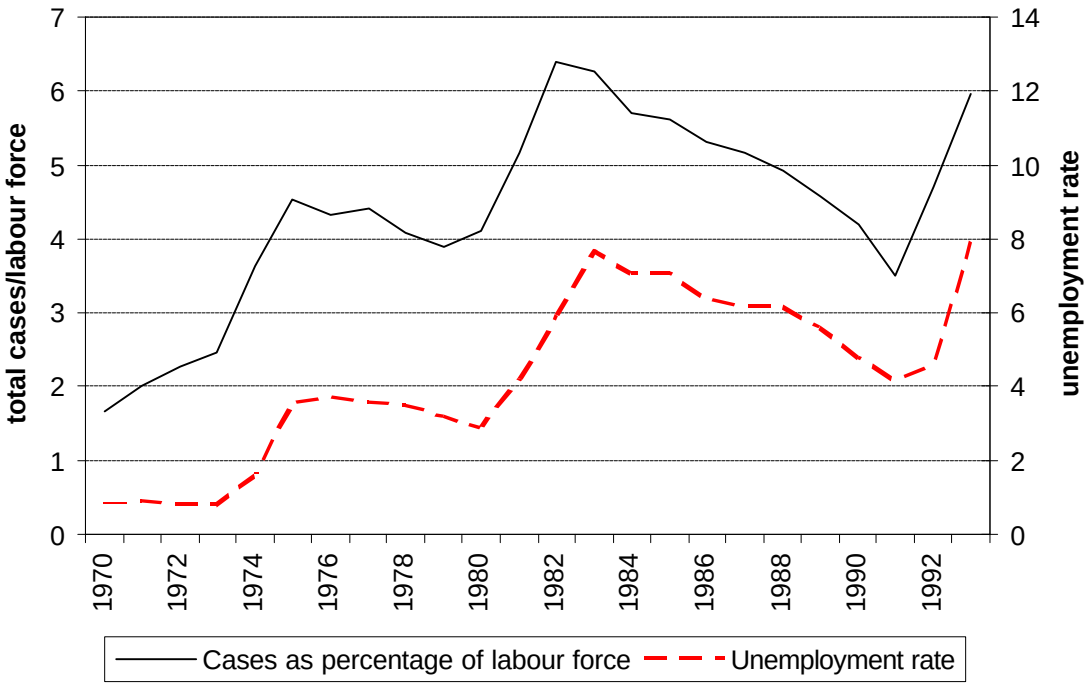
[12] For example, in Italy, this choice depends on the establishment size and on the process of dealing with the dispute.

coverage of unemployment benefits (beneficiaries over unemployed according to the Labour Force Survey definitions). Conversely, in countries like Ireland and the UK where courts are favourable to employees in significantly less than half-of-the cases, unemployment insurance covers a very large portion of the unemployed. These are just hypothetical questions; more data points would be needed to assess the correlation between these variables.

The above suggests that there is much that we can learn from the cross-country variation in the degree of involvement of Tribunals in labour disputes. Other relevant information on the enforcement of EPL can be obtained by analysing the time-series properties of data on jurisprudence. Unfortunately this was possible only for two countries, namely Germany and Spain.

Figure 2. Total closed labour court cases, unemployment rate and growth rate of GDP,

Germany (1970-1993)



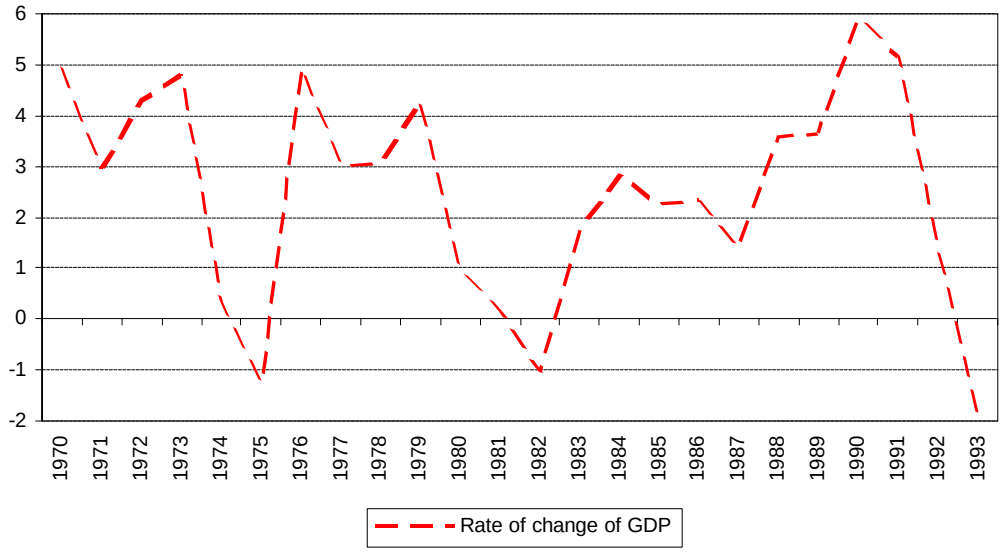
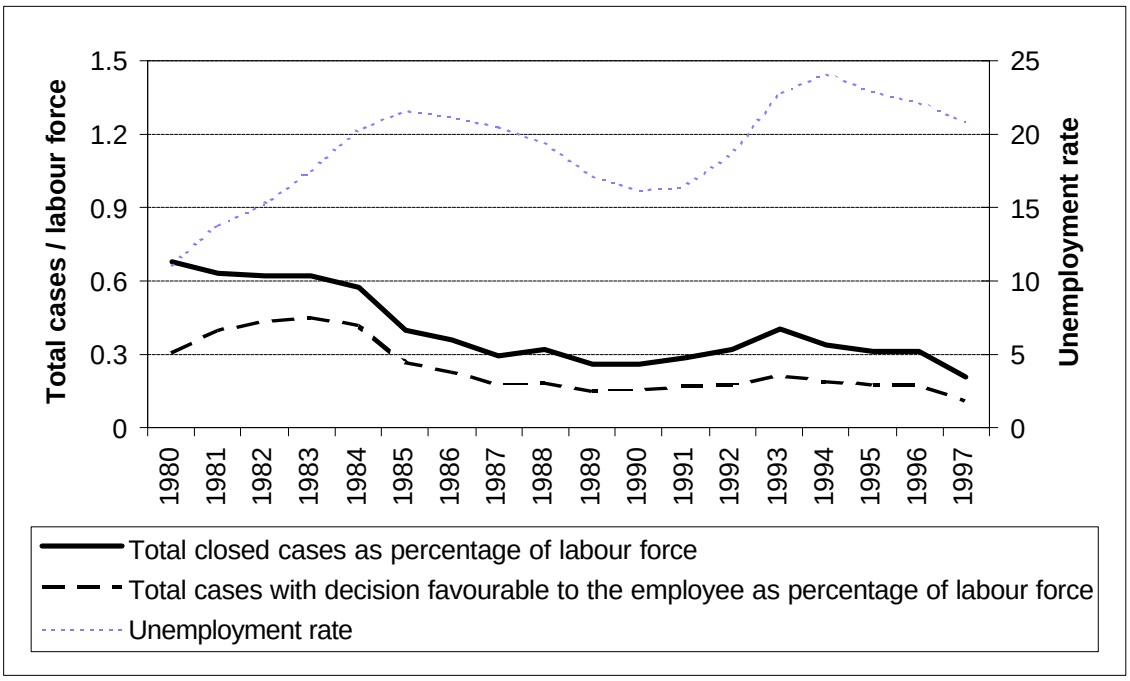


Figure 2 plots the series on the number of closed labour court cases as a proportion of the labour force in Germany in the period 1970-93. The unemployment rate and the yearly growth rate of GDP are also displayed in the top and bottom panel, respectively. The striking fact is the very marked covariation of the incidence of jurisprudence and of unemployment. Cyclical conditions, captured by GDP growth rates, would seem to be relevant only insofar as they significantly affect unemployment.

Figure 3. Total closed labour court cases, total cases favourable to the employee and unemployment rate, Spain (1980-1997)



Comovements of indicators of jurisprudence and unemployment can also be observed in Spain, especially when the focus is on cases ended with sentences favourable to the employees. All this suggests that labour market conditions play indeed an important role in the magnitude and nature (more or less favourable to employees) of jurisprudence. In other words, the evidence points to an endogeneity of jurisprudence which should perhaps be duly acknowledged when assessing the causal relation between EPL and unemployment.

4. Conclusion and policy implications

The effects of EPL, while fairly clear from a theoretical standpoint, are difficult to study in practice because of the elusive and complex nature of available information, and of the EPL concept itself. Hence, policy recommendation should be formulated with caution, and should *not* be based on the largely unsatisfactory information available to date. In particular, available rankings of employment protection cannot be used for the purpose of surveillance of structural reforms in the labour market area, as envisaged in the European context of the Luxembourg process. A broad conclusion of the report is that simplification of rules in this area is needed for Governments to regain control over the enforcement of EPL. If a greater complexity of rules is a by-product of political constraints, notably the unfeasibility of comprehensive reforms of EPL, then precise guidelines should be given to administrations concerning enforcement, and legislative vacuums concerning the new contractual types should be possibly avoided. Moreover, Governments should exploit the interactions between EPL and other institutional features. The documented negative correlation between, on the one hand, strictness of employment protection and, on the other hand, coverage of unemployment insurance, suggests for example, that the extension of the coverage (which does not necessarily imply an extension of the duration!) of unemployment insurance could ease reform of EPL. It would also reduce pressures on judges deriving from the social responsibility they feel when processing labour disputes in areas and time-periods characterised by high levels of unemployment. Similarly, decentralization in wage setting allowing employers in firms facing transitory adverse shocks to adjust wages or hours of work rather than reducing the workforce, could also make it easier to reform EPL and reduce the resistance of policy delivery mechanisms to the liberalization of labour markets. It should be finally stressed that the costs of labour mobility are not only related to EPL, but also to the adaptability of the workforce to different tasks, the infrastructure supporting regional mobility, etc. Thus reforms of EPL cannot substitute for reforms of the education systems, enhancing the fungibility of school curricula, as well as for the build-up of networks of training (and retraining) providers and for measures promoting greater regional mobility of workers.

Bibliography

Abraham, Katharine G., and Susan N. Houseman (1994): "Does Employment Protection Inhibit Labour Market Flexibility? Lessons from Germany, France, and Belgium", in R.M.Blank, ed., *Social Protection versus Economic Flexibility: Is there a trade-off?*, Chicago and London: The University of Chicago Press.

Acemoglu, Daron and Jorn-Steffen Pischke (1998): *The Structure of Wages and Investment in Training*, NBER Working Paper No. 6375.

Addison, John T. and Jean-Luc Grosso (1996): "Job Protection and Employment: Revised estimates", *Industrial Relations*, No. 35, pp. 585-603.

Anderson, Patricia M.(1993): "Linear Adjustment Costs and Seasonal Labour Demand: Evidence from Retail Trade", *Quarterly Journal of Economics*, No. 108, 1015-42.

Auer (1999): *Europe's employment revival: four small European countries compared*, ILO (forthcoming).

Bean, Charles R. (1994): "European Unemployment: A Survey", *Journal of Economic Literature*, No. 32, 573-619.

Bentolila, Samuel, and Giuseppe Bertola (1990): "Firing Costs and Labour Demand: How Bad is Eurosclerosis?", *Review of Economic Studies*, No. 57, 381-402.

Bentolila, Samuel, and Gilles Saint-Paul (1992): "The Macroeconomic Impact of Flexible Labour Contracts, with an application to Spain", *European Economic Review*, 1013-1053.

Bentolila, Samuel, and Gilles Saint-Paul (1994): "A Model of Labour Demand with Linear Adjustment Costs", *Labour Economics*, No. 1, 303-326.

Berger, H. (1997): "Regulation in Germany: Some Stylised Facts About Its Time Path, Causes and Consequences", paper prepared for the IMPE Conference on *Institutions, Markets and (Economic) Performance: Deregulation and its Consequences*, Utrecht, December 11-12, 1997.

Bertola, Giuseppe (1990): "Job Security, Employment and Wages", *European Economic Review*, No. 34, 851-886.

Bertola, Giuseppe (1992): "Labour Turnover Costs and Average Labour Demand", *Journal of Labour Economics* No. 10, 389-411.

Bertola, Giuseppe (1994): "Flexibility, Investment, and Growth", *Journal of Monetary Economics* No. 34, 215-238.

Bertola, Giuseppe (1998): "Microeconomic Perspectives on Aggregate Labour Markets," in Ashenfelter and Card (eds.), *Handbook of Labour Economics* vol.3, North-Holland, forthcoming.

Bertola, Giuseppe, and Andrea Ichino (1995a): "Crossing the River: A comparative perspective on Italian employment dynamics", *Economic Policy* No. 21, 359-420.

Bertola, Giuseppe, and Andrea Ichino (1995b): *Wage Inequality and Unemployment: US vs. Europe*, NBER Macroeconomic Annual 1995 (M.I.T. Press, Cambridge Mass.)

Bertola, Giuseppe, and Richard Rogerson (1997): "Institutions and Labour Reallocation", *European Economic Review* No. 41, 1147-1171.

Blanchard, Olivier J.(1997): *The Medium Run*, Brookings Papers on Economic Activity: Macroeconomics, No. 2.

Blanchard, Olivier J., and Lawrence Summers (1986): "Hysteresis and the European Unemployment Problem", in S.Fischer, ed., *NBER Macroeconomics Annual 1986* (MIT Press, Cambridge Mass), 15-78.

Blau, Francine D., and Lawrence M. Kahn (1996): "International Differences in Male Wage Inequality: Institutions versus Market Forces", *Journal of Political Economy* No. 104, 791-837.

Boeri, Tito (1996): "Is Job Turnover Countercyclical?", *Journal of Labour Economics* No. 14, 603-25.

Boeri, Tito (1999): "Enforcement of Employment Security Regulations, On-the-job Search and Unemployment Duration", *European Economic Review* (43) 1, 65-89.

Booth, Alison L. (1997): "An Analysis of Firing Costs and their Implications for Unemployment Policy", in D.J.Snower and G.de la Dehesa, eds., *Unemployment Policy: Government options for the labour market* (Cambridge University Press, Cambridge).

Brandolini, Andrea (1995): "In Search of a Stylised Fact: Do real wages exhibit a consistent pattern of cyclical variability?", *Journal of Economic Surveys* No. 9, 103-161.

Burda, Michael, and Charles Wyplosz (1994): "Gross Worker and Job Flows in Europe", *European Economic Review* No. 38 (6), pp.1287-1315.

Burgess, Simon M. (1994): *The Reallocation of Employment and the Role of Employment Protection Legislation*, London School of Economics Centre for Economic Performance, Discussion Paper N0. 193.

Calmfors, Lars, and John Driffill (1988): "Bargaining Structure, Corporatism, and Macroeconomic Performance", *Economic Policy* No. 6, 14-61.

Card, David, and Philip B.Levine (1994): "Unemployment Insurance Taxes and the Cyclical Properties of Employment and Unemployment", *Journal of Public Economics* No. 53, 1-29.

Coe, David T., and Dennis J.Snower (1997): *Policy Complementarities: The Case for Fundamental Labour Market Reform*, International Monetary Fund Staff Papers No. 44, 1-35

Davis, Steven and John Haltiwanger, (1992): "Gross Job Creation, Gross Job Destruction and Employment Reallocation", *Quarterly Journal of Economics* No. 107, 819-863.

Davis, Steven J, and Magnus Henrekson (1997): "Industrial Policy, Employer Size, and Economic Performance in Sweden", in R.B.Freeman, R.Topel, and B.Swedenborg (eds) *The Welfare State in Transition: Reforming the Swedish model* (University of Chicago Press, Chicago).

Donohue, John J. III, and Peter Siegelman (1995): "The Selection of Employment Discrimination Disputes for Litigation: Using Business Cycle Effects to Test the Priest-Klein Hypothesis", *Journal of Legal Studies* No. 24, 427-62.

Dunlop, John T., and Zack, Arnold (1997): *Mediation and arbitration of employment disputes*, Jossey-Bass Conflict Resolution Series (Jossey-Bass Inc., San Francisco).

Eisenberg, T.and H.S.Farber (1996): *The litigious Plaintiff Hypothesis: Case Selection and Resolution*, NBER Working paper No. 5649.

European Commission, Directorate-General for Employment, Industrial Relations and Social Affairs (1997): *Termination of employment relationships, Legal situation in the Member States of the European Union* (Office for Official Publications of the European Communities, Luxembourg)

Freeman, Richard B., and Lawrence F. Katz, eds., (1995): *Differences and Changes in Wage Structure* (The University of Chicago Press, Chicago)

Garibaldi, Pietro (1998): "Job Flow Dynamics and Firing Restrictions", *European Economic Review* No. 42, 245-275.

Garibaldi, Pietro, Jozeph Konnings, and Christopher Pissarides (1997): "Gross Job Reallocation and Labour Market Policy", in D.J.Snower and G.de la Dehesa, eds., *Unemployment Policy: Government options for the labour market* (Cambridge University Press, Cambridge).

Grubb, David, and William Wells (1993): "Employment Regulation and Patterns of Work in E.C. Countries", *OECD Economic Studies* No. 21, 7-58.

Hogan, Seamus, and Christopher Ragan (1995b): "Job Security and Labour Market Flexibility", *Canadian Public Policy* No. 21, 174-86.

Hopenhayn, Hugo, and Richard Rogerson (1993): "Job Turnover and Policy Evaluation: a General Equilibrium Analysis", *Journal of Political Economy* No. 101, 915-938.

Ichino, A., Ichino, P. e Polo, M., "Il Mercato del Lavoro e le Decisioni dei Giudici sui Licenziamenti", in Cassese, S. e Galli, G. (a cura di) *L'Italia da semplificare: I Le istituzioni, Il Mulino*, 1998, pp. 459-492.

IDS, (1991): European Management Guides, *Terms and Conditions of Employment.*

---., (1994-95): *Recruitment and dismissal.*

---., (1998-99): *Recruitment and dismissal.*

International Encyclopaedia for Labour Law and Industrial Relations, (Blanpain R. and Engels, C.) "European Labour Law".

