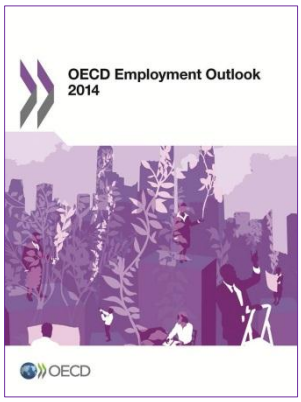

NON REGULAR EMPLOYMENT, JOB SECURITY AND THE LABOUR MARKET DIVIDE – Further material for Chapter 4 of the 2014 OECD Employment Outlook

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
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The following pages provide supplementary material for Chapter 4 of *OECD Employment Outlook 2014*. (Annex 4.A2).

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ADDITIONAL TABLES AND FIGURES

Table 4.A2.1. **Permanent and fixed-term contracts, of which with a temporary employment agency**

Percentage of employees aged 15-64, average 2006-07

	Permanent			Fixed-term			Temporary employment agency
	All permanent contracts	Not with a temporary employment agency	With a temporary employment agency	*All fixed-term contracts*	Not with a temporary employment agency	With a temporary employment agency	
Australia	*93.5*	..	..	*6.5*	..	..	..
Austria	*91.0*	89.5	1.5	*9.0*	8.8	0.2	1.7
Belgium	*91.3*	..	..	*8.7*	.	.	..
Canada	*87.1*	..	..	*12.9*	..	..	..
Chile	*69.2*	..	..	*30.8*	..	..	..
Czech Republic	*92.1*	91.3	0.8	*7.9*	7.6	0.3	1.1
Denmark	*91.1*	89.9	1.2	*8.9*	8.4	0.5	1.7
Estonia	*97.6*	97.5	0.1	*2.4*	2.4	0.0	0.1
Finland	*83.9*	..	..	*16.2*	..	..	..
France	*85.1*	85.1	0.0	*14.9*	12.5	2.5	2.5
Germany	*85.4*	83.8	1.5	*14.6*	14.0	0.6	2.2
Greece	*89.2*	89.0	0.2	*10.8*	10.7	0.1	0.3
Hungary	*93.0*	92.7	0.4	*7.0*	6.7	0.2	0.6
Iceland	*87.8*	..	..	*12.2*	..	..	..
Ireland	*93.0*	..	..	*7.0*	..	..	..
Italy	*86.8*	86.8	0.0	*13.2*	12.8	0.4	0.4
Japan	*86.7*	..	..	*13.3*	..	..	..
Korea	*75.8*	..	..	*24.2*	..	..	..
Luxembourg	*93.6*	93.5	0.0	*6.5*	6.1	0.3	0.4
Netherlands	*82.8*	82.4	0.4	*17.2*	13.9	3.3	3.5
Norway	*90.2*	90.2	0.0	*9.8*	9.6	0.1	0.2
Poland	*72.3*	72.3	0.0	*27.7*	27.1	0.6	0.6
Portugal	*78.5*	..	..	*21.5*	..	..	..
Slovak Republic	*95.0*	94.0	1.0	*5.0*	4.2	0.8	1.8
Slovenia	*82.3*	81.8	0.5	*17.7*	12.7	5.0	5.6
Spain	*67.1*	65.2	1.9	*32.9*	30.5	2.4	4.2
Sweden	*83.0*	82.4	0.6	*17.0*	16.6	0.4	1.0
Switzerland	*86.8*	86.3	0.5	*13.2*	12.9	0.3	0.8
Turkey	*87.9*	87.9	0.0	*12.1*	12.1	0.0	0.0
United Kingdom	*94.3*	..	..	*5.7*	..	..	..
United States	..	..	..	..	..	..	1.9
Latvia	*94.3*	93.6	0.7	*5.7*	5.5	0.1	0.8
Lithuania	*96.0*	95.8	0.2	*4.0*	4.0	0.1	0.3

Note: For the United States, data refers to the share of temporary help services workers in total non-farm employees.

