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**Reflections On Employment Protection Legislation:
An International Comparison**

Abstract

In Europe, as in the rest of industrialized countries, reforms of the labour market have generally concerned employment protection legislation (EPL). One of the main missions of this legislation is to insure security for workers, particularly in case of redundancy. The object of this article is to compare the strictness and the degree of rigidity of EPL in two different economies, namely, Canada and France. This choice is justified by the fact that the labour market policies in both countries do not have the same orientation and are based on different ideological references.

Keywords: *Employment Protection, France, Canada, Security, Unemployment*

1. Introduction

In Europe, as in the rest of industrialized countries, the reforms of the labour market have generally concerned employment protection legislation (EPL). One of the main missions of this legislation is to insure the security of workers, particularly in case of redundancy (Cazes and Tonin 2010). Nevertheless, the notion of security covers other dimensions, such as the possibility of reinstating

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easily and quickly finding a new job and security of income for those who participate in the labour market (Coxkx and Van Der Linden 2010).

Several theoretical studies have attempted to analyze the effects of employment protection policies, including firing costs on firms' performance. In this sense, Nickell (1978), Bentolila and Bertola (1990) and Bertola (1990) show that high dismissal compensation costs for firms reduces both the creation and elimination of jobs (Blanchard and Wolfers 2000, Mortensen and Pissarides 1999).

In addition, in most Western countries we see the emergence and development of atypical forms of employment, associated with the need for professional security compatible with the constraints on flexibility required by companies. In this context, the concept of *flexisecurity* has become one of the political strategies to adjust employment regulations in response to the transformations of the labour market structure (Bevort and *al.* 2006).

Unlike other public policies, this approach focuses on the protection of individuals rather than job protection. According to the European Commission, *flexisecurity* should answer the question of "how to maintain and improve competitiveness while strengthening the existing social model." This concept was introduced for the first time in a publication of the Danish Ministry of Labour in 1999, in which the "golden triangle" was described as an approach that combines the flexibility of the labour market (low firing costs), generous unemployment compensation, and active employment policies (executive education system). However, in the context of the economic crisis which accentuated the unemployment rate, the Danish government, which seeks to control its public spending, has established a set of reforms to favour the dynamics of the labour market. Among these reforms, the government introduced amendments to the unemployment insurance system by reducing the duration of unemployment benefits from four to two years. This questioning of *flexisecurity* is part of a process of developing a new concept, called *mobication*. According Meiland (2010), the concept of *mobication* is a contraction of the words *mobility* and *education*. This new approach is based on the development of human capital in order to increase mobility in the labour market by directing labour to those industries in short supply of it.

In the same framework, Romih and Festić (2008) discussed the relevance of reforms such as *flexisecurity* in the economies of Central and Eastern Europe. They emphasized that it is necessary to review the relevance of individual forms of labour market flexibility and security while taking into account the competitiveness of the economy and social security of workers. Moreover, they explained that the successful implementation of *flexisecurity* requires consideration of several parameters, such as ethics, local values and social traditions. In this perspective, they

point out that the adoption of certain *lexisecurity* reforms in economies where legislation is weak could lead to negative effects on social security for workers and inefficient public spending increases (Kluwe and al. 1999).

Boeri and Garibaldi (2005) show that in the case of Poland, for example, the transition difficulties between the public and private sectors explain the low employment rate of unemployed persons. In response, Poland and Slovenia each offered a program of public works in order to create opportunities for full-time employment for the unemployed. It should be noted that the low professional and spatial mobility of workers in Poland can partly be explained by the increase in the number of unemployed (Boeri and Garibaldi 2005).

In a general way, EPL represents all the regulatory measures which govern the termination of employment, severance pay, periods of advance notice and other procedural obligations (Cazes and Tonin 2010). In this perspective, Botero and al. (2004), being interested in the determinants of the employment regulations, show that the latter are not of an economic, but legal nature. The legal system includes, according to these authors, three branches: labour law, the law of the collective relations, and the law of social security.

In this sense, the World Bank, in terms of labour law, maintains three basic indicators. They concern the flexibility of recruitment, the flexibility of redundancy, and the conditions of employment. Besides, the OECD had developed indicators of the degree of job protection. These indicators measure the procedures and the costs related to redundancies of workers, and the procedures for hiring workers under fixed-term or temporary contracts. In the compilation of its data, the OECD takes into account the existing legislation, the collective (bargaining) agreements, and the jurisprudence of member countries.