International Labour Office (ILO): *Protection against unjustified dismissal*, General Survey on the Termination of Employment Convention (No158), International Labour Conference (82nd Session, 1995) (ILO, Geneva) and Recommendation (No166), 1982, Report 111 (Part 4B).

---., (1995): Conditions of work digest, Working time around the world.

Lazear, Edward P. (1990): "Job Security Provisions and Employment", *Quarterly Journal of Economics* No. 105, 699-726.

Lijunqvist, Lars, and Thomas J.Sargent (1995): "Welfare States and Unemployment", *Economic Theory* No. 6, 143-160

Lindbeck, Assar, and Dennis J.Snower (1988): *The Insider-Outsider Theory of Employment and Unemployment* (MIT Press, Cambridge Mass).

Millard, Stephen P. and Dale T. Mortensen (1997): "The Unemployment and Welfare Effects of Labour Market Policy: a comparison of the USA and the UK", in D.J.Snower and G.de la Dehesa, eds., *Unemployment Policy: Government options for the labour market* (Cambridge University Press, Cambridge).

Nickell (1986): "Dynamic Models of Labour Demand", in O.Ashenfelter and R.Layard, eds., *Handbook of Labour Economics*, volume 1 (North-Holland, Amsterdam).

OECD (1994): "Labour Adjustments and Active Labour Market Policies", Chapter 6 of The *OECD Jobs Studies*, II: Evidence and Explanations, Paris: OECD.

OECD (1997): “Economic Performance and the Structure of Collective Bargaining”, Chapter 3, *Employment Outlook*.

OECD (1999): *Employment Outlook.*

Priest, G.L. and B.Klein (1984): “The Selection of Disputes for Litigation”, *Journal of Legal Studies* (1-55).

Saint-Paul, Gilles (1997a): *Dual Labour Markets: A Macroeconomic Perspective*, MIT Press.

Scarpetta, Stefano (1996): “Assessing the Role of Labour Market Policies and Institutional Settings on Unemployment: A cross-country study”, *OECD Economic Studies* No. 26, 43-98

Vetter, Henrik, and Torben M.Andersen (1994): “Do Turnover Costs Protect Insiders?”, *The Economic Journal* No. 104, 124-130.

WYATT (1995): *Employment Terms and Conditions: Europe* (Brussels).

ANNEX A

Table A1. Earnings dispersion in selected OECD countries

	D9/D5			D5/D1		
	late 70s - early 80s (1979)	mid. 80s (1986)	mid 90s (1995)	late 70s - early 80s (1979)	mid. 80s (1986)	mid 90s (1995)
Australia	1.67	1.71	1.77	1.64	1.68	1.65
Austria	1.78[(1)]	1.80[(2)]	1.82[(3)]	1.94[(1)]	1.93[(2)]	2.01[(3)]
Canada	1.79[(4)]	1.83	1.84[(3)]	2.24[(4)]	2.43	2.28[(3)]
Denmark	1.52[(1)]	1.55	-	1.41[(1)]	1.42	-
France	1.94	1.96	1.99[(3)]	1.67	1.62	1.65[(3)]
Germany	-	1.64	1.61[(5)]	-	1.58	1.44[(5)]
Italy	1.50	1.43	1.60[(5)]	1.96	1.75	1.75[(5)]
Netherlands	-	1.62	1.66[(3)]	-	1.55	1.56[(3)]
New Zealand	-	1.67	1.76[(3)]	-	1.70	1.73[(3)]
United Kingdom	1.65	1.78	1.87	1.69	1.74	1.81
United States	-	-	2.10	-	-	2.09

[(1)] 1980; [(2)] 1987; [(3)] 1994; [(4)]1981; [(5)] 1993.

Note: D1 and D9 refer to the upper earnings limits of, respectively, the first and ninth deciles of employees ranked in order of their earnings from lowest to highest, i.e. 10% of employers earn less than the D1 earnings limit and 90% earn less than the D9 earnings limit; D5 corresponds to median earnings.

Sources: OECD, Employment Outlook, 1996.

Table A2. Minimum wage systems in selected OECD countries

	Statutory min. wage[a]	Alternative minimum wage mechanisms	Ratio to manual pay (% male manual average salary)			Coverage/ groups covered	% of workers at or near minimum	Comments
			1985	1993	1996/97			
Australia	No	Min. levels of wages contained in State level legislation and in wage rates outlined in ind. and occupational awards.						
Austria	No	Minimum rates binding on all firms in a given sector (set by CB)				90% of employees	4%	Both minimum rates an company rises set by sector
Canada	Yes		32.5%	34.9% (1991)	n.a.			
Denmark	No	'Minimum' rates system in most sectors, binding on signatories. 'Standard' wage system in a few sectors (rates set by CB)				80% of employees	6%	Move to setting just minimum rates at sectoral level (observed by non-signatories)
France	Yes		65%	64.6%	59%	employees aged 18+	11%	Reduction in social charges available for low paid plus other schemes for lowering labour costs
Germany	No	Minimum rates binding on signatories in a given sector (set by CB)				85%-90% of employees		Non-signatories usually observe minimum rates
Ireland[b]	No	Joint Labour Committees can set minimum rates in 16 low-paying industries (ERO, a binding Employment Regulation Order issued for sectors with low union density). A Registered Employment Agreement (REA) may be negotiated in Joint industrial councils where density higher and is binding on signatories				ERO covers 6% workforce		
Italy	No	Minimum rates effectively binding on all forms in a given sector				All employees		Talk of negotiating lower minima in manufacturing
Netherlands	Yes		58.5%	51%	49%	Employees aged 23+	3.2%	Min. rates in CAOs lowered towards national minimum. Calls for limits to national minimum
New Zealand	No							

	Statutory min. wage[a]	Alternative minimum wage mechanisms	Ratio to manual pay (% male manual average salary)			Coverage/ groups covered	% of workers at or near minimum	Comments
			1985	1993	1996/97			
Spain	Yes		42%	38%	42%	Employees aged 18+	6.5%	Decline in inflation means govt. forecast more credible as uprating basis. Youth rate abolished in 1998.
United Kingdom[b]	No	Pre-1993: Wages Council which set binding minimum rates covering 2.5 million employees, now only agriculture. Industry agreed minima not legally binding on signatories.				n.a.		
United States	Yes		42% (1981)	35% (1990)	37.2%		4%	

(a) all the countries with a statutory minimum wage also have binding industry minima which can be extended to non-signatory parties.
(b) Ireland and the UK are in the process of introducing statutory minimum pay legislation.
Sources: IDS, ILO Yearbook of labour statistic.

Table A3. Unemployment insurance benefits - 1985

	Eligibility	Maximum length	Replacement ratio[a]	Type of program
Australia (GI)	-	unlimited		Unemployment assistance
Austria (UI)	20 weeks within last 12 months or 52 weeks within last 24 months (first claim)	up to 12 weeks (20 weeks if 52 weeks coverage in last 2 years or 30 weeks if 156 weeks coverage in last 5 years)	60% - 30%[b]	Compulsory insurance system ÿ unlimited unemployment. assistance
Canada (UI)	10 - 20 weeks (during last year) (depending on unemployment rates of region)	up to 50 weeks (depending on regional unemployment rate and individual employment history)	60%	Compulsory insurance system ÿ social assistance
Denmark (UI) (GI)	12 months of insurance with fund 26 weeks of employment in last 3 years	no more than 2½ years (depending on employment record)	90%	Subsidized voluntary insurance system ÿ social assistance
France (UI)	3 months (during last 12 months) for minimum coverage 2 years during last 3 years for maximum coverage	**up to 60 months depending on age** 3 months if 3 months contribution 15 months (21 months if > 50 years) if 6 months contribution. 30 months (45 months " ") if 12 months contribution. 45 months (60 months " ") if 24 months contribution.	Below age 50, 85% of overall benefit paid in initial period, reduced to 85% of previous benefit level every 6 months; from age 50, 90% of overall benefit, reduced to 90% every 9 months; over age 55, no reduction	Dual compulsory employee-employer & governement-funded system
Germany (UI)	12 months (during last 3 years)	16-52 weeks (depending on employment record)	63% of after tax earnings	Compulsory insurance system ÿ unlimited unemployment assistance
Ireland (UI) (GI)	*Flat-rate benefit*: 26 weeks paid contribution + 48 weeks paid or credited in last year	*Flat-rate benefit*: up to 15 months	For combined flat-rate and pay-related benefits plus income tax rebate, up to 85% of net earnings [b]	Dual social insurance and assistance system ÿ unemployment assistance unemployment assistance
Italy (UI)	2 years of insurance + 52 weeks of contribution in last 2 years	6 months	7,5%	Compulsory insurance system
Netherlands (UI)	*General benefits:* 130 days of employment during last 12 months	*General benefits:* 26 weeks per benefit year	*General benefits:* 70%	Dual social insurance and unemployment assistance systems ÿ social assistance
New Zealand (GI)	-	unlimited	-	unemployment assistance system
Spain (UI)	6 months during last 4 years	up to 24 months (3-24) depending on contributions	80% (1-6 months) 70% (7-12 months) 60% (13-24 months)	Compulsory insurance system ÿ unemployment assistance

United Kingdom (UI) (GI)	*Flat-rate benefit:* - contributions paid in one of the 2 tax years on which the claim is based amounting to at least 25 times the minimum contribution for that year; - contributions paid or credited in both the appropriate tax years amounting to a total of at least 50 times the minimum contribution for that year.	*Flat-rate benefit:* up to 52 weeks		Compulsory insurance system ÿ unemployment assistance
United States (UI)	3/4 of States require minimum earning. Other: 14-20 weeks	up to 26 weeks (39 if high unemployment rate)	50% (depending on States)	Compulsory insurance systems

GI: guaranteed income; UI: unemployment insurance.
(a) The reference wage is not defined in the same way in all the countries. In general, it is defined as gross wages. The rate is applied only to the fraction of wages below a ceiling.
(b) The rate is declining function of the wage.

Table A4. Unemployment insurance benefits - 1995

	Eligibility	Maximum length	Replacement ratio[(a)]	Type of program
Australia (GI)	-	unlimited	Flat rate (~ 22%)	Unemployment assistance
Austria (UI)	26 weeks within last 12 months (< age 25) or 52 weeks within last 24 months	up to 52 weeks (depending on age and employment record)	56% of daily net income	Compulsory insurance system ÿ unlimited unemployment assistance
Canada (UI)	10 - 20 weeks (within the last year) (depending on unemployment rate of region)	up to 50 weeks (depending on regional unemployment rate and individual employment history)	55%	Social insurance system ÿ social assistance
Denmark (UI) (GI)	12 months of insurance with fund 26 weeks of employment in last 3 years	4 years (1 phase) 3 years (2 phase)	90%	Subsidized voluntary insurance system ÿ social assistance
France (UI)	4 months in last 8 months	up to 60 months [27 months (depending on age & employment record) + maximum of 33 months at declining rate every 4 months]	57% (6 months) (then, downward sliding scale every 4 months)	Dual compulsory employee-employer & goverment-funded system ÿ allocation de solidarité spécifique
Germany (UI)	12 months of employment. during last 3 years	up to 832 days (depending on age and employment record)	60% of after tax earnings	Compulsory insurance system ÿ unlimited unemployment assistance
Ireland (UI) (GI)	*Flat-rate benefit* * 39 weeks paid contribution + 39 weeks paid or credited in last year	*Flat-rate benefit* up to 15 months	For combined flat-rate and pay-related benefits plus income tax rebate, up to 85% of net earnings	Dual social insurance and assistance system ÿ unemployment assistance unemployment assistance
Italy (UI)	2 years of insurance + 52 weeks of contributions in last 2 years	6 months	30% of average wage received during the last 3 months	Compulsory insurance system No subsequent benefit
Netherlands (UI)	*General benefits*: 26 weeks during the last 39 months *Extended benefits*: during the last 4 years at least 5 years in each of which a salary over 52 days was paid	*General benefits* 6 months can be extended to 5 years (depending on age and years of employment)	*General benefits* 70%	Dual social insurance and unemployment assistance systems
New Zealand (GI)	-	unlimited	Flat rate (~ 26%)	Unemployment assistance system
Spain (UI)	12 months in the last 6 years	up to 24 months depending on contributions, reducing after 6 months	70% (1-6 months) 60% (7-25 months)	Compulsory insurance system ÿ social assistance
United Kingdom (UI) (GI)	*Flat rate benefit* - Contributions paid in one of the 2 tax year on which the claim is based amounting to at least 25	*Flat rate benefit* 52 weeks	flat rate (~ 16%)	Compulsory insurance system ÿ unemployment assistance

	Eligibility	Maximum length	Replacement ratio[a]	Type of program
	times the minimum contribution for that year. - Contributions paid or credited in both the appropriate tax years amounting to a total of at least 50 times the minimum contribution for that year.			
United States (UI)	3/4 of States require minimum earning. Other: 15-20 weeks	up to 26 weeks (39 if high unemployment rate)	50% (depending on States)	Compulsory insurance systems ÿ general assistance

GI: guaranteed income; UI: unemployment insurance.

(*) Pay-related benefit: beneficiary must have a right to flat-rate benefit and must have had earnings over IR£ 97.50 (ECU 119) per week in the relevant tax year. Abolished from July 1994 for new claimants only.

(a) The reference wage is not defined in the same way in all the countries. In general, it is defined as gross wages. The rate is applied only to the fraction of wages below a ceiling.

Sources: SS throughout the World - MISSOC, 1995; OECD, EO.

ANNEX B - The enforcement of EPL: some data on jurisprudence

Once established that enforcement matters, notably that jurisprudence on unfair dismissal is often more important than the nominal legal constraints that apply in each country, it becomes necessary to obtain some data on the enforcement of the laws. As little information on jurisprudence is available, it is first important to gather at least general data, such as: a) the number of unfair dismissal cases brought before the competent tribunal; b) the average delay between the start of the procedure and the verdict; c) the percentage cases won by workers, supplemented by detailed information on the normative aspects of the dismissal. Thirteen OECD countries have been selected for this study (most European countries, the United States, Canada, Australia and New Zealand). The following questionnaire was sent to each of them to obtain information on unfair dismissal based on the rules that apply and on the implementation of the laws, as far as possible for three years, the mid 70s, the mid 80s and the mid 90s.

Unjustified dismissal
(available for each country)

1. Scope and definition
- Conditions under which individual dismissals are fair or unfair
- Scope, qualifying conditions

2. Procedural obligations prior to or at the time of termination
- right to defence?
- consultation of workers' representatives?
- notification; (written)?
- statement of the reasons; (written)?
- majority of cases solved by conciliation before appeal proceedings?

3. Percentage of cases closed before hearing for arbitration

4. Procedural obligations in case of appeal
- existence of an impartial body specialized in appeals?
- conciliation and arbitration: compulsory?
- burden of the proof to employer?

5. Number of cases brought before the competent tribunal(s)

6. Percentage cases won by workers

7. Remedies
- reinstatement available?
- compensation available? amount?
- possibility of appeal?

Consistency of the definition

The task was complex because judicial data are difficult to collect, to define and to compare. Availability and comparability have extensively been discussed in the article. Yet, to interpret properly these data, it is important to check the consistency of the definition across countries: the ILO Convention 158 on the termination of employment relationship at the employer's initiative refers for example to "unjustified" dismissal. Yet several terms may be used (table 1 hereafter). The conditions under which a dismissal is unjustified may be included in the legislation of the country or contained in other texts, which list the various valid reasons for dismissal (*fair* dismissal); it goes from more concise definitions to more precise ones. Reasons considered justified for dismissal are usually connected with the conduct or capacity of the worker, or with the operational requirements

of the enterprise. The Article 4 of the ILO Convention 158 provides a useful framework to define prohibited reasons of dismissal; they refer to:

a) union membership or participation in union activities;

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;

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

e) absence from work during maternity leave.

Yet, in some countries, other reasons may be specified, such as age, military service, temporary absence from work because of illness or injury. The legislation of some countries uses similar terms to those of the Article 4. In other countries, it is less specific requiring a "valid reason" or "real and serious grounds" (tables 1 and 2). In that case, the bodies responsible for applying these provisions have accumulated extensive jurisprudence (for example in France: in case of a dispute, the judge determines the real and serious nature of the reasons; jurisprudence plays also a role in the interpretation of laws in Spain and the Netherlands, particularly in defining grounds for dismissals).

In summary, the conditions under which individual dismissals are fair or unfair differ widely across the selected countries. Yet it appears that most often, the wish of the employer is no sufficient in itself to justify the dismissal: dismissal must be *justified by a valid reason* and the systems of the countries provide various means for checks on the grounds underlying the decision to dismiss. Even in the US, the employer's right to dismiss "at-will" has been eroded by exceptions established by Congress, state legislatures and the courts in the 1980s; it now only applies to a small number of termination of employment contracts. If the termination of employment comes under one of the recognized exceptions, the employer may be liable to be sued for wrongful dismissal. Furthermore in this country, collective agreements often contain clauses that provide that employees will not be discharged except for "just cause"and establish grievance and arbitration procedures.