Source: OECD calculations based on EULFS microdata; US Current Employment Statistics and OECD *Labour Force Statistics Database. http://dx.doi.org/10.1787/data-00297-en.*

Table 4.A2.2. **Employment protection and perceptions of job insecurity.**

A. High risk of job loss

	(1)	(2)	(3)	(4)	(5)	(6)
Contract type	FTC	FTC	FTC	FTC	TWA	DSE
EPRC	10.15**	11.52**	13.61***		4.65	8.43
	(2.31)	(2.48)	(3.35)		(0.47)	(0.91)
EPT	4.17**	4.10**		5.50***	-3.39	-0.09
	(1.98)	(2.06)		(2.66)	(-1.05)	(-0.04)
EPRCxEPT		2.87				
		(0.59)				
Observations	*8.229*	*8.229*	*8.229*	*8.229*	*6.84*	*6.931*
R-squared	*0.118*	*0.118*	*0.117*	*0.117*	*0.104*	*0.072*

B. High risk of costly job loss

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Contract type	FTC	FTC	FTC	FTC	TWA	TWA	DSE	DSE
EPRC	6.21*	5.08	8.62***		7.45		14.25*	13.22**
	(1.74)	(1.25)	(2.64)		(0.67)		(1.91)	(2.40)
EPT	2.90***	2.96***		3.71***	-8.58*	-7.19	-0.90	
	(2.70)	(2.80)		(3.49)	(-1.73)	(-1.63)	(-0.34)	
EPRCxEPT		-2.34						
		(-0.74)						
Observations	*7.929*	*7.929*	*7.929*	*7.929*	*6.59*	*6.59*	*6.681*	*6.681*
R-squared	*0.110*	*0.110*	*0.110*	*0.110*	*0.103*	*0.103*	*0.076*	*0.076*

Note: OLS estimates. In Panel A the dependent variable is high risk of job loss. In Panel B the dependent variable is high risk of costly job loss. Workers are defined as perceiving a high risk of job loss if they agree or strongly agree that they may lose their job in the six months following their interview. By contrast, they are defined as perceiving a high risk of costly job loss if they agree or strongly agree that they may lose their job in the next 6 months but do not agree or strongly agree that they can easily find another job with a similar salary. For each type of contract (indicated in the column title), the sample contains only workers holding that contract as well as workers with permanent contracts who are used as a comparison group. All independent variables reported in the table are interacted with a dummy for the contract type indicated in the column title. EPRC: indicator for strictness of regulation on dismissal for regular contracts in 2010. EPT: indicator for strictness of regulation on scope and duration of temporary contracts in 2010. FTC: standard fixed-term contracts. TWA: temporary-work-agency employment. DSE: dependent self-employment. All specifications control for country dummies and dummies for contract type, gender, 9 age classes, 3 education levels, 9 occupations, 21 industries, 9 tenure classes, 9 firm-size classes and unemployment spell before the current job spell. The estimated difference is then added to the average for permanent workers. The sample excludes workers with more than 8 years of job tenure. Standard errors are adjusted by clustering on country by contract type. ***, **: significant at the 1%, and 5% level, respectively.

Source: OECD estimates based on Eurofound (2010), 5th European Working Conditions Survey (EWCS).