The object of this article is to compare the EPL in two different economies, namely, Canada and France. This choice is justified by the fact that the characteristics concerning and public policies underlying the labour markets of both countries are different. Indeed, the 'common law' countries (the United States, Canada, Australia, New Zealand, the United Kingdom) appear as having weak regulation of employment with respect to the other countries of Western Europe (Netherlands, Germany, Italy, France, Greece, Spain, Portugal) (Kirat 2006).

Tonin (2009) presented a study of employment protection legislation indicators for a wide group of Central and East European countries during recent years. Using the OECD methodology (OECD 1999), they took into account labour legislation and information from collective agreements. However, because of the difficulties in collecting and processing data for all countries, only the regulations contained in Labour Codes and other relevant laws were included in their study (for Poland the chosen law was that of 31 December

2004). They showed that in the countries studied informal practices (such as employment without a contract) were widespread and skewed the appreciation strictness of regulations on employment protection. As a result they explained that the inclusion of these informal practices in the indicators of EPL is a very difficult task owing to the lack of detailed information.

In another study on labour markets in the economies of Central and Eastern Europe, Nesporova Cazes (2003) emphasized the importance of adopting an update of EPL strictness in this region.

According to Boulhol (2014), Poland is close to the OECD average in terms of EPL stringency for permanent contracts. In this context the author shows that regulation related to the definition of unfair dismissal is also one of the least constraining among OECD countries (OECD 2013). Furthermore, he explains that the Polish labour market is heavily segmented; the share of temporary employment in total dependent employment is above 25% (Baranowska and al. 2011).

Taking this into account, Blanchard and Tirole (2003) examined the empirical relationship between employment protection and unemployment in the context of an international comparison. They showed that differences in employment protection between the United States (lower) and Portugal (higher) are not reflected in significant differences in unemployment rates in the two countries. Instead, over the past thirty years, their unemployment rates have been very similar. However, according to them, the duration of unemployment in Portugal was on average three times higher than in the United States (Blanchard and Portugal, 2001).

We know that measuring employment protection is a difficult task, not only because of the variety of institutions, but in addition the indicator methodologies differ between countries, thus making comparisons difficult (Bertola and *al.* 2000). Therefore, especially given that Canada and France are both members of the OECD, the comparative analysis of the strictness of legislation between the two countries will be based on the indices and indicators defined by the OECD.

2. Analysis and indicators for comparative purposes

The OECD uses measurements to calculate its indication of employment protection which make reference to the employment protection conferred by the law and the regulations, taking into account the procedures of application. In general, the indicators used by the OECD refer to legislative and contractual elements.

It is important to note that the work of Lazear (1990) was at the origin of several empirical studies on the effects of employment protection on the

performance of the labour market (Elmeskov and *al* 1998, Di Tella and MacCulloch 2005, Scarpetta 1996). In this perspective, and having as its main objective the development of a synthetic index of EPL, the OECD is much inspired by the work of Grubb and Wells (1993) (OECD, 1993, 1994, 1999). It considers that the measures developed by the OECD remain the most relevant and represent a great improvement over other analyzes based largely on firing costs (Addison and Teixeira 2003).

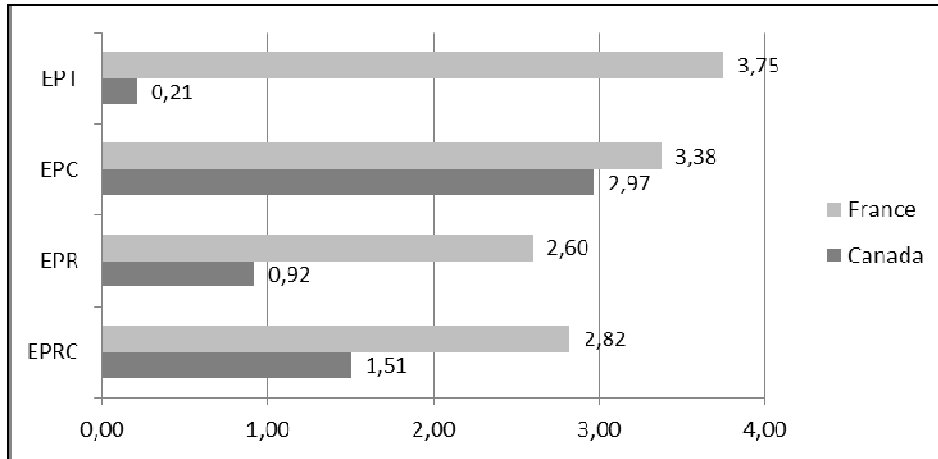
In our case, we arranged the raw data concerning Canada and France into four components, and converted the components examined into cardinal values on a scale from 0 to 6, with 6 indicating the strictest legislation. The four components we used are those established by the OECD (2013). They are: the protection of the permanent workers against individual and collective dismissals (EPRC); the protection of the permanent workers against the individual dismissals (EPR); the additional rules applicable to collective dismissals (EPC); and the legislation concerning temporary contracts (EPT).