Scope of the instruments

There are also exceptions or specific requirements for certain types of contracts (workers engaged under a contract of employment for a specified period of time or a specified task; workers serving a probation period or a qualifying period of employment; or workers engaged on a casual basis for a short period), certain categories of workers (in most countries there are special rules for civil servants, the armed force and the police), employers (for example, the exclusion of small enterprises from the scope of national legislation respecting protection against unjustified dismissal in Germany), or sectors. In many countries, the general rules governing unjustified dismissal do not apply -or apply with special provisions- to workers engaged under a contact for a specified duration: in Spain, for example, they do not apply, to fixed-term contracts and fixed-task contracts. Such differences in the scope of application should be kept in mind when comparing the countries, given the large proportion of temporary contracts in Spain (more than one third of total employment). The qualifying periods required by national provisions to enjoy protection vary from country to another, from a few months (six months without interruption in Austria and Germany) to several years (for example, in Quebec, the period of continuous service in the same employer has been reduced from five to three years in 1990; in the United Kingdom, two years tenure are necessary to be able to have recourse to the competent court). Another relevant feature of the scope of protection is whether part-time workers are covered: in many countries, the legislative provisions governing dismissal do not draw a difference between part-time and full-time workers (for example, in France, Germany, or the Netherlands), while in others certain thresholds must be met (for example, in Austria, Ireland or UK).[13]

The role of tribunals - Additional comments to data on enforcement (Table 7)

Data on jurisprudence come from national sources most often collected by ILO correspondents. Table 7 (in main document) presents some of them for 1995; data come mainly

[13] In the UK, under the Employment Protection Act 1978, workers employed between eight and sixteen hours a week must work for the same employer for five years to get protection against unfair dismissal, rights to compensation or appeal against unjustified dismissal, before 1994.

from administrative sources. As mentioned earlier, data on the "number of cases brought before the (competent) tribunal(s) for unjustified dismissal" were requested. Yet, available data refer sometimes to registered cases (e.g., number of claims filed to the tribunal(s)), sometimes to closed cases (e.g., number of finalized claims). Ideally, both series would be useful (but, only available for France and Australia). Another relevant aspect refers to the level of information: in countries such as Australia or the United States, provincial, state and federal levels interfere. This means that data should be used with great cautious: the number presented for Australia in Table 7 refers to claims filed at the industrial Court of Australia (e.g., at the Federal level); it is therefore not fully comparable to the other countries, since it does not take into account the state awards, for example. The same problem applies to the US figures, which refer to claims filed in the federal courts, under various federal statutes (Title VII, age discrimination, National Labour Relations Act, etc.); they do not include claims under collective agreements, claims made under state laws, which is were the employment at will doctrine has undergone erosion.

Table B1. Dismissal contrary to certain specified rights

	Union membership/ participation in union activities	Seeking office as, acting or having acted in the capacity of a workers' representative	Filing of a complaint/ participation in proceedings against an employer	Race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin	Absence from work during maternity leave
Austria	X	X		pregnancy[(1)] X	X[(1)]
Denmark		X			X
France	X	X	X	X	X
Germany	X	X	X	pregnancy[(1)] X	X
Ireland	X		X allowed under conditions	X	X
Italy	X	X	X	X	X
Netherlands		X		X	X
Spain	X	X	X	X	X
United Kingdom	X		X[(2)]	X	
Canada	X		X	X	
United States	X		X	X	
Australia	X	X	X	X	X
New Zealand	X	X	X	X	X

(1) Consent of the court/competent authority

(2) Except for having organized or taken part in lawful industrial action

Table B2. Definition and conditions under which dismissal is fair or unfair

	Conditions under which dismissal is fair or unfair
Austria	"unfair dismissal": **socially unjustified**. Only in the case of employees with at least 6 months service in establishment with 5 or more employees. Fair dismissals are not bound to certain justifications but to a procedure, which has to be followed by the employer. Unfair dismissals: dismissal without consent of the court in cases of pregnancy and parental leave, civil service, members of works councils, official acknowledged disability; dismissal without information and consultation with works councils; dismissals because of certain motives (age, race, sex, marital status, religion, political opinions, national origin, union membership, etc.)
Denmark	"unfair dismissal": **arbitrary**. No general statutory prohibition against unfair dismissal. There is, however, legislation for specific groups of employees, notably the Salaried Employee's Act (FUL, for white collar workers). There are also statute laws covering specific issues, such as the Equal Pay Act, the Equal Treatment Act, the Act on the Retention of Workers' Rights in case of Transfer of Undertakings and the Act on collective redundancies. An Act prohibiting discrimination on grounds of race, color, religion, political opinion, sexual orientation and national extraction or social origin was adopted in 1996. Some workers are covered by collective agreements (in the public sector the coverage is around 100 %, but in the private sector the coverage of collective agreements is only between 50 and 60% of the workforce). Unfair if there is no reasonable cause, either in the conditions of the enterprise or in the behaviour of the employee, or in any other conditions relating to the employee (FUL and Main Agreement between the Danish Employers' Confederation -DA- and the Danish Confederation of Trade Unions -LO, 1992). Lack of competence and economic redundancy thus seem to be legitimate reasons. Prohibited grounds for discrimination: sex, marital or family status, pregnancy, race, religion.
France	"unfair dismissal": **no genuine and serious grounds.** Fair: dismissal for economic reasons such as economic difficulty, reorganization or technological change, or for reasons related to the conduct or performance of the employee, such as: - Flagrant misconduct, following unacceptable behaviour on the part of an employee, such as fraud, industrial espionage or theft. - Gross misconduct, following behaviour which precludes the continued presence of the employee in the company, such as insubordination or harming the security or interests of the company. - All other cases, which include personal reasons such as personality clashes, continual aggressiveness, or professional reasons such as incompetence or poor performance. Unfair: prohibited grounds for discrimination: trade union members, pregnancy, origin, sex, family status, race, nationality, political opinion, religion, disability, exercise of right to strike. Obligation for employer to offer redundant employees a "retraining contract" and to give him priority when rehiring.
Germany	"unfair dismissal": **socially unwarranted**. Fair (for ordinary dismissal, e.g. with notice): dismissal warranted by factors related to the employee's person, factors related to the employee's conduct, or compelling operational reasons (that is on economic grounds). Unfair: dismissals where the employee can be retained in another capacity within the same establishment or enterprise, and dismissals for operational reasons where due account has not been taken of "social considerations".
Ireland	"unfair dismissal": **wrongful dismissal and unfair dismissal**.

	Wrongful dismissal is a common law concept and occurs when an employee is dismissed with no, or with inadequate, notice in circumstances where the employer was not so entitled to act under the contract of employment. Unfair dismissal is a statutory concept: the Act deems unfair dismissals for trade union membership or activity, pregnancy, religion, politics, race, colour (1977), age, sexual orientation and membership of the Irish traveling community (added in 1993). A dismissal which results from the employee's redundancy is deemed not to be unfair, unless the employee was unfairly selected. An employer is entitled to dismiss an employee without notice (summary dismissal) because of "misconduct". Fair: dismissals for lack of ability, competence or qualifications, or redundancy.
Italy	"unfair dismissal": **no just cause and no just motive**. It is considered unfair a dismissal made without "just cause" (giusta causa) or "justified subjective and objective reason" (giustificato motivo soggettivo e oggettivo). The justified subjective reason is when the employee runs into a considerable non-fulfillment of contractual obligations; the "just cause", which is also to be referred to the employee's non-fulfillment as the "justified subjective reason", differs from it only for the particular gravity, which is such as not to allow the continuation, not even temporary, of the employer-employee relationship (art. 2119 civil code and jurisprudence); the "justified objective reason" is when there are reasons concerning the productive activity, the labour organization and its regular functioning. In any case, it is considered unfair the discriminatory dismissal, which is caused by reasons of political credo or religious faith and by belonging to a trade union; race, sex and language (1970).
Netherlands	"unfair dismissal": **manifestly unreasonable**. Unfair: 1) dismissal made on false or distorted evidence provided by the employer when applying for dismissal authorization from the PES; 2) the effects of the dismissal on the employee are radically out of proportion with the employer's reasons for dismissal; 3) dismissal of employees about to do military service in order to circumvent their protected status while carrying out their military service; 4) when no account was taken of the "last in , first out" principles in selecting employees on economic grounds; 5) if the employee refuses to continue working on account of a "serious objection" as a result of their personal beliefs + "void and destructible dismissals" for pregnant women, disabled, new mothers and works council members.
Spain	"unfair dismissal": **no justifiable cause**. It requires a cause for a dismissal to be considered fair: disciplinary reasons and objective grounds. Disciplinary reasons, when the worker does not properly perform his duties. Legally authorized objective reasons include dismissals for economic, technological, organizational or productive reasons (since 1977). Unfair: sex, race, social condition, religious or political ideas, language or belonging to a trade union.
United Kingdom	"unfair dismissal": **unfair**. Unfair for: union membership, race, sex, health and safety, pregnancy and child birth. Fair: dismissals justified by lack of capability or qualifications, persistent or gross misconduct; economic redundancy; or some other "substantial" reason.
Canada	"unfair dismissal": **no good and sufficient cause**. Unfair are dismissals without notice and/or pay in lieu of notice, for trade union activities, pregnancy, and those based on breach of human rights legislation. Fair are all dismissals for "just cause" (in subordination and grave discipline; incompetence; dishonesty, fraud or theft; alcoholism and drug abuse; chronic absenteeism; sexual harassment; misrepresentation of qualifications; revelation of character; disruption of corporate culture; breach of fiduciary duties).

United States	"unfair dismissal": **no just cause**. In general it is fair to terminate an open-ended employment relationship without justification or explanation (employment- at-will concept) unless the parties have placed specific restrictions on terminations or the employee is protected under legislation prohibiting discrimination on various grounds. Nevertheless, protection from arbitrary termination of employment may be given to American workers. Employees covered by collective agreements may be safeguarded under these agreements which often require dismissals to be for a valid reason (just cause). Unfair dismissals may be based on breach of equal employment opportunity principles (national origin, sex, religion, age, race, colour, physical disability, pregnancy) or on other legal protections offered by laws on trade union organization, pensions, etc. Besides, the employer's right to dismiss at-will was diminished by State court rulings in several jurisdictions in the 1980s. Exceptions recognized by State courts may be arranged into three main classes: implied contract of employment, implied covenant of good faith and fair dealing, public policy.
Australia	"unfair dismissal": **harsh, unjust, unreasonable or discriminatory grounds**. Unfair dismissals for union membership, race, colour, sex, sexual preference, age, physical disability, marital status, family responsibilities, pregnancy, religion, political opinions, national extraction and social origin.
New Zealand	"unfair dismissal": **wrongful dismissal and unjustifiable dismissal.** Unfair dismissals for: sex, marital status, religious or ethical belief, colour, race, ethnic or national origins and pregnancy; the Human Rights Act, 1993 added age, disability, political opinion, employment status, family status and sexual orientation. Justifiable dismissal: employee's lack of capacity for the work or his conduct or performance on the job. In certain exceptional cases, such as serious misconduct, summary dismissal (without notice) may be justified. Redundancy dismissals may be unfair if no consultation with employees/trade union concerning selection and possibilities for redeployment.

ANNEX C - Individual dismissals and collective redundancies in selected OECD countries

Table 1. Administrative procedures for individual dismissal

Situation of a regular employee who is dismissed on personal grounds or individual redundancy, but without fault.

	Notification		Obligation to inform the employee of the ground of dismissal	
	verbal	written	verbal	written
Austria (1)	Y	N	N	N
Denmark	N	only for white collar	(The situation varies according to the applicable collective agreements and laws)	
France	Y	Y	Y	Y
Germany (1)	Y	N	Y	N
Ireland	Y	Y (if redundancy)	Y (if requested by the employee)	Y (if requested by the employee)
Italy	Y	Y	Y	Y (if requested by the employee)
Netherlands	N Y (if PES) (2)	N Y (if PES)	N Y (if PES)	N Y (if PES)
Spain	Y	Y	Y	Y
United Kingdom	Y	N	Y	Y (if individual termination)
Canada (Quebec)	Y	Y	Y	Y (for just cause, on request of the CNT, Commission des normes du travail)
United States	N	N	N	N
Australia (3)	Y	N	Y	N
New Zealand	Y	N	Y	Y (if requested by the employee)

(1) Before giving notice, the employer must inform and consult with the works council in establishment with 5 or more employees (for Austria) and with at least 10 employees (for Germany).
(2) In the Netherlands, workers are dismissed either by means of a procedure at the regional labour office (PES, Public Employment Service) or by court.
(3) Procedures refer to the federal workplace relations system.

ANNEX C

AUSTRALIA - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
…-1984	The common law courts have adopted a restrictive definition of what constitutes unfair dismissal. Summary dismissal is permitted in cases of serious misconduct.[1] Prohibited grounds for discrimination: union membership or activity, non-membership of a union, race, colour, sex, sexual preference, age, physical disability, marital status, family responsibilities, pregnancy, religion, political opinions, national extraction and social origin.	Common Law:[2] if the notice period is not specified in the award or contract (most federal industrial awards provided for one week notice), "reasonable" notice must be given, which depends on the length of service and on the nature of the employment, white-collar employment usually being considered to require longer notice than manual work.	No indemnity payments for termination of employment are required under common law. Under industrial legislation in two states and by awards and agreements, provision is made in certain circumstances for compensation for severance. The approach is typically to require a longer period of notice than the normal weekly hiring, for which the employee may be paid in lieu.		The common law courts have generally refused to entertain reinstatement as a remedy at common law.	
14 December 1984- Termination, Change and Redundancy Case[3] (TCR)	An unfair dismissal is a termination of employment on harsh, unjust, unreasonable or discriminatory grounds.	1 week of notice when length of service is below 1 year, 2 weeks when length of service is between 1 year and 3 years, 3 weeks when length of service is between 3 years and 5 years, 4 weeks for more than 5 years' service. Employees over age 45 with at least two years' continuous service are entitled to an additional week's notice.			If the Commission determines that a dismissal was harsh, unjust or unreasonable, it may (having regard to the employer's financial circumstances and the employee's length of service) reinstate or re-engage the employee, order damages in lieu of reinstatement (there is very recent evidence that courts in Australia may be willing to alter the traditional judicial	

[1] The employer may dismiss the employee summarily if it is deliberate or amounts to refusal by the employee to carry out some basic element of the employment contract.

[2] Two distinct types of law govern the workforce in Australia. The first is employment law, which relates to the individual and his or her common law contract of employment with the employer. The second type of law is industrial law, which is concerned with the law of employer and employee organizations. Industrial law operates by way of enterprise bargaining and of conciliation and arbitration at the collective level (there is a statutory provision for compulsory conciliation and arbitration of disputes, mostly by Industrial Relations Commission, reduced since 1996), and the products of this system are determinations made by the industrial tribunals known as awards.

[3] The lack of adequate protections against unfair dismissal caused a trade union campaign for greater employment security ended in the Termination, Change and Redundancy Case; its provisions were inserted into most federal awards after 1984.

ANNEX C

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
					reluctance to order reinstatement) or order compensation for lost remuneration. If the Court finds that a dismissal is discriminatory it may award any of the following: a penalty, reinstatement or compensation.	
Industrial Relations Act 1988- Industrial Relations Reform Act 1993	The Act constrains the ability of employers in terminating the employment of his employees. The Commission will consider in determining whether a dismissal was harsh, unjust or unreasonable (the TCR principle): whether there was a valid reason for the termination related to the capacity or conduct of the employee or the operational requirements of the employer; whether the employee was notified of that reason; whether the employee was given an opportunity to respond to any reason related to his capacity or conduct; for terminations relating to unsatisfactory performance, whether the employee had been warned about unsatisfactory performance.				The Act introduced provisions, which gave the arbitral power for reinstatement much broader scope. It introduced a statutory floor of termination from employment rights, which covered all employees for the first time in Australian history. Previously the authority of the Industrial Relations Commission was limited to employees covered by federal awards. The Act obliged the Court to direct the parties to conciliation to resolve disputes in the first instance.	See column “sanctions”.

ANNEX C

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
June 1994[4]					The compensation does not have to exceed the amount that employee earned in the last six months, up to a minimum of six months pay or A$30,000 (indexed), whichever is the lesser.	Access to the provisions was limited to employees covered by federal or state awards or employees earning under A$ 60,000 (indexed) per annum. Fixed-term, casual workers, probationary employees and trainees are excluded.[5]
Workplace Relations Act 1996- Workplace Relations Regulations 11/12/1996, nr. 307[6]					Changes have been introduced to allow issues of unfair dismissal to be resolved by the arbitral commission where conciliation fails; access to the Federal Court system is restricted to unlawful cases of discrimination only.[7]	Changes have been introduced to restrict the scope of the unfair dismissals provisions: access is restricted to the employees of constitutional corporations; employees employed on the basis of common law contracts have been denied access to these provisions; provisions excluded fixed term, probationary, casual and trainee employees have been retained or expanded.[8]

[4] In reaction to criticism of the unfair dismissal provisions of the 1993 Reform Act, the federal Labour government amended these provisions in June 1994.

[5] Nevertheless, the unfair dismissal provisions of the Reform Act were used by a greater number of employees than had been expected. So a radical change of the unfair dismissal provisions was one of the main platforms on which the Liberal and National Coalition fought the election in March 1996. The new government introduced changes in the Workplace Relations Act.

[6] The central piece of federal legislation governing the termination of employment in Australia is the Workplace Relations Act 1996 ("WRA"), as supplemented by the Workplace Relations Regulations 1996 ("WRR"). In addition, the states of Australia, except for Victoria, have unfair dismissal legislation which employees covered by state awards may be entitled to use. Employees who are not covered by the WRA, or state legislation, may bring a wrongful dismissal claim at common law. Case law decided under the WRA, and under the previous legislation, is also a source of regulation, particularly the Termination, Change and Redundancy Case 1984 (see above).
Since the mid-1980s employer associations have criticized the rigidities of award regulation. So since the early 1990s the thrust of public policy at both State and federal level has been to push employees out of award regulation into a sphere of single-employer bargaining ("enterprise bargaining": the aim is to promote bargaining and to move industrial relations in Australia from reliance upon conciliation and arbitration to a system based upon bargaining at the workplace); according to the Workplace Relation Act 1996, employees are encouraged to exit into what is an even more superficially regulated sphere of certified agreements and Australian Workplace Agreements. While not going as far as New Zealand's Employment Contracts Act 1991, which dismantled that country's arbitration system, the current coalition government tried to take the Australian system away from its collectivist origins, in which there was a powerful part for unions and tribunals, towards a more fragmented and flexible system of individual bargaining between employees and employers (without the involvement of unions).

[7] The body which will determine any complaint about a dismissal depends on the grounds of the complaint. If the employee alleges a dismissal was harsh, unjust or unreasonable the complaint will be heard by the Industrial Relations Commission, if, and only if, the Commission is unable to settle the complaint by conciliation. If the employee is alleging discrimination or breach of notice requirements (either for collective or individual dismissals), the Federal Court will hear the matter, again if, and only if, the Commission is unable to settle the matter by conciliation.