Table 4.A2.3. **Hiring regulations and perceptions of job insecurity.**

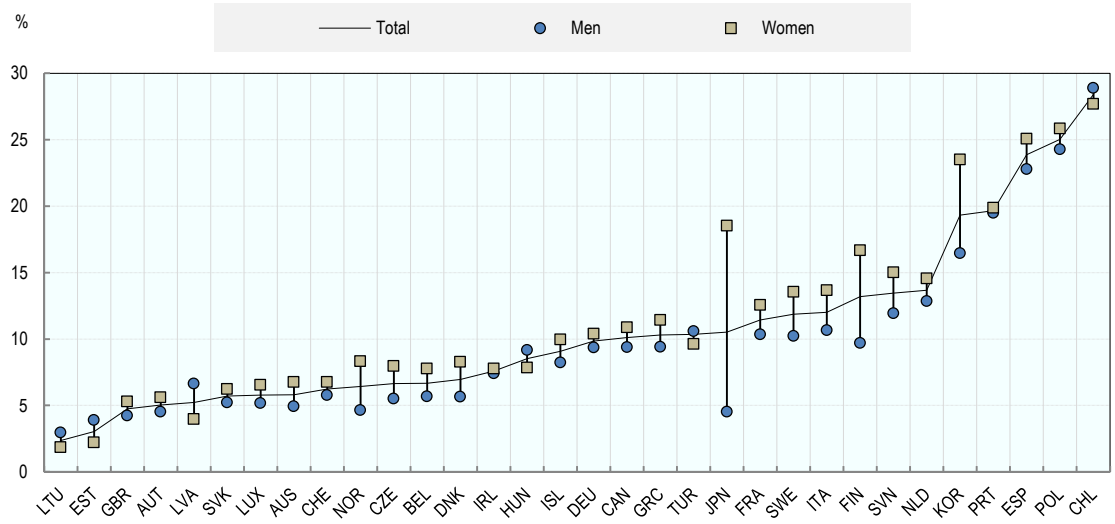
EPT variables based on:	(1) Duration	(2) Duration	(3) Duration	(4) Duration	(5) Duration	(6) Other	(7) Other	(8) Other	(9) Both
High EPRC High EPT	15.66***	9.82***				7.50	4.82		
	(3.52)	(2.75)				(1.57)	(1.17)		
High EPRC Low EPT	8.14					7.69*			
	(1.63)					(1.67)			
Low EPRC High EPT	4.58					-2.08			
	(0.96)					(-0.38)			
EPRC			9.86**	13.61***				11.01**	9.75**
			(2.10)	(3.35)				(2.64)	(2.08)
EPT duration			4.76**		6.16***				4.18*
			(2.05)		(2.70)				(1.65)
EPT scope								3.03*	0.65
								(1.84)	(0.47)
Observations	*8.229*	*8.229*	*8.229*	*8.229*	*8.229*	*8.229*	*8.229*	*8.229*	*8.229*
R-squared	*0.117*	*0.117*	*0.118*	*0.117*	*0.117*	*0.117*	*0.116*	*0.118*	*0.118*

Note: OLS estimates. The dependent variable is high risk of job loss. Workers are defined as perceiving a high risk of job loss if they agree or strongly agree that they may lose their job in the six months following their interview. The sample contains only workers holding with standard fixed-term contracts as well as permanent workers who are used as a comparison group. All independent variables reported in the table are interacted with a dummy for standard fixed term contract. EPRC: indicator for strictness of regulation on dismissal for regular contracts in 2010. EPT duration: indicator for strictness of regulation on duration and renewals of temporary contracts in 2010. EPT other: indicator for strictness of regulation on temporary contracts in 2010 (excluding components concerning renewals and duration). Column titles indicate which EPT indicator is used in the regressions. High (resp. low) EPRC indicates countries with above (resp. below) average indicator for strictness of regulation on dismissal for regular contracts. High (resp. low) EPT indicates countries with above (resp. below) average indicator for strictness of regulation on temporary contracts based on either duration or other components (depending on the column title). All specifications control for country dummies and dummies for contract type, gender, 9 age classes, 3 education levels, 9 occupations, 21 industries, 9 tenure classes, 9 firm-size classes and unemployment spell before the current job spell. The estimated difference is then added to the average for permanent workers. The sample excludes workers with more than 8 years of job tenure. Standard errors are adjusted by clustering on country by contract type. ***, **: significant at the 1%, and 5% level, respectively.