The results of this data compilation are shown in Figure 1. It thus appears that laws and regulations related to EPL are more severe and rigid in the French economy compared to its Canadian equivalent. This is true for both permanent contracts as well temporary jobs. However, the difference is more significant when it comes to the comparison of temporary jobs (EPT). Indeed, this difference illustrates the rigid and conservative nature of French public policy, which emphasises the protection of workers and the fight against social exclusion at the expense of the flexibility required by companies to adjust their payroll to the vagaries of the economy. We later show that this severity has negative effects on the persistence of unemployment and on labour market participation.

While the OECD associates EPL with the internalization effect of the social costs of dismissal by companies themselves in order to increase economic efficiency, other authors, in contrast, consider EPL to be a device for alternative taxation to employment regulation (Blanchard and Tirole, 2003, Cahuc and Kramarz, 2003, Cahuc and Jolivet, 2003).

Casez and Tonin (2010) argue that the primary function of EPL is to ensure that workers have greater security, both in their current jobs and in the event of dismissal (Bevort and *al.*, 2006).

Many authors recognize that it is easier to quantitatively measure aspects such as the number of months' notice which must be met given before an individual or collective dismissal, while other aspects are more difficult to measure accurately, such as access to court procedures by dismissed employees, or the judicial interpretation of the legitimate reasons for terminating employment (Bertola and *al.* 2000).

Figure 1. Indicators of Employment Protection, 2013

Source: Database of the OECD employment protection, 2013.

Moreover, Blanchard and Tirole (2004) emphasize the principle of corporate responsibility on the social costs of layoffs. They argue that a “good system of employment protection” is one that financially empowers companies. Based on this financial responsibility, the decision whether to dismiss or not should be left to companies.

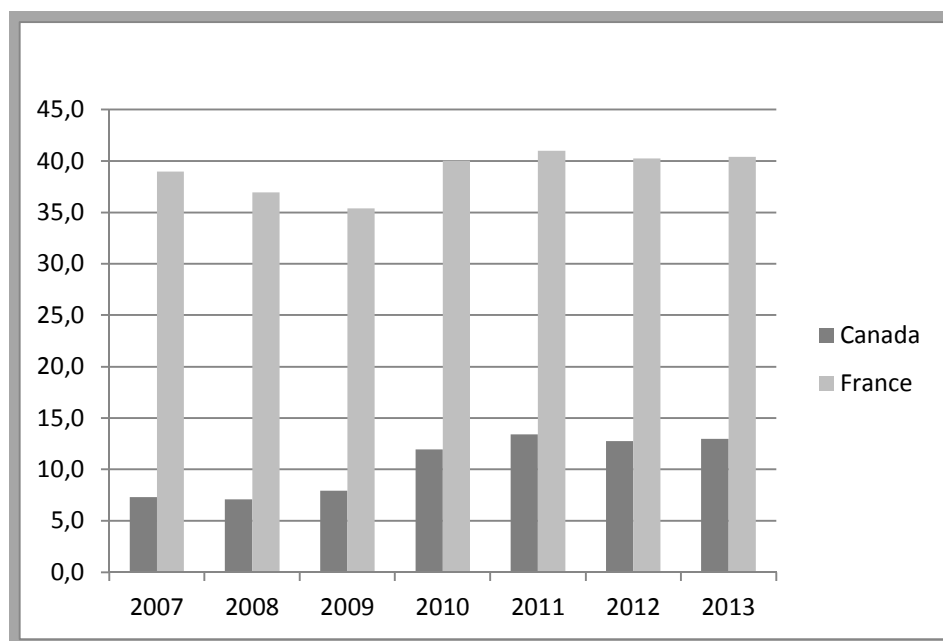
3. Employment Protection and Labour Market Performance

In addition, most theories of the labour market suggest that employment protection, in the form of legal and administrative constraints, should result in a lower rate of layoffs, reduced labour market flows, and longer durations of unemployment. According to the OECD, the empirical evidence on international data is largely consistent with these theoretical conclusions. On the basis of the indices of employment protection constructed, there is a strong negative correlation between employment protection and flow to and from employment and unemployment. Average times of high unemployment are often observed in those countries where employment protection is high (OECD 2004).