[8] The implication of these changes is that many employees of small businesses will not have access to the unfair dismissal procedures.

AUSTRALIA - COLLECTIVE REDUNDANCIES

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Social plan
...-1984[9]					The period of notice is related to the length of service and the age of the employee, but varies in different industries. Legislation in New South Wales and South Australia provides a minimum period of three months' notice.	No indemnity payments for termination of employment are required under common law. Under industrial legislation in two states and by awards and agreements, provision is made in certain circumstances for compensation for severance. The approach is typically to require a longer period of notice than the normal weekly hiring, for which the employee may be paid in lieu.	
14 December 1984- Termination, Change and Redundancy Case (TCR)[10]	Dismissal of 15 or more employees on economic, technical or structural grounds.	Situations in which less than 15 employees are made redundant.[11]	The employer must give notice to the Commonwealth Employment Service and give notice and consult each union, which has members within the employer's employment.	When there has been a failure to consult unions, the Commission may make any order to restore the parties, as far as possible, to the position they would have enjoyed has there been consultation. The Court may order an employer not to terminate certain employees if the Commonwealth Employment Service	From 2 weeks for employees who have completed one year's service to 4 weeks' notice for employees with five or more year's continuos service; and in the case of employees over the age of 45, an extra one week's notice after two years continuos service.	The Commonwealth tribunal accepted the principle that such provisions should apply to redundancy caused by technological change. The retrenched employee with a year or more of continuous service is to receive redundancy payments in respect of the continuos period of service: 4 weeks ordinary pay when length of service is	The employer must, as soon as practicable after the decision has been taken, hold discussions with the employees and the union in an endeavour to mitigate any adverse effects of the dismissals, to provide all relevant information about the proposed dismissals including the reasons for them, the number and categories of employees likely to

[9] Before 1984, there was no consistent body of principle governing redundancy, each situation was treated as a "one-off" case, and there were few precedents and little legislation.

[10] The Commonwealth Conciliation and Arbitration Commission created a general standard to which all Commonwealth awards are now conforming. That case began as a test case brought by Australian Council of Trade Unions (ACTU) which was seeking a uniform approach to the issues raised by the contemporary phenomenon of mass dismissal occurring at a time of record unemployment and high and persistent inflation.

[11] But in most cases the retrenchments concern less than 15 employees. So the TRC provisions fell very short of the legislative protections adopted in other developed countries.

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Social plan
				has not been notified of pending collective dismissals.		between 1 and 2 years, 6 weeks when length of service is between 2 and 3 years, 7 weeks when length of service is between 3 and 4 years, 8 weeks payment for 4 or more years of service.	be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Tribunals' approaches to redundancy problems vary widely. In general they have encouraged the parties to agree on procedures that mitigate the hardship of the redundant employees. In various industries they have ruled that seniority of service should determine the order in which employees are terminated, or that surplus labour be absorbed elsewhere in the employing organization (perhaps at a lower job classification paid at the employee's former, higher rate).
Industrial Relations Act 1988- Industrial Relations Reform Act 1993[12]							

[12] The redundancy provisions incorporated into these acts preserved the approach taken in the TCR principles.

AUSTRIA - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Civil Code, 1812-Works Constitution Act[1]	Austrian law incorporates a distinction between a summary dismissal (s.d.), which immediately terminates the employment contract, and an ordinary dismissal (o.d.) with notice, which ends the employment contract at the end of the period of notice. S.d.: an employment contract may be terminated without notice only for an important reason.[2] O.d.: there is no requirement to show cause or good reason in	The minimum notice period fixed by law depends on the length of time the employee has been in employment; however the periods of notice differ for white- and blue-collar workers (see footnote[3]). These periods of notice may be varied, but not decreased, by collective agreements or by agreement between the employer and employee.	Severance pay is due only if the employment relationship is terminated after a period of at least three years' service in the organization. The amount of the payment will depend on the period the employee has worked (see footnote[4]); collective/company agreements or individual contracts of employment may improve on these payments. Employees are not entitled to severance pay if they resign or are justifiably dismissed.	S.d.: the employer is not required to inform and consult with the works council before dismissal but must do so within three working days of the dismissal. O.d.: before giving any employee notice, the employer must inform and consult with the works council which then has five working days to react to the proposal; it can react in one of the following three ways: it can agree to the proposed dismissal, protest against it or show no	In the case of unlawful notice given by the employer, the employee is entitled to pay for the remaining period of time, that is, until the date when a regular termination of the employment relationship, in accordance with the period of notice, is possible. Compensation for unfair dismissal is usually limited to reimbursement of actual loss of earnings between dismissal and ruling; in the case of unfair summary dismissal, pay	The Works Constitution Act only applies to employees in establishments were five or more employees are regularly employed, which is the same limit establishing a works council.

[1] Austria has a very long tradition of employment protection. Many of the provisions relating to contracts of employment were enshrined in the Austria General Civil Code of 1812.

[2] What amounts to behaviour considered a good reason for termination will depend on whether the employee is a manual worker or a salaried employee (reasons are listed in the Business Code and in the Salaried Employees Act and are not always the same; reasons for summary dismissal may include unsuitability for service or persistent neglect of duties).

[3] Blue-collar workers: 14 days, but collective agreements often contain different provisions.

White-collar workers:

Service	Period of notice
0-2 years	6 weeks' notice to the end of the quarter year
2-5 years	2 months' notice "
up to 15 years	3 months' notice "
up to 25 years	4 months' notice "
more than 25 years	5 months' notice "

[4]

Length of service	Severance pay (months' salary)
3-5 years	2
5-10 years	3
10-15 years	4
15-20 years	6
20-25 years	9
more than 25 years	12

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
	order to give notice. A dismissal could be "socially unjustified" if it damages the legitimate and fundamental social interests of the employee or is based on the employer's reaction to certain legitimate actions of the employee. Unfair dismissal can be claimed on the grounds that it is: socially unjustified (only in the case of employees with at least six months' service); or in response to certain legitimate actions on the part of the employee (e.g. trade union activity). Prohibited grounds for discrimination: trade union membership, race, sex, marital status, religion, political opinion, national origin, disability and victims of political persecution.			reaction.[5] In an establishment without a works council, the procedure described is not applicable: an employer is free to give notice, but an appeal against it is still possible (the right of appeal goes automatically to the employee concerned; the period for appealing is within one week of receiving notice).	for notice period is required. If the court accepts the appeal, the dismissal is immediately declared invalid and, theoretically, the old working relationship resumes.	

[5] The way it reacts influences the appeal procedure.
If the works council states its acceptance of a dismissal, notice was final, there was no further appeal against it (but since 1990, appeal by the employee is allowed, if the employee alleges an unlawful motive).
If the works council expressly protests against the intended dismissal, within one week of receiving notification, the right of appeal belongs primarily to it.
If the works council does not comply with a request for appeal, the employee who was given notice has the right to lodge an appeal on his own behalf. The employee can appeal within one week of the end of the period allowed to the works council.

ANNEX C

AUSTRIA - COLLECTIVE REDUNDANCIES

	Definition	Procedural obligations	Sanctions	Notice period	Severance pay	Social plans
Ministerial Order, 1979- Works Constitution Act	There is a collective dismissal if the number of employees is to be reduced within four weeks: -by at least 5 employees in undertakings of 20-99 employees; -by at least 5% in an establishment with 100-599 employees; -by at least 30 employees in an establishment with at least 600 employees; -or at least 5 employees older than 50 years.	The local employment office has to be notified in writing of the employee concerned at least 30 calendar days before notice is given. The works council is to be consulted and shall be informed as soon as possible of any intended alterations to the establishment.	If the employer gives notice without notifying the employment office, the notice given is null and void.	Periods of notice are as for individual dismissals.	No special regulation.	The works council may make suggestions to prevent, reduce or eliminate any consequences of the measures undertaken which are disadvantageous to the employees (through transfer payments, special support for older employees to training and retraining initiatives). Social plans to be established with > 20 employees

CANADA - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Canada Labour Code (amended in 1992)- Canada Labour Standards Act[1]	An employer is free to terminate employment; however, such dismissal must be linked to good and sufficient cause. Summary dismissal is permitted in cases of serious misconduct.[2] Prohibited grounds for discriminations: trade union membership, pregnancy, participation in proceedings under industrial relations legislation or employment standards legislation, garnishment or attachment of wages.	**Two weeks for employees employed for three months or more.**[3]	An employer who terminates the employment of an employee who has completed 12 months of continuous employment shall pay to the employee a severance allowance equivalent to two days' wages for each year of service, but not less than five days' wages at the regular rate.[4]	If an employee has completed at least three months of continuous employment by the employer, the latter must give notice in writing before terminating employment.	For dismissal without notice: the employer may be ordered to pay the equivalent of the wages and benefits to which the employee would have been entitled during the notice period. For unjustified dismissal, the Canada Labour Relations Board is authorized to require the employer to pay the employee a sum not exceeding the remuneration that would, but for the failure, have been paid by the employer. The court may, in addition to any other punishment, order the employer the reinstatement of the employee in his former position.[5]	See columns "notice period" and "severance pay" (length of service).

[1] In addition, legislation at the provincial level may afford protection in relation to dismissal.

[2] The courts have considered the following behaviour as constituting sufficient grounds to justify dismissal without adequate notice: insubordination and grave discipline; incompetence; dishonesty, fraud or theft; alcoholism and drug abuse; chronic absenteeism; sexual harassment; misrepresentation of qualifications; revelation of character; disruption of corporate culture; breach of fiduciary duties.

[3] All Canadian jurisdictions have legislation requiring an employer to give notice to the individual worker whose employment is to be terminated. In addition, the Parliament of Canada, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Quebec, the Yukon and the Northwest Territories require an employer to give advance notice of a projected termination of a large scale layoff to a group of employees (for collective dismissals). In case of individual terminations, normally, the legislation provides staged increases in the period of notice based on the years of service of the employee. For example, in Quebec the notice period is:
-for less than 1 year of continuous service: 1 week;
-from 1 to 5 years of continuous service : 2 weeks;
-from 5 to 10 years of continuous service : 4 weeks;
-for more than 10 years of continuos service: 8 weeks.

[4] Only Ontario has a similar provision covering employees with five years' service or more. Both in the Federal jurisdiction and in Ontario jurisdiction, severance pay is payable in cases of both group and individual termination of employment.

[5] Nevertheless, it appears that reinstatement is not being ordered in a significant number of cases.

ANNEX C

CANADA - COLLECTIVE REDUNDANCIES

	Definition	Procedural obligations	Notice period	Severance pay	Social plans
Canada Labour Code (amended in 1992)- Canada Labour Standards Act[6]	A collective dismissal must affect at least 50 workers in the same establishment and must carried out within a period not exceeding four weeks in federal jurisdiction.	The employer must give the Minister of Human Resources Development written notification at least 16 weeks before the date of the first dismissal. A copy of this notice should also be submitted to the Minister of Employment and Immigration; to the Canada Employment and Immigration Commission; to any trade union representing the redundant employees concerned, and where the employees are not represented by a trade union, then a copy of the notice must be given to the employee.[7] As soon as notice has been submitted to the Minister, the employer must establish a joint planning committee consisting of at least four members, half of whom should be representatives of the redundant employees and the others, representatives of the employer.[8]	In addition to any notice requirement to be given to employees, see column "procedural obligations".	An employer who terminates the employment of an employee who has completed 12 months of continuous employment shall pay to the employee a severance allowance equivalent to two days' wages for each year of service, but not less than five days' wages at the regular rate.	The objective of the joint planning committee (see column "procedural obligations") is to develop an adjustment programme to eliminate the need for the termination of employment, to minimize the impact of the termination on the redundant employees and to assist them in obtaining other employment. If the members of the joint planning committee are unable to complete developing an adjustment program, or are not satisfied with the adjustment program developed, the committee may apply to the Minister for the appointment of an arbitrator to assist with their planning.

[6] In addition, legislation at the provincial level may afford protection in relation to dismissal.
[7] Such notice must contain the employer's name, location of the terminations and nature of the industry, the date on which the terminations are to occur, the estimated number of employees in each occupational classification, the name of any trade union recognized as employees' bargaining agent and the reason for the termination.
[8] Only at the federal level, in Manitoba and in Quebec joint committees of employers and worker representatives are to be created.

DENMARK - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Salaried Employees Act, law 9/6/1948, nr. 26 (FUL-Funktionoerloven) (for white collar workers)- collective agreements (for blue collar workers)[1]	Termination of employment must be considered as unfair ("arbitrary") if there is no reasonable cause, either in the conditions of the enterprise or in the behaviour of the employee, or in any other conditions relating to the employee (FUL and Main Agreement between the Danish Employers' Confederation-DA- and the Danish Confederation of Trade Unions-labour offices, 1992). An employee default which is both substantial and gross[2] may give grounds for summary dismissal without notice. Prohibited grounds for discrimination: sex, marital or family status, pregnancy, race, religion and trade union members.	The length of the period of notice varies considerably, depending on the category of employee and length of service. For white collar employee: the employer must give at least: -One month's notice, to expire at the end of the month, during the first six months of employment. -Three months' notice, to expire at the end of a calendar month, after six months of employment, but within the first three years of employment. -The period of notice above shall be increased by one month for every three years of service, starting from the fourth year of employment, until a maximum period of six months is reached after nine years of employment. For blue collar employee: two or three weeks' notice after one year's employment and four to seven weeks' notice after two to three years'	White collar employees are entitled to severance pay after long service: after twelve years' service the entitlement is one month's pay, two months' pay after fifteen years, and three months' pay after eighteen years in addition to pay during notice. However, employees have no claim to severance pay if they are entitled to a pension either from the employer or from the State. Similar rights for wage earners (blue collar) only exist when expressly stated in an agreement (and it is often the case).	Employers must observe the Main Agreement, which protects the employee against arbitrary dismissals. Notice to terminate the contract of employment will normally be in writing and contain details of the period of notice and any leave. The party wishing to terminate the contract must ensure that notice has reached the other party by the required time. Salaried (white collar) employees are entitled to ask the reason for dismissal, as are blue collar workers who have been in an undertaking for at least nine months. If they are not satisfied that the reason is sufficient cause he is entitled to have the question taken up by his shop steward (these local negotiations shall be completed within seven days of notice of dismissal being given). If this does not result in a solution the union of the employee has a right	<u>Case of unfair dismissal</u> For blue collar workers: if the Tribunal of Arbitration is of the opinion that the dismissal is neither reasonable according to the conditions of the enterprise nor by the behaviour or conditions of the employee,[3] it can decide whether the wage earner shall be reinstated in his job. If, however, there is reason to believe that the possibility of co-operation between the enterprise and the employee has been seriously damaged, or will be seriously damaged by a continuation of the employment, the Tribunal can decide that the employer has to pay compensation (it cannot exceed an amount equal to the wage of 52 weeks-before 39[4]) to the employee. The possibility of reinstatement was introduced in the Main Agreement in 1981, but until now there have	The Main Agreement applies only to those employees who have been employed for at least nine months (before 1 year).

[1] In the Danish model only few labour market issues are regulated by law; by and large, labour market issues have been regulated by collective agreement. The Danish labour market is characterized by a low level of legislative regulation and rather weak rules for employment protection.
[2] E.g. substantial absence without cause, serious breach of confidence, criminal offences committed at the place of work, or outside the place of work.
[3] An assessment of whether a dismissal is deemed to be fair or unfair must be based on all the relevant and concrete circumstances related to the dismissal.
[4] This amount is however only a maximum; within this maximum figure, the Board is free to determine compensation, taking into consideration all circumstances of the case.

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
		employment. Long-service employees, with ten to twelve years' service, may be entitled to up to three or four months' notice. However, there are still collective agreements according to which the worker is not entitled to any notice at all.		to have the question taken up with the organisation of the employer and if this also does not produce a solution the union is entitled to have the question decided by a special arbitration board- the board of Dismissals (the complaint should be submitted within seven days of the conclusion of negotiations between the trade union and employer organisation). There are no consultation procedures for terminating the employment of an individual white collar or blue collar employee.	only been a few decisions in which the Tribunal decided that the dismissed employee should be reinstated. For white collar workers, the FUL contains stipulations similar to those of the Main Agreement. It is stated that the functionaire, who has obtained the age of eighteen years, and who has been employed for an unbroken period of at least one year before he receives notice of the termination of employment, is entitled to compensation, if he is dismissed for reasons which cannot reasonably be considered as caused by the conditions of the enterprise, or by the behaviour or conditions of the functionaire. The ordinary Courts handle cases relating to compensation; the legal usage of the Courts mostly corresponds with the usage of the Board of the Main Agreement. The size of the compensation is measured by taking into consideration the seniority of the	

[5] An amount equal to the wage of the functionaire for a period corresponding to half the length of the period of notice to which he is entitled. If however the functionaire, when he receives notice of the termination, has reached the age of thirty the maximum size of the compensation is an amount equal to the wage for three months and if the functionaire has been employed in the enterprise for an unbroken period of at least ten or at least fifteen years, the maximum compensation is respectively an amount equal to the wage of four or six months.

[6] If the functionaire is entitled to a period of notice of, at most, three months, the size of the damages should be at least an amount equal to the wage for the period from the dismissal until the time of legal termination. The functionaire, who is entitled to a period of notice longer than three months, is entitled to damages the size of which must at least an amount equal to the wage of three months.

ANNEX C

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
					functionaire, and all other circumstances of the case. The size, however, cannot exceed a fixed amount.[5] There are no rules in the FUL according to which the functionaire who is dismissed in a manner considered unfair is entitled to be reinstated. Reinstatement can only be decided when stipulated in an agreement. <u>Case of termination of employment without proper notice</u> For white collar workers-rules of the FUL-: the functionaire is entitled to have damages paid by the employer.[6] For blue collar workers: rules corresponding to the legal rules of the FUL are contained in many collective agreements.	