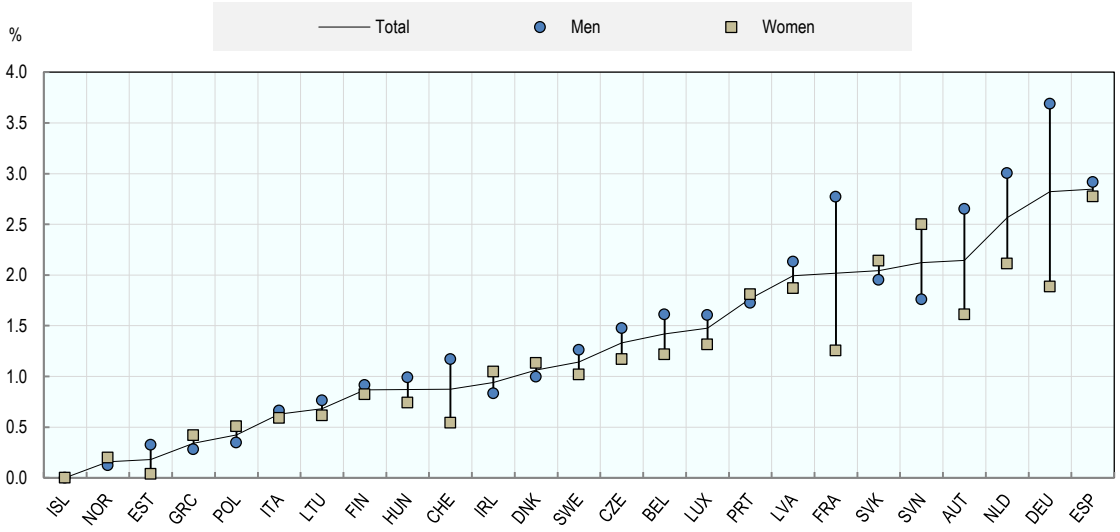
Source: OECD estimates based on Eurofound (2010), 5th European Working Conditions Survey (EWCS).