In order to check this observation in the context of our comparison between France and Canada, we linked the level of employment protection and the harmonized unemployment rate. It is clear that it remains higher in France than in Canada (in 2013 10% against 7%). Certainly, the gap in unemployment

rates is partly explained by the difference in severity of the two countries' EPL. However, in order to better validate such a conclusion, we are interested in long-term unemployment (Figure 2).

Figure 2. Number of long-term unemployed (12 months and more) as a percentage of total unemployed 2007-2013



Source: database OECD 2013 workforce.

In accordance with our intuition, we found that the number of long-term unemployed (12 months or more) is much higher in France. The latter has provoked, in recent years, long-term unemployment and a large drop in labour market participation. Although the unemployment benefit system remains more generous in France than in Canada, the current economic recession has made it impossible to maintain such a policy orientation. In this context, the French government has initiated a series of reforms to make its legislation less rigid and to give more flexibility to companies.

In addition, to better understand the differences between the two countries in their responses to the rise in temporary jobs, we analyzed the proportion of permanent and temporary jobs, compared to total employment, in both economies.

Several empirical studies have analyzed the effects of the severity of EPL on the performance of the labour market, and in particular on the level of employment and total unemployment (Autor and *al.* 2004, 2006, Kugler and

Saint-Paul 2004). However, these effects should be qualified by demographic groups to which EPL reforms apply. In this line, Behaghel and *al.* (2008), studied the effects of a less protective EPL reform on workers over 50 years of age in France. They showed that, after the reform, the unemployment rate for workers over 50 declined compared to their counterparts less than 50 years of age (Acemoglu and Angrist, 2001, Fernandez-Kranz and Rodríguez-Planas, 2011). Other studies using time series data by industry have tried to analyze the correlation between EPL (including redundancy costs) and employment flows. In this sense, Bassanini and Garnero (2013) analyzed several sectors in a comparative approach of OECD countries. They show that the rate of transition from one job to another remains low in industries where EPL is restrictive (Haltiwanger and *al.* 2013).

Figure 3. Evolution of the share of permanent and temporary jobs as a percentage of total employment 2002-2012



Source: OECD Database: data expressed as a percentage of total employment.

As shown in Figure 3, it appears that the share of permanent employment is higher in Canada than in France, while the finding is reversed when it comes to temporary employment. This result is not surprising and is entirely consistent with the characteristics of the two economies. Indeed, given that Canadian laws and regulations in terms of labour law are relatively flexible, companies can create permanent jobs more easily, as the costs of dismissal are less restrictive compared to other countries. In contrast, the rigid nature of the French labour market encourages companies to use temporary employment (fixed-term contracts) to meet their demand for labour and to circumvent the law with respect to permanent employment.

4. Final Remarks

In this article we have tried to highlight some features of employment protection legislation (EPL) using a comparative approach between two different economies. We have shown that, according to OECD data, laws and regulations related to the labour market are more stringent in France than in Canada. This finding may partly explain the considerable gap between the two countries in the levels of long-term unemployment (France being much higher). Long term unemployment is one of the phenomena which is used to undermine the rigidity that characterizes the French labour market and justify the process of reforms to make France's EPL more flexible. Despite these differences observed between a known rigid country such as France and one considered flexible such as Canada, many experts and organizations focus on international convergence in terms of public policies in the labour market (Amine 2014). This homogenization trend is largely justified by the consequences of the economic crisis, especially on fiscal responsibility for national budgets.

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Streszczenie**REFLEKSJE NA TEMAT USTAWODAWSTWA W ZAKRESIE OCHRONY
ZATRUDNIENIA: PORÓWNANIE MIĘDZYNARODOWE**

W Europie, podobnie jak w pozostałych krajach uprzemysłowionych, reformy rynku pracy dotyczą na ogół ustawodawstwa w zakresie ochrony zatrudnienia (EPL). Jednym z głównych zadań tego ustawodawstwa jest zapewnienie bezpieczeństwa pracowników, w szczególności w przypadku zwolnienia z pracy. Celem niniejszego artykułu jest porównanie surowości i stopnia sztywności EPL dwóch różnych gospodarek, a mianowicie, Kanady i Francji. Wybór tych dwóch państw wynikał z faktu, że polityka rynku pracy w obu państwach jest odmiennie zorientowana i opiera się na różnych podstawach ideologicznych.

Słowa kluczowe: *ochrona zatrudnienia, Francja, Kanada, bezpieczeństwo, bezrobocie*