DENMARK - COLLECTIVE REDUNDANCIES

	Definition	Procedural obligations	Sanctions	Notice period	Severance pay	Social plans
Law 4/3/1977, nr. 74-AFLM, 1/6/1994, nr. 414	The stipulations of the Act apply when an employer undertakes collective dismissals caused by one or more reasons, for which the employee have no responsibility. The Act does apply if the number of dismissals within a period of 30 days are: -at least 10 in enterprises which normally employ more than 20, but less than 100 employees, -at least 10% of the total number of employee, if the enterprise normally employs at least 100, but less than 300 employees, and -at least 30 in enterprises which normally employ at least 300 employees.	Before an employer undertakes a collective dismissal, he must as soon as possible start negotiations with representatives of the employees of the enterprise.[7] The employer has to inform also the local manpower committee in writing.[8] The information to the local committee must not, however, be given until after the negotiations with the representatives of the employees have been finished. As soon as possible, and at the latest ten days after this primary information is given to the local committee, the employer has to inform the committee of the names of those employees who are to be dismissed. A copy of this statement has to be forwarded to the representatives of the wage earners, who are entitled to submit their remarks on this matter to the committee. The earliest possible time for effecting the collective dismissals is	For the lack of the information and negotiations with representatives of the employee: fine. For the lack of the information to the administrative authority: fine plus compensation for workers.	The stipulations of the Act do not alter the obligations of the employer to give notice to the employees. If the periods of notice are longer than 30 days, the employer must give notice according to such rules. When a collective agreement provides for periods of notice which are shorter than those stipulated in the Act, the longer provisions of the Act prevail.	Until recently, employers could lay off workers and provide little or no compensation. But in 1989 the Unemployment Insurance Law was amended to require that employers pay the first day of unemployment for each insured employee who is dismissed. Since 1993, employers have been obliged to pay for the first two days of unemployment for each insured unemployment person.	Negotiations with representatives of the employee have the aim, if possible, to avoid the dismissals, or otherwise to obtain an agreement which limits the number of dismissals, or at least limits the effects of those dismissals which cannot be avoided (transfer and/or retraining) The local manpower committee, after the information, has the chance to find a solution to the problems created by the dismissals.

[7] Before and during the negotiations, the employer has an obligation to furnish the representatives of the employees with all information necessary, and he has furthermore an obligation to provide the representatives with a written statement of the causes of the dismissals, the number of employees who are to be dismissed, the total number of employees which are normally employed by the enterprise, and of the period of time within which the dismissals shall be effected. A copy of the statement has to be forwarded to the local manpower committee, which is a tripartite committee, which assists the local branch of the labour exchange service.

[8] The information made available to the local committee shall comprise the same information furnished to the representatives, and furthermore all other necessary and relevant information. Finally, the information for the local committee must contain information on the result of the negotiations with the representatives of the employees.

ANNEX C

	Definition	Procedural obligations	Sanctions	Notice period	Severance pay	Social plans
		30 days after informing the local committee. It is possible that the committee may dispense with this period and allow a shorter one.				

ANNEX C

FRANCE - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Law 13/7/1973, nr. 73-680	A dismissal is considered justified only if it is founded upon genuine and serious grounds (les causes réelles et serieuses) which may be controlled by the courts.[1] There are three basic grounds for dismissal for non economic reasons that is for the reasons related to the conduct or performance of the employee. The first two involve summary dismissal and the third, dismissal with notice.[2]	In order to claim the benefit of a period of notice the employee must not have perpetrated a major offence (making difficult, if not impossible, the continuation of the employment, i.e. summary dismissal). The duration of the period of notice is fixed by law and collective agreement: the law establishes the minimum duration of the period of notice for employees with minimum seniority, collective agreements may naturally improve upon the legal minimum. For blue collar and white collar: 0 days of notice when length of service is below 6 months, 1 month when the length of service is between 6 months and 2 years, 2 months for 2 or more years' service.	Severance pay is due only if the employee has at least two years' seniority and has not been dismissed for a major offence (summary dismissal). Legal severance pay cannot be less than an amount computed by year of employment in the enterprise: 20 hours of wages (for workers paid hourly) and one-tenth of a month (for workers paid monthly) per year of service, plus an additional payment of one-fifteenth of a month's salary per year of service over ten years.	The employer planning to dismiss an employee must, prior to the decision, summon him to a hearing by registered letter containing the reason for the hearing, the time, day and place of the hearing.[3] If, after the hearing, the employer maintains the decision to dismiss the employee, he must notify the worker of his dismissal by registered letter with recorded delivery. This letter may not be sent less than a full working day after the day of the hearing.[4] The employer must state the genuine and serious grounds for dismissal on written request of the employee. The employee must then make this request known by registered letter with notice of receipt within ten days after the day he has effectively left his job. The employer must inform him of the grounds for dismissal by		The rules are not applicable to individual dismissal in enterprises generally employing fewer than eleven employees.

[1] The law does not clarify the meaning of genuine and serious; therefore the courts were called upon to do so. A cause is genuine if it is of an objective nature, which should exclude prejudice and personal convenience. A serious cause is a cause the gravity of which makes impossible, without damage to the enterprise, the continuation of employment and which makes dismissal necessary. Prohibited grounds for discrimination: trade union members, pregnancy, origin, sex, family status, race, nationality, political opinion, religion, disability, exercise of right to strike.

[2] - Flagrant misconduct, following unacceptable behaviour on the part of an employee, such as fraud, industrial espionage or theft.
- Gross misconduct, following behaviour which precludes the continued presence of the employee in the company, such as insubordination or harming the security or interests of the company.
- All other cases, which include personal reasons such as personality clashes, continual aggressiveness, or professional reasons such as incompetence or poor performance.

[3] The purpose of the letter is thus to inform the employee of the possibility of dismissal, but not yet to let him know the grounds which might motivate it. However, during the hearing the employer must inform the worker of the grounds for possible dismissal. With a certain degree of optimism, the law aims at providing a tentative reconciliation between the two parties during which the right of the defence is guaranteed.

[4] The date of posting of the registered letter inaugurates the period of notice of dismissal.

ANNEX C

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
				registered letter with notice of receipt sent within ten days of receiving the employee letter.		
Law 3/1/1975, nr. 75-5	The law takes into account dismissals for economic reasons, both collective-see below- and individual. The employer must give genuine and serious reasons for all dismissals, both for economic and non economic reasons.			The employer may not dismiss a worker without having obtained administrative authorisation,[5] while the provision of the law of 1973 regarding the necessary procedure may still apply.		
Law 3/7/1986, nr. 86-797				Dismissal for economic reasons will no longer be submitted to any administrative authorisation.[6]		
Law 30/12/1986, nr. 86-1320				It is compulsory in all cases for the employer to state the grounds of the dismissal in writing; he must do so personally in the letter of notification of dismissal when the reasons for dismissal are economic[7] or disciplinary; in other cases he must do it only on written request of the employee.		

[5] Nevertheless, this authorisation was allowed in the 90% of the cases (Labour Ministry). Despite these numbers, employers criticized this measure, as postponed the dismissal.

[6] The abrogation of the administrative authorisation had a faint impact on employment and caused an increase of dismissals (Labour Ministry). Therefore the new socialist government increased again the role of the labour administration; the Law 2/8/1989 obliged employers to draw up a social plan and to offer the "convention de conversion" (see below). Then, the government made the procedure again stricter: the law 27/1/1993 ("loi Aubry") reinforced the control power of the administration on the social plan quality (see below).

[7] If a single employee is to be dismissed for economic reasons he is to be summoned to a hearing. Only after 7 days have elapsed can the employer then notify the dismissal by registered letter with notice of receipt containing the statement of the grounds on which it takes place. Then the administrative authorities must be *informed* of the dismissal.

ANNEX C

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Law 2/8/1989, nr. 89-549	Dismissal on economic grounds is defined as "dismissal by an employer for one or more reasons not related to the person or the workers concerned, resulting from the disappearance or alteration of (their) employment or a substantial modification of the employment contract as a result of a economic difficulties or technological change".			The employer must state in all cases, without the request of the employee, the grounds of the dismissal, in the letter notifying dismissal. For dismissal for economic reasons: the employee is requested to attend a hearing during which the employee is offered a retraining contract (convention de conversion).[8]	If an employee with at least two years' service in a company with at least eleven employees is unjustifiably dismissed, the tribunal may propose, but not enforce, the reinstatement of the employee. However, if either party refuses to accept reinstatement, then the employer is obliged to pay the employee a sum in compensation not lower than the previous six months' earning. If the employer is found to have failed to follow the correct dismissal formalities the employer must pay the employee, at most, one month's wages in compensation; the judge may not propose reinstatement.	

[8] An employee has 21 days in which to decide whether or not to take up the offer. Retraining contracts are offered individually to employees whose job have been eliminated (they must be aged under 56 year and two months -then changed in 57 years-, have at least two years' seniority in the company and be physically and mentally able to work), to enable them to learn new skills and gain further qualifications to facilitate future job placement. The scheme is jointly managed and financed by the State, the unemployment insurance organization and companies. A registered letter confirming the dismissal may be sent to the employee during the twenty-one days following the hearing, but no sooner than 7 days following the date of the hearing. If the employee makes no reply to the offer of a retraining contract during these 21 days, it is assumed that the offer is rejected. Employees dismissed for economic reasons have priority of reinstatement for a period of one year dating from the termination of their contract provided that they make the wish to be reinstated known to the employer within four months.

ANNEX C

FRANCE - COLLECTIVE REDUNDANCIES

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Social plan
Law 3/1/1975, nr. 75-5	A collective dismissal is defined as the dismissal of two or more employees on economic grounds. The law distinguishes between 4 categories of redundancy: - individual redundancy, - redundancy of fewer than 10 employees over a 30-day period, - redundancies of 10 or more employees over a 30-day period, - redundancies in the context of a firm's recovery plan/ compulsory liquidation.	For enterprises employing more than 50 employees: more tight procedures (see footnote).	It is compulsory for the employer to consult workers' representatives.[9] The dismissal must be preceded by administrative authorisation when founded on economic causes.[10]		From 1 month to 2 months, or according collective agreements.	Yes, if 2 years' service (the payment are the same as those with are due in the case of non-economic dismissal; there are no statutory requirements in this respect).	
Law 3/7/1986, nr. 86-797			From July 1986 to 31 December 1986 administrative authorisation was required only for collective dismissals of more than nine employees.				
Law 30/12/1986, nr. 86-1320		Dismissals for economic reasons of	Dismissal for economic reasons	If the dismissal is not justified by economic			

[9] *For enterprises employing fewer than 50 employees= the workers' representatives must be informed and consulted (with a precise procedure if more than nine employees are to be dismissed during thirty days: the employer must send workers' representatives before the meeting all necessary information about the planned dismissal, as he would do if he were to convene the enterprise committee-see below-); minutes of the meeting are taken and filed with the Labour Inspectorate; the law does not establish a delay between the meeting with the representatives and the request for an authorisation of dismissal sent to the relevant administration.
*For enterprises employing more than 50 employees=these are subject to the obligation to have an enterprise committee; if fewer than ten employees are to be dismissed in a period of less than 30 days, the act does not paradoxically provide for consultation; if at least ten employees are to be dismissed during a period of 30 days, the employer must send certain information at least three days before convening the committee; between the consultation of the committee and the request of the administrative authorisation to dismiss, a delay of at least 15 days must elapse.

[10] If the dismissal concerns ten or more employees during a period of 30 days or less, the administrative authority has 30 days to give its answer. For requests for dismissals in all other cases the administrative authorities have a period of seven days, renewable once, in which to answer.

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Social plan
		10 employees or more over 30 days have a slightly more complicated procedure (see footnote).	will no longer be submitted to any administrative authorisation. It is mandatory in all cases to summon the employee whom the employer plans to dismiss to a hearing with the only exception being dismissals for economic reasons of 10 employees or more over 30 days (which have a slightly more complicated procedure).[11]	reasons, if the procedure is not followed, the employer may be liable to damages.[12]			
Law 2/8/1989, nr. 89-549	Dismissal for economic reasons is defined as "dismissal by an employer for one or more reasons not related to the						The drawing up of a social plan is compulsory in all firms or establishments with 50 or more

[11] *If 2 to 9 employees are to be dismissed during a period of 30 days, the employer must convene, inform or consult employee representatives (or the enterprise committee in firms with 50 or more employees: the procedures for informing and consulting enterprise committee are more tightly-defined than those for employee representatives -see above-). The information must include the economic, financial or technical reasons for the planned dismissals, the number of employees who are to be dismissed, the job categories of the employees in the establishment, permanent or not and the planned schedule of dismissals. The employees are individually summoned to a meeting (the employer must give the employee also written information on the offer of a retraining contract; the employee has 21 days to respond to this offer) and notified of the dismissals and the administrative authorities *informed*.
*If more than 10 employees are to dismissed during a period of 30 days, the enterprise committee or the workers' representatives must be convened just as above. Additionally, the employer must provide information on all provisions aiming to avoid dismissals, limit their number and facilitate the outside re-employment of the dismissed employees. In enterprises with less than 50 employees (or more than 50 but when no enterprise committee exists) the provisions must compulsory include conventions for retraining. In all cases, within the delay granted for notification of the dismissals to the employees concerned, the employer must study the suggestions offered by the enterprise committee (or workers' representatives) and provide a detailed reply. If the enterprise employs more than 50 employees, the enterprise committee must be convened two distinct times within 7 days if fewer than 100 employees are to be dismissed, 14 days if more than 250 employees are to be dismissed. These delays can be lengthened by collective agreements.
Then the administrative authorities must be notified at the earliest, e.g. the day following the first meeting of the enterprise committee. The administration verifies within 14 days, 21 days or 30 days for dismissals concerning less than 100 employees, between 100 and 250, and more than 250 employees. The dismissal is notified to the employees concerned after a delay commencing from the notification given to the administrative authorities. This delay is of:
- 30 days when less than 100 employees are dismissed;
- 45 days if between 100 and 250 employees are dismissed;
- 60 days if more than 250 employees are dismissed.
If more than 10 employees are to dismissed during a period of 30 days, the time which may elapse between the meetings employer-enterprise committee or workers' representatives was extended: in firms with 50 or more employees, there is an obligation to hold two consecutive consultation meetings at intervals of between 14 and 28 days, depending on the scale of the dismissal (14 days for less than 100 workers, 21 days for 100-249 workers and 28 days for 250 or more workers). Besides, the administration has new time limits in which to examine the information: 21 days for less than 100 redundancies, 28 days for between 100-249 redundancies, 35 days for more than 250 redundancies.

[12] Regarding employees with 2 years' seniority in an enterprise employing more than 10 employees, damages may include:
- up to one month's wages if the individual hearing procedure has not been followed, but the economic reason is real and serious;
- an amount equivalent to the prejudice suffered if the procedure for collective dismissals for economic reasons has not been followed;
- an amount equal to at least 6 months' wages if there is no serious and real economic reason.
If the employee has less than 2 years' seniority or if the enterprise has less than 11 employees, the damages are computed in order to compensate for the prejudice suffered.

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Social plan
	person or the workers concerned, resulting from the disappearance or alteration of (their) employment or a substantial modification of the employment contract as a result of economic difficulties or technical change".						employees, where 10 or more people are to be made redundant over a 30-day period. Two supplementary measures are compulsory in the event of redundancies: -the offer of early retirement to those aged at least 56 year and 2 months (then changed in 57 years); -the offer of a retraining contract (convention de conversion) to eligible individuals dismissed for economic reasons.[13]
Law 27/1/1993, nr. 93-121				If there is no social plan or the measures proposed are inadequate, the redundancies will be considered to be null and void.			Enterprise councils or workers' representatives must be consulted about the plan before notice of termination issued. The plan must also be submitted to the Departmental Labour Inspectorate which may propose changes if it considers the measure taken to be insufficient.

[13] Under legislation passed in August 1989, the option of a retraining contract must be offered to relevant employees declared redundant for economic reasons, irrespective of the size of the company or the numbers dismissed. Relevant employees are those who are aged under 56 years and two months (then changed in 57 years), have at least two years' seniority in the company, are physically and mentally able to work.

GERMANY - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Civil Code, 1896 and the Protection Against Dismissal Act, 1969 - Works Constitution Act[1], 1972.	German law distinguishes between summary dismissal (s.d.) without notice and ordinary dismissal (o.d.) with notice. s.d: an employment contract may be terminated without notice only for an important reason[2]. o.d: employees[3] aged over 18 and with at least six months'service and employed in the same establishment or undertaking are protected against "socially unwarranted" dismissal provided the	Until 1990, statutory minimum notice periods varied for white- and blue-collar staff. Whereas the minimum for blue-collar workers was 2 weeks, white-collars employees were entitled to 6 weeks to the end of a calendar quarter. Each category was entitled to longer notice period depending on length of service, but with more favourable provision for white-collar staff.	O.d: there is no requirement to make a severance payment in the event of a lawful dismissal. However , employers may offer this, either in connection with the dismissal or as part of an inducement to the employee to accept termination by mutual agreement. Severance payments are tax free. Amount: one month salary for each year of service up to 12 years (more for older employees). However, under certain circumstances, severance payments made be deducted from any	The works council must be notified before issuing a notice of dismissal irrespective of the employee's length of service, the nature of the dismissal (ordinary or summary), the character of the employment relation, or the size of the workforce. Since procedural errors may rend the termination null and void, employers should make use of the standard forms available for notifying works councils. The works council must respond to the employer's proposal within one week (o.d.) and three days (s.d.). Its	If a labour court upholds the employee's appeal, and the employer takes no further step to seek to have this ruling reversed, then the employee has a right to reinstatement at his former conditions of employment and to full pay for the period between the expiry of the notice period and the date of reinstatement. However, an employer may deduct from any pay due sums equal to other earnings the employee had actually earned had he not wilfully refused other employment, and any sums paid to the	The Works Constitution Act only applies to employees in establishments were five or more employees are regularly employed, which is the same limit establishing a works council.

[1] It sets out the right of work councils to notification of proposed dismissals, and consultation and codetermination rights (in establishments with 20 or more employees) in the event of alterations to the establishment involving reductions in employment, closure of the establishment or important departments, transfers, amalgation and other "important changes".