Figure 4.A2.1. **Temporary employment by gender, aged 25 to 54, 2011-12**

A. All fixed-term contracts (share of employees with a fixed-term contract)



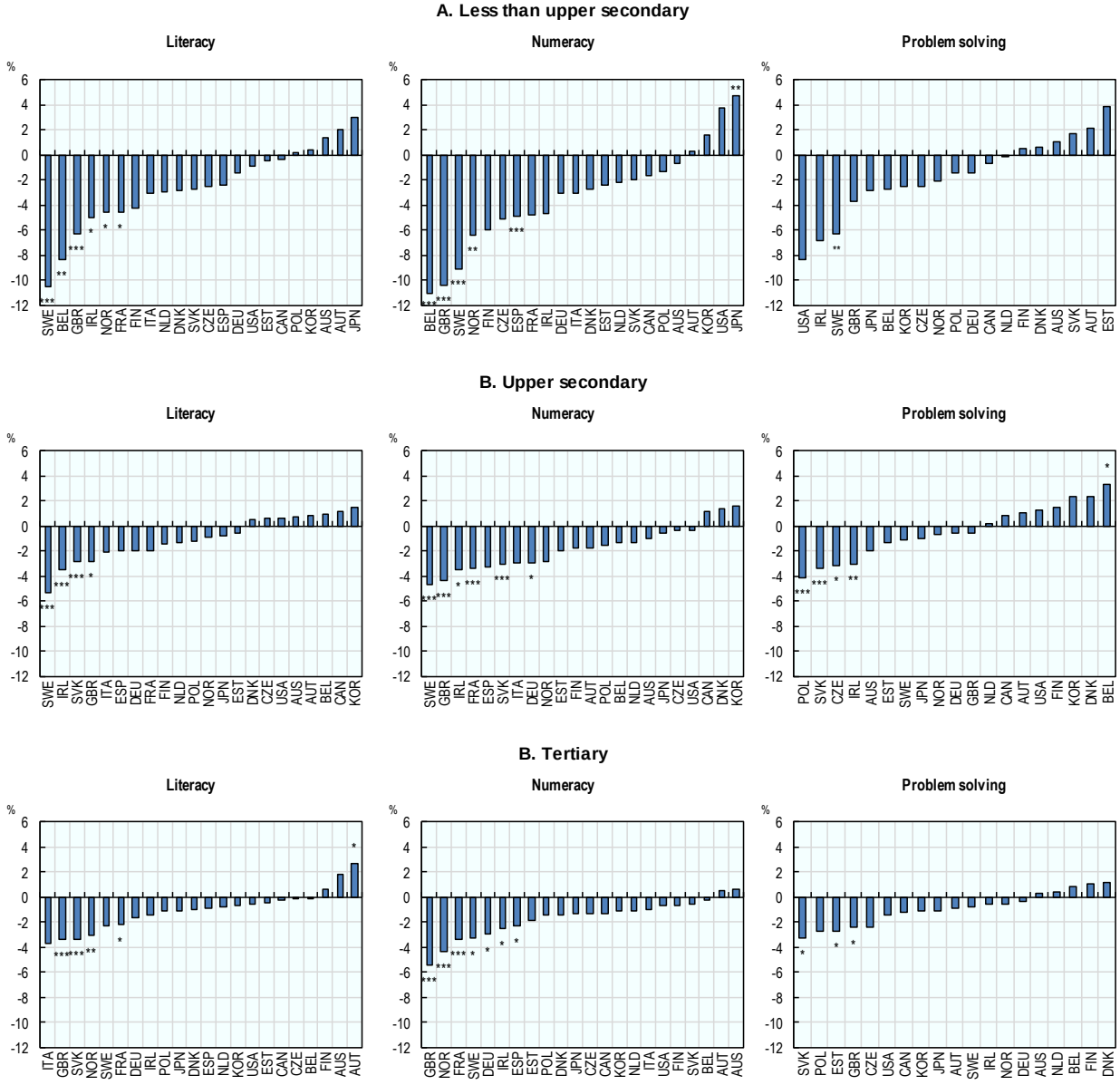
B. Temporary employment agency (share of employees on a contract with a TWA)



Source: OECD calculations based on EULFS microdata and *OECD Labour Force Statistics Database*, *http://dx.doi.org/10.1787/data-00297-en*.

Figure 4.A2.2. **Differences in scores by skills: regular compared to temporary workers**

Percentages



Note: Data collection of around 166 000 adults aged 16-65 surveyed in 24 countries and sub-national regions; temporary workers include fixed-term contracts and all forms of TWA. "No contract" excluded except for the US, reclassified as "regular workers". Estimated differences controls for 5-years age dummies and are expressed as percentage of the average score in literacy, numeracy and problem solving, respectively.

Source: *Survey of Adult Skills (PIAAC)*, 2012.

LEGAL INSTRUMENTS FOR THE IDENTIFICATION OF AN EMPLOYMENT RELATIONSHIP

Australia: An employment relationship is identified under the case law. The main issues to be considered to identify an employment relationship are: the existence of direction and control by the employer; designated working time by the employer; absence of responsibility for financial risk, entitlement to superannuation from the employer; income tax withheld by the employer; and regular payment (weekly / fortnightly / monthly). The Fair Work Ombudsman is responsible for upholding compliance with sham contracting provisions in the Fair Work Act. It also has the power to commence litigation in order to enforce compliance if an important public interest is involved (OECD questionnaire; FWO, 2013).