[2] Such serious reasons might include : criminal behaviour by the employee, persistent refusal to comply with the contract of employment , despite warnings , deception as to the possession of skills or formal qualificationsessentila to the task. The employer must proove the xistence of an important reason to justify a s.d. A s.d must be made within two weeks of the occurrence which has prompted the dismissal. The employer must infoirm the employee of the reason(s) for dismissal in writing on request. S.d. also have to be notified to work councils.

[3] "Employee" for the purpose of the act is anyone working more than 10 hours a week or 45 hours a month on a regular basis.

[4] New legislation introduced in 1993

Years of service	Period of notice
2 years	1 month to end of a calendar month
5 years	2 months "
8 years	3 months "
10 years	4 months "
12 years	5 months "
15	6 months "
20	7 months "

Redundancy pay-collective agreement . many Cas contain clauses providing for earnings guarantess and redudancy protection for older employees, anbd compensatory paymnets for employees who are transferred or who loose their jobs. payments due under an industry agreement may be substracted from any severance payments agreed at company level under a social compensation plan.

White-collar workers:

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
	establishment in which they work has at least six employees, excluding trainees. An o.d is only fair if it is warranted by: factors related to the employee's person, factors related to the employee's conduct, or compelling operational reasons (that is on economic grounds).		unemployment benefits due. Severance pay is due only if the employment relationship is terminated after a period of at least three years' service in the organization. The amount of the payment will depend on the period the employee has worked ; collective/company agreements or individual contracts of employment may improve on these payments. Employees are not entitled to severance pay if they resign or are justifiably dismissed.	response can take three forms: it can agree to the dismissal, express an objection or, in the case of an o.d. only, lodge an objection to the proposed dismissal.[5] Appeals If no resolution is achieved and the employee wishes to contest the dismissal, they must appeal to a local labour Court. Within 3 weeks of the notice of the dismissal- attaching the opinion of the Works council, if applicable (and the employer must continue to employ the employee)[6]. Where dismissal requires the approval of an authority, then the period within which an appeal has to be lodged with the Labour court begins from the date on which the employee is informed of the authority's decision. Employees dismissed summarily can also appeal to a labour court.	employee in the form of unemployment or other social benefits. Reinstatement is rare, however. In the case of managers and executives, the employer can refuse to reinstate the employee without the need to state the reasons. Under the Protection Against Dismissal Act, the maximum sum payable in compensation is 12 months'pay, which can be increased to 15 times monthly pay for employees aged 50 with at least 15 years' service, and up to 18 times monthly pay for employees aged 55 and over with at least 20 years' service. The case of unlawful notice given by the employer, the employee is entitled to pay for the remaining period of time, that is, until the date when a regular termination of the employment relationship, in accordance with the period of notice, is possible. Compensation for unfair
Law on the equalisation of Notice Periods for wage and Salaried Employees, 1993		Under the law all employees have a minimum statutory notice period of four weeks either to the fiftieth or the end of a calendar month- removing the complication of notice being able to be given to the end of a calendar quarter for white-collar employees, provided it is the new statute which is applicable, and not a preceding collective agreement or individual contract.[4]				

[5] Consequences of works council's objection: objections to the dismissal on the part of the works council do not stop the employer from issuing it to the employee. Any works council objections to the dismissal must be appended to the notice of the dismissal sent to rth employee. However, if the works council objects to an o.d. and th employee has initiated proceedings at a Labour Court within 3 weeks of the notice being given under the Protection against Dismissal Act, then the employer must continue to employ that person if the employee requetss it until final legal settlements of the case- subject to appeal by the employer.

[6] Because of the lenghty and expensive nature of legal proceedings, employers often prefer to offer termination by mutual agreement with payment of compensation.

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
					dismissal is usually limited to reimbursement of actual loss of earnings between dismissal and ruling; in the case of unfair summary dismissal, pay for notice period is required. If the court accepts the appeal, the dismissal is immediately declared invalid and, theoretically, the old working relationship resumes.	
1996-1997						At least eleven employees (1/10/1996)

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GERMANY - COLLECTIVE REDUNDANCIES

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Social plans
Protection Against Dismissals Act, 1969-Works Constitution Act	There is a collective dismissal if the number of employees is to be reduced within 30 calendar days: -by more than 5 employees in an establishment with more than 20 and fewer than 60 employees; -by more than 25 employees or 10% of those regularly employed in establishments with at least 60 and fewer than 500 employees; - by at least 30 employees in an establishment employing more than 500 employees[7].	See column definition	Firstly, in an establishment with more than 20 employees, the employer must inform the works council of any alteration to the running of the business [8]. The information disclosure must be "comprehensive and in good time", and the employer must also consult with the works council over the proposed changes. Under Para. 17 of the Protection against Dismissals Act, any collective dismissals must be notified to the works council with the reason for the proposed redundancies, the number of employees to be dismissed, the number of employees employed and the period of time over which the redundancies are to take place. Employers and works council are statutorily required to examine ways in which the redundancies can be avoided or reduced. The employer is also required to notify the local Labour Office, (see below). Court	If the employer deviates from any company agreement on how the interests of the two sides are to be reconciled without good reason, then employees may apply to the courts for an order on the employer to make a severance payment (up to one year's pay, with additional sums up to 15 months'pay for employees over with at least 15 years' service, and up to 18 months' pay for employees aged at least 55 with 20 years' service). Moreover, the employer must compensate employees for any other financial loss suffered as a result of their non-compliance within 12 months. The same penalties apply if the employer proceeds with dismissals without having attempted to come to an agreement with the works council and employees suffer financial losses.	For many employees, notice is regulated by collective agreement. Except for the longer notice period previously granted to white-collars, the law allowed collective agreements to lengthen or shorten the statutory period, or vary the age from which service was calculated[10]	There is no legal obligation On employers to make payments over and above normal pay during notice. However, provision for a redundancy payment may be included as part of a "social plan". Many collective agreements contain clauses providing for earnings guarantees and redundancy protection for older employees, and compensa-tory payments for employees who have lost their jobs. Payments due under an industry agreement may	The "social compensa-tion plan" provides the most common form through which employees receive payments. It is a form of works agreement, concluded at the establish-ment level (but may cover more than one establish-ment in multi-plant companies) between the employer and works council. A plan may be concluded in the event of "alterations"[11]in the organisation of an establish-ment with more than 20 employees which, may entail substantial

[7] Employee here excludes executives.
[8] Entailing closures, redundancies, mergers, or fundamental changes in the conduct or structure of the organization, or of working methods which might have disadvantageous consequences for the workforce or substantial sections of the workforce.
[9] If resort has been made to a conciliation comittee during this two month period, then the overalll period for consultation will end one month after the date at which conciliation has been called, if the two month period might be exceeded.
[10] Over the course of the past two decades, many agreements have equalised notice periods.
[11] Such as: reduction in operations or closure of all or of important departments in the establishment, transfer of all or of important departments of the establishment, almagamation with other establishmnets, important changes in the organisation, purpose or plant of the establishment, introduction of entirely new work methods and production process.

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Social plans
			rulings have stated that works councils have a right to be consulted even if the percentages required by the law are not met-provided at least 5% of the workforce are affected. Works council may be able to obtain an injunction if the employer does not meet their obligations. The employer and works council must first seek to "reconcile their interest". If the two sides agree, this may culminate in the drawing up of a "social compensation plan"; in the event of a failure to agree, there is a statutory obligation to agree a social plan-with binding arbitration (the procedures are set out in the next column "social plans")			be substracted from any severance payments agrees at company level under a social compensa-tion plan.	prejudice to the staff or a large sector .
1985			<u>Secondly</u>, the employer must notify the local Labour Office, attaching the opinion of the works council. The works council should be informed at least 2 weeks before notifying the Labour Office. From Oct. 1996, the agreement setting their				An amendment to the Works Constitution Act, introduced through the 1985 Employment security Act, laid down new and more restrictive conditions under which a social plan may be obligatory[12]: In addition, the works council cannot enforce a social plan via resort to a binding conciliation award in any enterprise in the first four years after its establishment.

[12] Nr employees % to be dismissed Minimum number to be dismissed

21-59	20 %	at least 6
60-249	20%	at least 37
250-499	15%	at least 60
499+	10%	at leats 60

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	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Social plans
1996			"reconciliation of interests" between the two sides can replace a separate comment from the works council when notifying the labour office. If no opinion from the works council is available, the dismissal will be valid if the employer can demonstrate that he has informed the works council at least two weeks before submitting the notification to the labour office. <u>Thirdly,</u> there is a normal minimum of one month between the submission of the notification and the date from which dismissals can be effective. This period can only be reduced with the permission of the labour office. The labour office can also decide that a further month should elapse before dismissals become effective. Failure to supply the required notification will make the redundancy invalid.	The previous provision is subject to the new timetable introduced by the 1996 amendment to the Works Constitution Act: the employer will have been deemed to have attempted to have conducted a reconciliation of interests if they had informed the works council in "good time" and no agreement has come out about within 2 months of the start of consultation[9].			Social plans can make provisions in a variety of areas including: severance payments, loans to employees, help with finding new employment together with time off and fares, extra hardship provisions, often by setting up a separate hardship fund on which claims can be made, payment of any anniversary payments due, removal costs where appropriate, entitlement to leave and holiday bonus, continued payment of capital accumulation payments, and provisions for early retirement.

IRELAND - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Unfair Dismissals Act, 6/4/1977, nr. 10 (amended by law 1/10/1993, nr. 22[13])- Minimum Notice and Terms of Employment Act, 9/5/1973, nr. 4 (amended by the Worker Protection Regular Part time Employees Act, 26/3/1991, nr. 5: see table 2)	Irish law distinguishes between wrongful and unfair dismissal. Wrongful dismissal is a common law concept and occurs when an employee is dismissed with no, or with inadequate, notice in circumstances where the employer was not so entitled to act under the contract of employment. Unfair dismissal is a statutory concept: the Act deems unfair dismissals for trade union membership or activity, pregnancy, religion, politics, race, colour (1977), age, sexual orientation and membership of the Irish travelling community (added in 1993). A dismissal which results from the employee's	Employees who work for at least 8 hours per week, and who have completed 13 weeks of continuos service with the employer, are entitled to minimum notice periods. The minimum is often improved by collective agreement.[16]	Irish law does not distinguish in its basic guide-lines on right to redundancy payment between individual and collective redundancy. However, as one often deals with redundancy only collective dismissals, for more on redundancy, see below.	In case of individual termination,[17] although it is not compulsory, many collective agreement stipulate that notice should be served in writing, after oral and written warnings specifying what aspect of behaviour could lead to dismissal. In case of individual redundancy, employers must give an employee written notice (with copy to the Local Employment Office) at least 2 weeks before the date on which the dismissal is due to take effect. Any dismissed employee is entitled to request the employer to supply a written statement of the reasons for dismissal within 14 days. An employee who wants	For wrongful dismissal: compensation. For unfair dismissal: the Rights Commissioner or Tribunal can order any of the following: reinstatement in the employees old job (with back pay from the date of dismissal), re-engagement in a suitable alternative job, compensation by the employer of up to 104 weeks' pay (if the employee's financial loss is attributable to the dismissal; if it is not, compensation may not exceed 4 weeks remuneration).[18]	See footnote 1 for Unfair Dismissals Act and column "notice period" for Minimum Notice and Terms of Employment Act.

[13] The Act applies to any person working under a contract of employment or apprenticeship or employed through an employment agency. The Act does not apply to a person who is normally expected to work for the employer for less than 8 hours a week or who has been in the continuous service of the employer for less than one year.

[14] Generally speaking, redundancy occurs where the employer's requirements for employees to carry out work of a particular kind have ceased or diminished, or are expected to cease or diminish. Redundancy also covers the situation where the employer decides that the work should be carried out in a different place or in a different manner for which the employee is not suitably qualified or not trained.

[15] In effect, an employer can only summarily dismiss an employee in cases of very bad behaviour of such a kind that no reasonable employer could be expected to tolerate the continuance of the relationship for a minute longer. Common examples would be dishonesty or violence at work, or where the employee has wilfully disobeyed the lawful and reasonable orders of the employer.

[16] The minimum notice provisions are (for blue collar and white collar):

Length of service	Notice
13 weeks-2 years	1 week
2 years-5 years	2 weeks
5 years-10 years	4 weeks
10 years-15 years	6 weeks
More than 15 years	8 weeks

[17] Individual dismissal means dismissal for reason relating to the employee's conduct and circumstances; individual redundancy means dismissal for reasons relating to the company's circumstances.

[18] Most contested dismissals end in payment of compensation.

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	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
	redundancy[14] is deemed not to be unfair, unless the employee was unfairly selected. An employer is entitled to dismiss an employee without notice (summary dismissal) because of "misconduct"; no definition of "misconduct" is provided, and the courts have taken a restrictive view.[15]			to seek redress for unfair dismissal must, within six months of dismissal (12 months in special cases), give formal notice both to the employer and to a Right Commissioner. If either the employee or the employer objects to the case being heard by a Rights Commissioner, the employee's formal notice must be sent to the Employment Appeals Tribunal.		

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IRELAND - COLLECTIVE REDUNDANCIES

	Definition	Procedural obligations	Sanctions	Notice period	Severance pay	Premium for agreement	Social plans
Redundancy Payments Act, 18/12/1967, nr. 21 (amended in 1971, 1977, 1979, 1984, 1991, 1994)- Protection of Employees Act, 5/4/1977, nr. 7	Collective redundancies applies where, over a period of 30 consecutive days, the employer intends to dismiss as redundant at least: -5 people in a company or establishment normally employing between 20 and 49 employees; -10 people in an establishment normally employing between 50 and 99 employees; -10% of the workforce in an establishment normally employing between 100 and 299	The Act requires employers, who are planning collective redundancies, to notify and consult employee representatives at least 30 days in advance of the planned redundancies.[19] The Act also requires the employer to notify the Minister at least 30 days before the redundancies commence. The employer is required to give written notice (with copy to the Local Employment Office) two weeks in advance of redundancy to each employee		See footnote 8.	Employees who have been dismissed for redundancies are entitled to receive lump sum payments based on their age, length of service and rate of pay.[21] Excluded from the statutory entitlement are employees with less than 2 years service and those aged 66 or more.[22]		The consultation required by the Act must include the possibility of avoiding the proposed redundancies; reducing the numbers affected by them or otherwise mitigating their consequences.

[19] The employer must supply the employees' representatives with relevant information on the reasons for the proposal, the numbers proposed to be dismissed in the various categories of employee and the period envisaged for the dismissals.

[20] The 30 day notice period does not affect the individual period of notice due to each employee under the Minimum Notice and Terms of Employment Act, 1973, so that the two periods can run at the same time provided that proper notice under each Act is given.

[21] An employee who has been made redundant has a statutory right to a redundancy payment consisting of:
-a half week's pay for each year of employment between the ages of 16 and 41 years;
-one week's pay for each year of employment over the age of 41 years;
-one week's pay irrespective of service.

	Definition	Procedural obligations	Sanctions	Notice period	Severance pay	Premium for agreement	Social plans
	employees; -30 people in an establishment normally employing 300 or more employees.	concerned.[20]					

[22] An employer is entitled to claim a rebate of 60% of the employee's statutory entitlement from the Social Insurance Fund, provided the employer has complied with the rules set out in the redundancy legislation. If the employer offers an employee facing dismissal for redundancy "suitable alternative employment", and this offer is unreasonably refused, the employee is barred from claiming a redundancy lump sum.

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ITALY - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Law 15/7/1966, nr. 604	It is considered unfair a dismissal made without "just cause" (giusta causa) or "justified subjective and objective reason" (giustificato motivo soggettivo e oggettivo).[1] In any case, it is considered unfair the discriminatory dismissal, which is caused by reasons of political credo or religious faith and by belonging to a trade union.	The notice is due only to an employee dismissed for "justified reason", not for "just cause".		The dismissal is to be communicated to the employee in written form; the employee can require a written communication of the reasons.	Re-employment *or* compensation.[2]	The Act (and the relevant limitations on the employer's freedom to dismiss) applies only to company employing more than 35 people.
Law 20/5/1970, nr. 300: art. 18 (Workers' Statute)	It is a discriminatory dismissal also a dismissal caused by reasons of sex, race, and language.				Reinstatement *and* compensation equal to at least 5 months pay.[3]	Workers' Statute: only for employers (of commercial companies) with more than 15 employees in the same production unit.
Law 29/5/1982, nr. 297			[Annual salary/13,5] per year of service[4]			
At present (law 11/5/1990, nr. 108 and collective agreement)		The notice period is fixed by collective agreements: blue collar: 2 days of notice is required when length of service is below 2 weeks and 6 to 12 days thereafter; white collar: 8 days of			<u>For dismissal without "just cause" or "justified reasons"</u>:[5] for employers (of both commercial and non-commercial organisations) with more than 15 employees (5 for farms) in the same production unit or same	For employers with less than 16 employees (6 for farms): re-employment *or* compensation equal to 2.5-14 months pay.[7] There is the obligation to an extrajudicial attempt of a conciliation through the Provincial Labour

[1] The justified subjective reason is when the employee runs into a considerable non-fulfilment of contractual obligations; the "just cause", which is also to be referred to the employee's non-fulfilment as the "justified subjective reason", differs from it only for the particular gravity, which is such as not to allow the continuation, not even temporary, of the employer-employee relationship (art. 2119 civil code and jurisprudence); the "justified objective reason" is when there are reasons concerning the productive activity, the labour organization and its regular functioning.
[2] The employers can choose between the re-employment and the compensation.
[3] The employer must reinstate the employee and also pay a compensation, proportionate to the total salary and in any case not less than 5 monthly payments, as compensation for the damage for the period between the dismissal and the reinstatement. There is not the possibility of choice as in the past and the reinstatement is different from the re-employment: the first involves the payment of the compensation for the period between the dismissal and the reinstatement.
[4] The severance pay (trattamento di fine rapporto) is paid to all workers, in any case of separation and it is not considered a help for re-employment.
[5] Rules of law 604/1966 extended to small firms; rules of Workers' Statute for the others.

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
		notice is required when length of service is below 8 weeks and 15 days to 4 months thereafter.			locality and, anyway, for employers with 60 employees in his staff (even if distributed in production units or localities with less than 16-6 in agricolture-employees): reinstatement *and* compensation equal to at least 5 months pay. Besides the employee has the right to choose to compensate (15 monthly payments) rather than reinstate. The employee can (optional) request the conciliation through the Provincial Labour Office or the trade unions; often: agreement; if court: always reinstatement.[6] For formal reasons and for discriminatory dismissal: reinstatement *and* compensation; conciliation not possible.	Office or the Trade unions; if the attempt is unsuccessful, the parties can turn to a college of arbitrators.

[6] Generally employers and employees do not turn to the court, but they come to an agreement through the Provincial Labour Office or the trade unions. Following a court judgement of unfair dismissal, the employee has always the option of reinstatement.

[7] They can choose between the re-employment and the compensation, to the unlawfully dismissed employee, for the suffered damage: the compensation is determined by the judge between a minimum and a maximum fixed by the law; he must take into consideration the number of employees, the corporate sizes and employee's seniority (so the compensation can vary from a minimum of 2,5 to a maximum of 6 monthly payments, but it can be increased to 10 or even 14 monthly payments).

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ITALY - COLLECTIVE REDUNDANCIES[8]

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Premium for agreement	Social plans
1947-1991	Collective redundancies were regulated only by inter-unionagreements (lay off after a reduction or conversion in business) and by jurisprudence (but it is contradictory).		Collective redundancies were subject to procedural limits, as the obligation to a consultation with the employee representations was imposed.					
Law 23/7/1991, nr. 223	The law nr. 223 fills the gap and it carries out the community directive 75/129, identifying two hypothesis of lay off: - collective redundancies: when the firm with more than 15 employees, after a reduction or conversion in business or work, wants to dismiss at least 5 employees in 120 days, in every	Firms with less than 16 employees (rules of individual dismissal).	Obligation for the employers to a complex information and consultation with the trade union and the Provincial Labour Office (75 days).[9]	Reinstatement for the communication of the dismissal without written form, for the violation of the procedure (not only the lack of the information, but also an incomplete information cause the ineffectiveness of the dismissal) or the rules of choice (the lack of the communication of the rules or the violation of the rules).	From 1 months to 12 months plus the time required for the consultations (up to 75 days).	The employees of the firms subject to the rules of the CIGS (cassa integrazione guadagni straordinaria, a sort of redundancy fund), dismissed *ex* law nr. 223, with a seniority of at least 12 months (6 of which of effective work) have the right to a compensation (the so-called compensation of mobility)[10] for a maximum period	The firms subject to the rules of the CIGS must pay to the SS a contribution equivalent to 6 times the compensation of mobility in case of placing of mobility and to 9 times in case of collective redundancies. For both cases it is reduced to 3 times, in case of collective agreement.	The employees of the firms subject to the rules of the CIGS, dismissed *ex* law nr. 223, besides benefiting by the compensation of mobility, are registered in the lists of mobility, with the possibility of taking advantage in the search for a new employment.[11] The employees of the firms excluded from CIGS, dismissed *ex* law

[8] Unlike other European countries, this is a subject different from the subject of individual dismissal.

[9] Obligation for the employers to an immediate information in written form to the trade unions and to the Provincial Labour Office. The communication to the trade unions and the public authority must contain the information on the reasons of the redundancies; on the technical, organizational or productive reasons which do not allow alternative measures; on the number and the professional position and profile of the employees; it must contain also the possible social measures planned by the firm. The employee representatives can require a joint study (esame congiunto) in order to consider the possibility of different use for these employees, also by "solidarity contracts" (see Table 4) and the flexibility of working time (the agreements are so motivated). If agreement is not reached within 45 days, the Provincial Labour Office will act as mediator (for 30 days). If agreement is not reached during this period, the dismissal may take place. The dismissal is to be communicated individually in written form; there is obligation to notice (from 1 month to 12 months) or the compensation, which is fixed by collective agreements; a list of the personal and professional data of the employees dismissed as well as the formalities of the enforcement of the rules of choice (if they are not fixed by collective agreements, they are: dependants, seniority and technical-productive and organizational needs; in the jurisprudence the last criterion prevails) is to be communicated in written form to the Regional Labour Office, to the Regional Employment Commissions and to the trade unions.

[10] This particular unemployment subsidy is different and more favourable than the unemployment subsidy due to the other unemployed. The other European countries instead have only an unemployment subsidy.

[11] There are plans of professional qualification, of temporary social works and of facility for employers who hire them. As the unemployment subsidies, also the measures to facilitate the search of a new employment are particular for the employees registered in the lists of mobility.

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	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Premium for agreement	Social plans
	establishment, or in more establishments in the territory of a same province and this lay off is in any case be referred to the same reduction or conversion; -placing in mobility: when the firm admitted to the redundancy fun thinks it cannot guarantee the reinstatement to all suspended employees and it cannot turn to alternative measures.					of 12 months, which can be increased to 24 for those aged 40 to 50 and to 36 for those over 50: for the first year the amount of the compensation equals the redundancy fun before the dismissal, then it is reduced to 80%. Severance pay (trattamento di fine rapporto): payable in addition.		nr. 223, have the only right to be registered in the lists of mobility, not the right to benefit by the compensation.

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NETHERLANDS - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	**Notice period**	**Severance pay**	**Procedural obligations**	**Sanctions**	**Exemptions**
Civil Code	Summary dismissal (s.d.) for an "urgent" reason[1], dissolution of the contract by a cantonal court, ordinary dismissal with official authorisation from the RDA (regional labour office) Reasons (fair): employee unsuitable for the type of work, frequently absent due to illness, conduct, disrupted employment relationship or economic). Unfair: "manifestly unreasonable" dismissal: * Dismissal made on false or distorted evidence provided by the employer when applying for dismissal authorisation from the RDA. * The effects of the dismissal on the	Statutory notice period are determined by 2 elements: the frequency of pay and the length of service of an employee[2]. Notice period is calculated in one of the 2 ways, with the method yielding the longer notification period being the one which will apply: ***** Min. notice is at least equal to the interval between regular payment of wages (one week, one month, up to a max. of six weeks). * Employees are also given one week's notice for each year of service over the age of 18 up to a max. of 13 weeks. Longer notice for over-45s.	**No statutory requirement governing severance payments**, other than the right to paid notice [4] An employee's length of service and age will usually influence any level of severance pay made by collective agreement. Severance payments may be awarded in the courts as compensation for unfair dismissal and/or where the employer has refused reinstatement. Formulae to calculate the severance pay.[5]	No dismissal may take place without the prior authorisation of the RDA (except in the case of s.d.). However if an accurately prepared authorisation request is correctly presented to the director of the RDA, permission is normally granted. The only alternative to the authorisation procedure is to initiate legal action to obtain a dissolution of the employment contract in the civil courts by a judge. The application for authorisation must be made in writing, in duplicate, before giving notice to terminate and must provide the following information (details of the employee and employer; reasons for the dismissal; details of anydisciplinary action	There are no legal provisions on penalties for unfair dismissals. Compensation payments can only be awarded by the courts. A judge may also rule that an employee should be reinstated. If the employer goes to court to get a contract dissolved, but is faced with higher than expected severance pay, he may decide not to dismiss the employee after all[6].	Dismissal via the court can be instigated "at any time" even in cases where dismissal is forbidden. During probationary period, contract can be terminated without giving notice and without reason. The expiry of FT contract implies the end of the employment relationship. A notice period may be stipulated within the contract itself. However, in cases where a FT contract is renewed any termination relating to the second contract will require authorisation procedures unless there is a gap of at least 31 days between the 2 contracts.

[1] Deliberate deception on the part of the employee on hiring; persistent refusal to comply with employer's instructions, negligence or incompetence, persistent absence or lateness, theft, decepetion, drunkeness, violence, threats.
[2] Although this is not compulsory, notice should be served in writing. Collective agreements frequently stipulate this in any case failure to give the prescribed notice will result in payments of at least the notice period that should have been given.
[3] The new basic notice periods will be as follows:
* 1-5 years of service = one month notice,
* 5-10 years = two months,
* 10-15 years = three months,
* 15 years + = four months (maximum).
[4] Which may in practice be pay in lieu of notice where the employer, or both parties, wish to terminate employment immediatly.
[5] It was elaborated by the judges themselves: A*B*C, where A= years of service, B = pay, and C = correction factor.
There are other severance compensation formulae. The average severance pay is one month 's pay per year of service.
[6] In this case the employee has the right to pursue the dismissal in the courts.

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
	employee are radically out of proportion with the employer's reasons for dismissal. * Dismissal of employees about to do military service in order to circumvent their protected status while carrying out their military service. * When no account was taken of the "last in , first out" principles in selecting employees on economic grounds. * If the employee refuses to continue working on account of a "serious objection" as a result of their personal beliefs.			or action to avert an economic dismissal taken prior to moving to a dismissal; full details of company finances in the event of economic dismissal). If the RDA finds the reasons for dismissal insufficient , a term will be set within which parties must present an additional required information relating to the request. The RDA is obliged to consult a dismissal committee established within the RDA made up of at least one trade union representative and one from an employers' organisation. The employee always has a right to contest the dismissal application and is normally given up to 2 weeks to state their case; if necessary, a second hearing will take place after a further ten days. The majority of authorisation procedures are concluded within 8 weeks of application (85%), although the law aims for a period between 4 and 6 weeks.		
1995		Employers will be allowed to give notice of termination to employees at he same time as they present a request for dismissal		The dismissal permit is valid for 8 weeks once it has been issued, during which time the employment relationship may be		

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
		authorisation to the RDA (cutting the overall procedure by up to six weeks)		terminated. If the employer cannot serve notice within 8 weeks, the permit will expire and the employer will have to request another one. <u>Appeals</u> If a request for a dismissal permit is refused by the labour office, the employer still has recourse to the courts, where the contract can still be dissolved. NO appeal can be made by the employee to the RDA once the authorisation has been granted. However a employee may appeal directly to the courts (at the commission for equal treatment) within 6 months following dismissal.		
1997				The RDA procedure can be very time consuming. It is also possible to resort to the courts at the same time as applying for a dismissal permit. A written petition has to be made submitting details of the employee and the reasons for termination. By law, the court hearing has to begin within 4 weeks. An employee must be		

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
				immediately informed of the reasons for the s.d. in writing. No official authorisation is required for a s.d. However, employees retain the right to contest a s.d. in the courts.		
STAR recommendations: 1998 New legislation on shorter notice period		Reform the dismissal procedure and shorten and simplify notice. Employers will be able to give notice of termination before they have obtained authorisation from the RDA, on the understanding that notice of termination only becomes valid once authorisation has been granted. If the employer has already obtained authorisation before giving notice of termination, the notice period can be shortened by one month. However, the **minimum notice period must not be shorter than one month[3].**				

NETHERLANDS - COLLECTIVE REDUNDANCIES

	Definition	Procedural obligations	Notice period	Severance pay	Social plans
Civil Code and the 1976 law on collective dismissals (*Wet melding collective ontslag)*	A collective dismissal is defined in law as the dismissal of: - 20 or more employees over a three-month period in the catchment area of a single regional employment bureau. Some collective agreements may provide for a more restricted definition: for example the textile agreement (1996-1998) defines as a collective dismissal the dismissal of 10% of the workforce, or 25 employees regardless of workforce size.	Employers must notify the RDA and the relevant trade union in writing of the intention to carry out a collective dismissal. Although there is no specific time limit for this notification stipulated in the law, it does say that notice must be given as early as possible. One month's waiting time is then allowed before the RDA will begin its authorisation procedure, except in the event of bankruptcy. Where the RDA or the company or the trade union involved feel that the month's delay could harm the chances of re-employment of those to be dismissed or if employees are to be re-deployed, a special dispension may be granted to the RDA by the Minister of Labour to proceed the authorisation without delay. The notification must include: the justification for the proposed dismissals; the numbers of employees affected, the overall number of employees in the establishment (selection criteria: usually on a "last in, first out" basis[7]; some agreements may require a balanced distribution of employees to be dismissed between age groups-see below); the expected date at which the dismissals will take effect; any measures to compensate employees; details of consultation with the works council (if established). The works council must be informed of proposed collective dismissals and allowed	Periods of notice are as for individual dismissals.	No legal entitlement, but social plans often contains severance pay or top-ups to unemployment benefits. Two formulae are commonly used in case of collective dismissals. Some Collective agreements may stipulate that additional payments have to be made (they may be included in a social plan). The employee's length of service and age will usually influence the level of the severance pay (see next column). Most agreed severance payments are as one-off payment.	A number of Collective agreements stipulate that a social plan must be drawn up between unions and employers in cases of collective dismissal to provide compensation for employees: however, this is not a statutory requirement. Social plans specify: - Relocation opportunities. - Additional severance payments and/or top-ups to unemployment benefits[8] - Re-training and outplacement services. - Early retirement.

[7] Until the beginning of 1994 a law on the dismissal of older workers stated that in cases of collective dismissal, employers could weight the number of dismissals more heavily towards the over 55s in the company. Dismissing those over 55 was felt to be more financially fair and socially acceptable as they were liable, by dint of their longer service and their age, to higher benefits and to more generous compensation payments. Often they would be entitled to take up early retirement options within a few years and therefore, the argument ran, would be less likely to suffer financial hardship through the dismissal than their younger colleagues might. However in the face of its costs, this law was abolished.

[8] For example, the printing industry agreement (1996-1997) states that unemployment benefit will be topped up to 95% of previous earnings in cases of collective dismissals, provided the top-up does not amount to more than 20% of previous net pay. Depending on the age of the employee, this top-up is paid for between 13 and 58 weeeks. Employees aged over 57 years are entitled to have their benefit made up to 100% of earnings for 18 months, and then at gradually reduced amounts until retirement age.

	Definition	Procedural obligations	Notice period	Severance pay	Social plans
		to give its advice prior to the final implementation of the dismissal. Although there are no legal requirements governing the precise contents of the consultation process for collective dismissals with the works council, the RDA can (and often does) delay the authorisation procedures if it judges that insufficient consultation has taken place. The RDA has to be sure that alternatives to dismissal were sought by the company, and that it has reduced to a minimum the negative effects of the dismissal on the workforce.			

NEW ZEALAND - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
…-1970[1]						
IC & A[2] **Amendment Act, 1970**[3]**- IR** [4]**Act, 1973**	Definition of personal grievances: for wrongful dismissal. The Act, 1973 widened the provisions to include unjustifiable dismissal and not just wrongful dismissal and, therefore, enlarged the operation beyond those cases where proper notice had not been given. An employee can use the personal grievance procedure also where he has been discriminated against. Prohibited grounds for discrimination (unjustified dismissal): sex, marital status, religious or ethical belief, colour, race, ethnic or national origins and pregnancy; the Human Rights Act, 1993 added age, disability, political opinion, employment status, family status and sexual orientation.			Every awards and collective agreement must include a "model" disputes procedure along the following lines: -if any worker believes he has ground for a personal grievance then he will first submit it to his immediate supervisor; -if this step should fail, the worker can notify his union representative who will take up the issue with the employer involved; -if settlement is not reached at this level then a written statement of the grievance is to be put before a grievance committee; -the issue, if not settled by the grievance committee, is to be referred to the Industrial Commission (now the Arbitration Court) for a decision: the Court's decision is binding on the parties.[5]	Settlement in favour of the worker may include one or more of the following solutions: a reimbursement of wages lost, reinstatement and a compensatory payment for distress, humiliation, loss of reputation and the extra difficulty of finding alternative employment (basic award under statute is 3 months' pay).	

[1] Up to the end of the 1960's, New Zealand had no established procedure for the examination of grievances.
[2] IC & A= Industrial Conciliation and Arbitration.
[3] The Act introduced a standard procedure for settling personal grievances and removed what many considered one of the most serious defects in the legislation covering industrial relations.
[4] IR= Industrial Relations.
[5] Few actions are actually brought for a number of reasons: court proceedings involve cost and delay, there is little chance of reinstatement and the damages potentially recoverable for weekly or fortnightly employees must inevitably be small.

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	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Labour Relations Act 1987, n. 77[6]						
Employment Contracts Act 15/5/1991, n. 22[7]	The reasons for dismissal (justifiable dismissal) are connected to the employee's lack of capacity for the work or his conduct or performance on the job. In certain exceptional cases, such as serious misconduct, summary dismissal (dismissal without notice) may be justified.	No specific period of notice is required by statute. The period of notice is open to negotiation at the time a contract is drawn up, but is generally linked to the importance of the employee's position, seniority, length of service, and to the pay period. While a shopfloor worker would generally be covered by one week's notice, a senior employee could be required to give and could expect to receive between 3 and 12	It is not governed by statutory regulation but is a subject for negotiation between the parties.	Every employee has access to a personal grievance procedure in the event of unfair dismissal (previously, only workers who were members of unions could use the personal grievance procedure[8]); so an employer has to have good reason to justify the dismissal and must ensure that is carried out in a procedurally fair manner. The giving of a warning may be considered a necessary part of the		

[6] Collective bargaining and labour market flexibility in New Zealand are closely associated issues, in a negative way. Prior to May 15, 1991, the basis of industrial law in New Zealand was the Labour Relations Act 1987. There was a centralized collective bargaining system whereby an agent from the union representing a group of workers in a particular occupation negotiated a collective agreement, or awards, with the employers' representatives; both employers and employees were bound by the resulting award. The result was the development of uniform conditions of employment and wages for workers doing the same work. The system was generally considered to be inflexible, as it did not adapt to the particular circumstances of individual employers and workplaces.

-In the period up until the late-1980s the wage formation process is best described as being a "multi-tiered" system with a range of elements including: awards, which set minimum wages for various jobs at a national level; registered collective agreements which set minimum wage rates for various jobs at the enterprise level; informal house agreements, setting paid rates for particular jobs at the enterprise level; the national minimum wage; and general wage adjustments made by the government or by the arbitration court.