Austria: Generally, an employment relationship is identified under the case law, which considers various elements distinguishing an employee from a self-employed, mainly focusing on subordination or personal dependence. Employment conditions legally have to be qualified according to their economic importance and not according to their formal aspect. For sales representatives, pharmacists who work in dispensaries open to the public and sportspeople, a mandatory presumption of subordination applies. (OECD questionnaire; EIRO 2002a; Eichhorst et al. 2013).

Belgium: There are three types of criteria for identification of an employment relationship; the general criteria, the specific criteria and the neutral criteria. The first is a set of generic criteria related to subordination in terms of control, working time arrangement and both parties' will. The second includes various factors specifically applicable to each sector and profession. The third refers to things that cannot affect the status of employment, including tax and social security treatment and practice, registration of business (e.g. for VAT purpose) and the title of the contract. Moreover, three rebuttable presumptions of an employment relationship exist in the labour code; pharmacists with a contractual relationship vis-à-vis the owners of the dispensaries, sales representatives (excluding insurance agents, commercial agents under a commercial agency contract) and providers of complementary services for a principal if similar activities are bound by an employment contract. (OECD questionnaire; SPF, 2013).

Canada: There is no statutory legal presumption of an employment relationship under employment law. However, the existence of an employment relationship is determined on a case-by-case basis in courts, based on various legal tests established by case-law. These tests include, among others, the common-law control test, the integration test, the economic reality test and the specific result test. The common-law control test deals with the degree of discretion and autonomy in carrying out the work, which is directly related to the core feature of subordination. The integration test deals with the worker's degree of integration in the organisation. This test assumes that if the service provided by a worker is integrated into the customer's organisation, then the worker who provides the service is an employee. If the service can be considered as part of a separate business owned or managed by the worker, he/she may then be regarded as an independent contractor. The economic reality test gauges the degree of a worker's economic dependency on the business to which he/she is providing services. Finally, the specific result test analyses the type of labour service provided. If a worker is hired to achieve a certain objective result, then he/she may be considered as an independent contractor. By contrast, if the contract is without specific objectives, the contract is likely to be a contract of employment. Some labour relations laws (e.g., the federal Canada Labour Code, Part I) recognise "dependent contractors" as a category of workers that can unionise and bargain collectively (OECD questionnaire; Thompson River University, 2013).

Chile: A general form of statutory legal presumption of an employment relationship exists where a person (the employee) personally carries out services under "dependency and subordination" for another one (the employer), which in turn is obliged to pay remuneration for such services. The Labour Inspectorate is in charge of the identification of employment relationships, but its role is limited to clear and notorious cases. (OECD questionnaire; Chilean Labour Code).

Czech Republic: A general form of statutory presumption of an employment relationship exists. The labour code defines "dependent work" as work carried out under subordination, on the employer's behalf, and according to the employer's instructions (orders) and performed in person by the employee for his/her employer. It also enumerates the conditions under which the dependent work has to be performed, i.e. for wage, salary or other remuneration for work done, at the employer's cost and liability, at the employer's workplace or some other agreed place within specified working hours. The Labour Inspectorate can take administrative actions on violations of the labour law, but cannot take a legal action on behalf of the worker. (OECD questionnaire; Czech Labour Code).

Denmark: No statutory legal presumption of an employment relationship exists. However, some circumstances are especially considered by courts in establishing the status of employee, including the extent of control and direction that the employer has on the tasks performed by the worker. In particular, the type of labour taxes paid for the type of work under examination is an important criterion in determining whether an individual is to be considered an employee under the court's review. (OECD questionnaire; ILO 2013)

Estonia: A general form of statutory presumption of an employment relationship exists. The Employment Contract Act, §1 subsection 2, reads: "if a person does work for another person which, according to the circumstances, can be expected to be done only for remuneration, it is presumed to be an employment contract. Such presumption is enforced only through individual labour dispute resolution bodies – the labour dispute committee or the court (OECD questionnaire; Estonian Labour Code).

Finland: The employment contract is defined as a contract entered into by an employee, or jointly by several employees as a team, agreeing personally to perform work for an employer under the employer's direction and supervision in return for pay or some other remuneration. There is no statutory legal presumption of an employment relationship. But the labour code clarifies that an employment relationship is not denied merely by the fact that the work is performed at the employee's home or at a place chosen by the employee, or by the fact that the work is performed using the employee's equipment or machinery. (OECD questionnaire; ILO 2013)

France: The definition of an employment relationship has been recently broadened by case law. In 2000, the Supreme Court established the existence of an employment relationship in a case involved with a taxi driver, on the ground that despite a "contract of lease", the taxi driver was bound by numerous strict obligations concerning the use and maintenance of the vehicle and was in a situation of subordination. In 2001, the Supreme Court established an employment relationship for certain transport "franchisees" on the ground that the schedule and route were determined and the charges were set by the enterprise and the franchisees worked on behalf of a single industrial or commercial enterprise. There are also a couple of legal presumptions in the labour code. A set of professional categories are regarded to have employment relationship if certain conditions are met, varying across the professional categories. Representatives, travelling salespersons or insurance brokers are deemed to be employees, if they i) work for one or more employers, ii) work exclusively and continuously in the area of representation, iii) do not carry out any commercial activity on their own account, and iv) are limited by their employers as regards the nature of the services rendered or the merchandise offered, the region for their professional activity and the categories of clients. Artists, authors and composers are regarded as employees unless they are enrolled in the commercial registry. This presumption cannot be rebuttable by evidence that they have autonomy in

their performance, tools required for their work, or right to employ another person to help them. Models are also regarded as employees in any case (ILO, 2013; ILO, 2007; Perulli, 2003; EIRO 2002b).

Germany: Personal dependence is the essential standard in the determination of employment relationship. In case law, five major criteria for establishing personal dependence emerge: i) the employer decides the place of work; ii) the employer sets working time; iii) the employer establishes the content of work; iv) the worker is integrated into the organisational structure of the employer; and v) the worker has to use of the production equipment of the employer. However, not all these criteria have to be met in each individual case and the key elements or indicators may vary from one case to another. In general, the courts apply a "holistic view". There also used to be a statutory legal presumption in relation to social security law. A 1999 act established a set of five criteria to assess employment relationship for a person; i) not employing employees who are liable to compulsory insurance deductions; ii) having only one employer; iii) executing the same type of task at regular intervals; iv) not fulfilling the criteria of entrepreneurship that are based on personal and economic independence; and v) providing services that are consistent with former dependent work within the same company. A person used to be regarded as an employee if he/she met more than three of these five criteria. This set was removed by a 2003 reform, but is still applied in practice by the social insurance administration in assessing employment status. In addition to the judicial procedure, the social security agencies and the Tax Enforcement Unit for Undeclared Work (FKS), an administrative unit in charge of collection of unduly unpaid tax and social security contributions, are involved in the identification process. (Eichhorst et al. 2013; OECD 2000; EIRO 2002c).

Greece: Whether a work relation is an employment relationship is mainly determined by the Court, taking into consideration the whole content of the contract as well as the actual conditions and circumstances under which the relationship functioned. The Court is not bound by what is written in the contract, but considers the good faith and actual practices. Furthermore, two specifically-designated groups are legally, by statute, deemed dependent employees (tourist guides and technicians in cinema and broadcasting) irrespective of the given features of the work they perform. In 2010, a broader statutory legal presumption was introduced. If a worker performs his/her work in person, solely or principally for the same employer for nine consecutive months, then he/she is presumed to be a dependent employee. This presumption is rebuttable. (OECD questionnaire; ILO, 2013).

Hungary: An employment contract is defined in the labour code as a contract under which the employee is required to work as instructed by the employer and the employer is required to provide work for the employee and to pay wages. However, no statutory legal presumption exists (OECD questionnaire).