-The Labour Relations Act 1987, which abolished the IR Act 1973, was intended to obtain greater flexibility in bargaining structures: it was allowable for only a single agreement to cover any group of workers, thus ending multi-tier bargaining, with the aim of encouraging enterprise and industry-based agreements; but in practise, unions preferred to keep their members on awards. Only unions, and not employers, were given the right to maintain the award coverage or to take the employer out of this system and negotiate a separate agreement.

-The Employment Contracts Act 1991 encouraged decentralised enterprise bargaining: the coverage of collective bargaining fell by about half in three years (May 1991-May 1994), to a level of about 40 per cent of all employees, although it appears that it may now be stabilising; this decrease is almost entirely due to a fall in multi-employer bargaining and its replacement by enterprise-based bargaining as the norm, coupled with a growth in individual employment contracts.

[7] This Act enables each employee to choose either:

-to negotiate an individual employment contract with his or her employer; or

-to be bound by a collective employment contract with his or her employer is a party.

Also employers have this option; and they are free to decide how they will bargain e.g., at the workplace level, at the firm level, or in conjunction with other employers.

The Act allow employees to determine who should represent their interests in relation to employment issues; unions have lost the exclusive right they previously enjoyed to negotiate collective agreements (the reforms have resulted in a market decline in union membership and collective bargaining); now, any person, group or organization can be authorized as a bargaining agent; unions now have to compete to prove that they will provide the best bargaining agents in any contract negotiations. However, employees are provided with a certain amount of protection in the form of statutory minimum requirements with respect to such things as wages and leave.

Unemployment, having increased gradually during the 1970s and early 1980s, rose more rapidly between 1987 and 1991, from just under 4 per cent to nearly 11 per cent. Since 1991 there has been a significant employment growth, but unemployment level remain higher than a decade ago; unemployment reached just over 6 per cent at the end of 1995.

[8] An employer was able to terminate the employment of a non-union employee by the giving of reasonable notice or by a payment in lieu of notice.

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
		months' notice.		procedure; also sufficient opportunity for the employee to effect the required improvements must be given (for a dismissal on *performance grounds*). Before dismissing for *misconduct* the employer will generally be required to inform the employee about the complaint, to conduct a fair and reasonable inquiry into the grounds for dismissal and to give the employee a genuine occasion to explain his conduct. Should the problem proceed to the point of dismissal, the employer must provide the employee with the reasons for dismissal. The employee is able to require a written statement of the reasons within 60 days of being dismissed, and has 90 days from the date of the alleged grievance to submit a personal grievance. If discussions between the employer and the employee do not resolve the issue, the employee must provide the employer with a written statement of the nature of the grievance and the remedy sought. If the employer is not prepared to grant the remedy, then, within 14 days, the employer must give the employee with a written response including the employer's		

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	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
				view of the facts and the reasons. Where the employee is not satisfied with the response, or where a response has not been given, the employee can refer the grievance to the Employment Tribunal.		

NEW ZEALAND - COLLECTIVE REDUNDANCIES

	Definition	Procedural obligations	Sanctions	Notice period	Severance pay	Social plans
…-1982[9]						
SR[10] **July 1982/161**[11]	No special statute on collective dismissal.			No special regulation.	The sum paid as redundancy compensation must not be more than 8 per cent of the annual earnings for the last year of employment and 4 per cent of the previous 19 years. The maximum compensation can be seen as one month's pay for the last year and two weeks pay for further years of employment up to 19 years' service. All workers with less than one year of employment do not qualify to receive any redundancy compensation.[12]	
Case law, 1991 and employment contract		Inform and consult with trade union (employee representatives only if required by contract).	Adjudicatory bodies have jurisdiction to examine dismissals for reasons of redundancy to determine whether the redundancy was in fact for a genuine reason and procedurally fair. But the bodies do not have jurisdiction to substitute their judgement for that of the employer in deciding whether or not a redundancy was		No special regulation. Severance pay is not governed any more by statutory regulation, but is a subject for negotiation between the parties.[13]	The consultation with the employees and their representatives must give them a real opportunity for considering any constructive suggestions they may submit. The employer is required to consider alternative options to redundancy, such as retraining, transfer relocation, voluntary redundancy

[9] There were no statutory provisions in this area (the Labour Government's Severance and Re-employment Bill introduced in 1975 never became a statute) and the only support schemes were those included in a few individual collective instruments. These tended to offer very limited concession (for instance, some instruments merely stipulated that the union be advised of likely redundancies).
[10] SR= Statutory Regulations.
[11] The clear need for some statutory provisions relating to redundancy was finally met in 1982.
[12] For the first time, the term "compensation for redundancy" was defined as "…all payments that a redundant employee is entitled to receive from his employer by reason of the termination of the redundant employee's employment".
[13] Nevertheless, where severance is a result of redundancy, the Employment Tribunal, Employment Court or Court of Appeal has jurisdiction, in the absence of express contractual provisions, to determine what is fair and reasonable as regards redundancy payment in any given situation.

	Definition	Procedural obligations	Sanctions	Notice period	Severance pay	Social plans
			necessary in terms of the business's operational requirements. However, in the determination of procedural fairness, they can examine whether the employer considered other options as an alternative to redundancy.			and early retirement.

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SPAIN - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
Law 10/3/1980, nr. 8 (Workers' Statute)	It requires a cause for a dismissal to be considered fair. There are two sorts of reasons justifying an individual dismissal: disciplinary reasons and objective grounds.[1] It is considered null and void the discriminatory dismissal, which is caused by reasons of sex, race, social condition, religious or political ideas, language and by belonging to a trade union.		For disciplinary reasons: no severance payment is required. For objective grounds: severance payment is required at the rate of 20 days (this means 20 days wages per year of seniority, with a maximum of 1 year wages).	The dismissal is to be communicated to the employee in written form, specifying the reason for the dismissal. The worker may accept the situation or sue the employer for unfair dismissal. The latter is the usual case and when this happens, the two parties have to go through specific arbitration procedures to see if they can reach an agreement. The bargaining proceeds at the Mediation, Arbitration and Conciliation (MAC) units. If an agreement is reached -case a- (almost all dismissals are solved through a bargaining -mostly at the MAC units, but also at the court, before trial-: this happens in around 75 per cent of initiated dismissals), stating some further severance payment, the employer accepts that dismissal was unfair. If an agreement is not reached -case b-, the worker may file a claim for unfair dismissal. In the court, there is a new	For an unfair dismissal: the employer can choose between the reinstatement (plus the procedure wages, that is the wages for the period going from the dismissal to the final decision by the courts, if that stage is reached) and the compensation (the rate for severance payments is 45 days -meaning 45 days wages per year of seniority with a maximum of 42 months wages- plus the procedure wages). For a null and void dismissal (always for discriminatory reasons): the worker has to be reinstated (and the procedure wages paid). Also the non-fulfillment of the requirements for the mandatory advance notice and for written communication to the worker (formal reasons) could lead to the nullity of the dismissal, but the employer can choose between the reinstatement and the compensation (the rate is 45 days).	The dismissal for objective grounds can be used only by firms with less than 50 employees. For an unfair dismissal: compensation is reduced by 25% for small firms employing fewer than twenty-five workers, with 40% of the outstanding amount paid by the wages guarantee fund.

[1] Disciplinary reasons, when the worker does not properly perform his duties. Objective grounds which can not be attributed to the worker (this is known as the "objective dismissal"); this includes dismissals for economic, technological, organizational or productive reasons.

ANNEX C

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
				conciliatory meeting between the two parties; if no agreement is reached, the judge has to make a decision, declaring the dismissal fair, unfair or null and void.		
Law 19/5/1994, nr. 11		Zero days of notice when length of service is below 15 days for blue collar workers or below 1 month for white collar workers. Thereafter (only for objective dismissals): one month when length of service is below one year, 2 months when length of service is between one and two years and 3 months for two or more years' service.		In case a (see below), if the worker prefers to continue the dispute, the employer will have to pay only the wages for the period going from the dismissal to the attempt of conciliation (and not to the final decision by the courts).	The non-fulfillment of the requirements for the mandatory advance notice and for written communication to the worker only makes the dismissal unfair.	The dismissal for objective grounds must affect less than 10 per cent of the total workforce (otherwise, the firm would have to follow the administrative procedure for collective dismissals).
Decree 17/5/1997, nr. 8[2]	The law clarifies the "justifiable" grounds for dismissal, which from now on can be economic, technological, and organizational as well as due to changes in cyclical demand.[3]				For new permanent contracts of employment (aimed at young and disadvantaged workers: aged 16-28, over 45, disabled, fixed-term employees or unemployed for at least one year),[4] payment for unfair dismissal is reduced to 33 days per year of seniority, with a maximum of 24 months wages.[5]	

[2] The labour market reform pact, agreed on 8 April between employers and unions, entered into force on 17 May in the form of two separate decrees published in the Spanish Official Bulletin. The aim is to reduce dismissal costs in exchange for greater stability in the labour market (the high unemployment rate has been blamed in part on the fact that employers favour hiring on fixed-term contracts to avoid the prohibitive dismissal costs). According to the national office for employment, INEM,-July 1997- almost 20,000 permanent employment contracts have been signed since 17 May, in the wake of the new labour reform (some 80% of the total convert existing temporary contracts into permanent ones, while the rest are for new recruits; about one third of the new contracts covers recruits under the age of 29).

[3] Before grounds for "justifiable" dismissal were vague, which means that most cases of unfair dismissal came before the labour courts and resulted in high severance pay settlements.

[4] The incentives available from the Government in order to stimulate the creation of new permanent contracts take the form of a reduction in employer social security costs of between 40% and 60%, depending on the person who has been hired, for the first two years of the contract.

ANNEX C

SPAIN - COLLECTIVE REDUNDANCIES

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Premium for agreement	Social plans
Law 10/3/1980, nr. 8 (Workers' Statute)	Collective dismissal grounded on economic and technological causes; there is a threshold for collective dismissals of two or more employees.	In the case of firms with less than 25 workers, the Public Administration pays, through the "Wage Guarantee Fund", 40 per cent of the severance payment *agreed*.	Obligation for the employers to an information and consultation with the trade union and the labour authority (60 days).[6]		As for individual dismissals.	No special regulations.	Employers have boost to the agreement with the trade unions, as only in this case they are sure that the administrative authorities will not oppose to dismissals.	Social plan is not required in legislation.
Law 2/8/1984, nr. 32		The law established that the "Wage Guarantee Fund" pays 40 per cent of the *legal* severance payment.						There is often an agreement with the trade union (it usually provides for plans of professional qualification and benefits, at least 80% of the last six months' worked average wage).
Law 19/5/1994, nr. 11	The firm can initiate a collective dismissal if the dismissal affects - over a period of 90 days to: 10 per cent of the workers for firms with employees between 100 and 300, 10 workers for firms with less than 100 employees, 30 workers for firms	If the number of dismissed employees is smaller than 10%... (see above): individual dismissals. If the firm has less than 50 employees, the bargaining period of the procedure is halved (15 days).	The period stipulated for this procedure is 45 days: 30 for the bargaining period and 15 (instead of 30) for the labour authority decision.	It prevails in the jurisprudence a rigorous trend: collective redundancies must help to overcome the economic crisis of the firm. For the lack of the administrative authorization: null and void (reinstatement of the worker with payment of the				The law establishes the obligation of a social plan for firms with more than 50 employees.

[5] Severance pay remains unchanged at 20 days for "justifiable " dismissal and 45 days for unfair dismissal.

[6] The procedures start when the firm sends a written communication to the labour authority and opens a 30 days bargaining period with workers' representatives over the precise terms of the dismissal. The communication to the labour authority and to the legal representatives should be accompanied by all the necessary documentation justifying the reason for the dismissal and the measures which are to be adopted, in the term prescribed by regulation. If an agreement is reached, it is notified to the labour authority who certifies it. If an agreement is not reached, it is up to the labour authority, who has to decide (through strict controls) whether the procedure is accepted or rejected.

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	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Premium for agreement	Social plans
	whit more than 300 workers (instead of the previous threshold). The legally acceptable causes for collective dismissals have been expanded to include production and organizational causes.			outstanding wages).				

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UNITED STATES - INDIVIDUAL DISMISSALS

	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
-[1]	The United States is one of the few countries in the world which still takes in the employment-at-will concept; this means that workers may be dismissed for a good reason, a bad reason or no reason at all. Nevertheless, protection from arbitrary termination of employment may be given to American workers. Unionized employees may be safeguarded under enforceable union contracts or collective agreements which often make condition that dismissals be for a valid reason ("just cause").[2] Then, employees may have recourse to anti-discrimination statutes; prohibited grounds for	There is no legal requirement for notice to be given prior to termination of employment. Collective agreements usually include provisions for a reasonable period of notice (on average, 9,62 days according to a study about 1552 labor contracts signed between 1970 and 1990).	Severance pay is usually governed by the terms of the collective bargaining agreement and is an increasing function of seniority (on average, approximately 4 days' pay per year worked at the firm, according to a study about 1552 labor contracts signed between 1970 and 1990).	There is no legal policy or statute which requires the employer to grant the worker a fair hearing or follow any other natural justice process before dismissing him. Typically, collective agreements provide a mechanism for challenging dismissals for cause, normally through the availability of a grievance arbitration procedure or other alternative dispute settlement mechanism to review dismissal decisions.	Under the NRLA and other statutes, employees are provided with specific remedies where a dismissal has been found to be unlawful. These remedies may include reinstatement and the reimbursement of back pay as well as traditional remedies of damages.	

[1] With the exceptions of the State of Montana (in 1987, Montana passed a legislation requiring firms to have a just reason to fire a worker) and the Commonwealth of Puerto Rico and Virgin Islands (they have severance pay statutes applicable to wrongful discharge actions), as yet there is no legislation specifically focused on termination of employment. However, other legislation is related with this issue: the National Labor Relation Act, 1935 (NLRA: governing collective bargaining agreements and protection of freedom of association) and statutes concerning discrimination.
Besides, an attempt has been made to provide legislative guidelines for dismissals under a *Model Act*. In 1991, the National Conference of Commissioners of Uniform State Laws adopted a Model Employment Termination Act which would protect workers employed on average 20 hours a week for at least 26 weeks in the preceding year if they are dismissed without good cause by an employer of at least 5 persons; remedies would include reinstatement and back pay or severance pay. Besides, someone (Krueger, 1991) has argued that firms may prefer clearly codified unjust-dismissal legislation, with limited liability, to the greater uncertainty of a common law doctrine, opened to interpretation by the courts and to the risk of very high damage awards.

[2] The National Labor Relations Act (NLRA) includes procedural requirements on termination of employment and also has an indirect effect on dismissal law by giving unions the opportunity to bargain for a just cause or valid reason provision in collective agreements. However, the steady decline in union density, from over one-third of the workforce in the 1950s to about one-seventh today, means that this does not counterbalance the limited legal protection of individual employee rights.

[3] -Implied contract of employment: many State courts have held that an implicit contract exists between an employer and his employee which binds the employer to statements made in personnel handbooks, company manuals or oral promises.
-Implied covenant of good faith and fair dealing: this theory holds that a duty of good faith and fair dealing, leading to an assumption that dismissals should be fair, is owed in the performance and enforcement of all contracts.
-Public policy: the public policy exception under case-law is available largely to protect employees from dismissal in those situations where they refuse to commit an illegal or unethical act requested by the employer or where they choose to exercise a statutory right.

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	Definition of unfair dismissal	Notice period	Severance pay	Procedural obligations	Sanctions	Exemptions
	discrimination: trade union membership, age, race, national origin, sex, religion, disables persons, pregnancy, childbirth or related medical conditions. Besides, the employer's right to dismiss at-will employees has been diminished by State court rulings in several jurisdictions in the 1980s (even if without uniformity); exceptions recognize by state courts may be arranged into three main classes: *implied contract of employment, implied covenant of good faith and fair dealing, public policy*.[3]					

ANNEX C

UNITED STATES - COLLECTIVE REDUNDANCIES

	Definition	Exemptions	Procedural obligations	Sanctions	Notice period	Severance pay	Social plans
…-1988[4]							
Worker Adjustment and Retraining Notification (WARN) Act, 4/8/1988[5]	The WARN concerns employers with 100 or more employees. - For 50 or more employees in case of plant closure during any thirty-day period. - Mass lay-off for 50-499 (if they make up at least 1/3 of the workforce) in case of mass lay-off - 500 or more in case of mass lay-off.	In addition to not covering small employers, employers are exempted for a number of reasons.[6]	The notice must be given to the employees or their union representatives, as well as to State and local officials. Provisions relating to redundancies may also be included in collective agreements. Under a typical agreement, employers are obliged to bargain over the effect of the redundancy and must notify the representatives union; however, employers are under no legal obligation to consult with or inform the workers themselves about operational modifications or plans leading to redundancy.	Penalties for failure to provide the required advance notice include back pay and benefit for each displaced worker for each day of violation and a fine of $500 per day for failing to notify local governments.	The WARN requires employers to give 60 days' advance notice of redundancies, plant closure or mass lay-off of workers.	No, only if established by collective agreement.	Social plan is not required.

[4] As of early 1988, there was no federal law and only a few State laws relating to advance notice. Three States-Maine, Wisconsin, Hawaii- required advance notice of plant shutdown. Connecticut did not require advance notice, but did require nonbankrupt firms to maintain health insurance and other benefits for up to 120 days for worker unemployed because of plant shutdowns. Massachusetts, Maryland and Michigan all had voluntary programs in which firms were urged to provide advance notice and/or to continue benefits. South Carolina required employers to give workers two weeks' notice before shutting down but only in situations in which employees were required to give advance notice before quitting.

[5] Given the increase in the number of plant closings and lay-off in the US industry in the late 1970's and the early 1980's, a growing number of labor contracts and legislative initiatives were designed to regulate plant closings.

[6] Employers are exempted if:
-they provided reasonably accessible alternative work opportunities;
-if business circumstances that could not be "reasonable foreseen" occur or a natural disaster caused the shutdown;
-if the workers to be displaced were hired with the understanding that their employment was limited to the duration of a particular project;
-if the reductions were caused by labour disputes;
-if they are actively seeking ways to avoid the shutdown.