Iceland: There is neither a legislative definition of the term "employment relationship" nor a statutory legal presumption. The case law takes various factors into account in determining whether or not there is an employment relationship, which is characterised as a relationship where the employee undertakes to work for the employer under the employer's supervision and the employer undertakes to pay wages in return. The parties' characterisation and intentions are not discriminant. By contrast, the nature of their relationship is the crucial considered by courts (ILO, 2013).

Ireland: No statutory legal presumption exists. Case law has resulted in various "tests" concerning the nature of the working relationship. There is a Code of Practice in place to provide guidance for determining the employment or self-employment status of individuals. It is prepared, updated and monitored by the Employment Status Group consisting of representatives of various ministries and of employers' and workers' organisations. Nevertheless, this code does not bind the courts. An individual can seek clarification of their employment status from the tax authorities or the social insurance agencies. (OECD questionnaire; ILO, 2013).

Israel: Under the case law, the determination of employee status is performed based on a multi-component factual test, instead of the classification of the worker made by the contract. Good faith can play a pivotal role in cases where both facts affirming and negating an employment relationship are equally established. However, bad faith on the part of the employee when initiating an independent contractor relationship does not alter the classification of that relationship as an "employer-employee" one if the relationship meets the aforementioned multi-component factual test. The decision of the Labour Court could affect a whole group of "contractors" working with the same contracts even if the decision concerns only one individual case (OECD questionnaire; Rabin Margalioth, 2010-2011).

Italy: The case law has clarified that subordination is the core element in an employment relationship. According to the recent legislation (Law 92/2012, so-called "Fornero Reform"), a contract for services (excluding collaborators, see Box 4.3) is considered as an employment relationship, if at least two of the following conditions hold: i) the relationship lasts for a total of more than eight months within the same year; ii) the compensation deriving from the relationship represents more than 80 per cent of the total compensation earned by the worker within the year; and iii) the worker has his/her work space at the employer's offices. This presumption is rebuttable (Act 92/2012; ILO, 2013, Eichhorst et al., 2013).

Japan: The definition of employee is given in the labour code (the Labour Standard Act) as one who is employed at an enterprise or office and receives wages therefrom, regardless of the kind of occupation. A subordination test applies and various indicators are reviewed in order to see whether or not there is subordination. Case law consistently sticks to the "primacy of fact" rule, meaning that the actual facts matter regardless of the contractual forms. Thus, an employment relationship can be established even in the cases where agency contracts have been concluded, for example, insurance sales agents, fee collectors (gas or electricity), or truck drivers for delivery service, as far as the subordination requirement is met, even though they receive fees on the basis of their performance instead of regular wages. There is no statutory legal presumption. However, a variety of administrative directives give guidance on the determination of an employment relationship under certain circumstances in specific sectors or categories of workers. (OECD questionnaire; ILO, 2007; Asakura, 2003).

Korea: The definition of employee is given in the labour code (the Labour Standard Act) as one who provides labour in return for wages in an enterprise or establishment, regardless of the kind of occupation. There is no statutory legal presumption and the employment status is determined by case law, which takes all relevant facts into consideration in determining whether or not subordination exists in the relationship (Labour Standard Act; OECD questionnaire; Kim, 2014).

Luxembourg: There is no statutory definition on "employment relationship". The case law has considered legal subordination as the core element in an employment relationship. Thus, the degree of control and management is examined in relation to the nature of the work performed. According to a decision of the Supreme Court, the burden of the proof of subordination is on the claimant – worker – (CSJ 4/1/2001 N°24644). Affiliation or non-affiliation with social security through the CCSS (Centre commune de la sécurité sociale) is, in any event, not decisive for the qualification of the relationship among parties (OECD questionnaire; Bonn Steichen and Partners, 2013).

Mexico: A general form of statutory legal presumption exists. A contract and an employment relationship are presumed to exist between the person who renders a labour service and the one who receives it (Mexican Labour Code).

The Netherlands: If a worker has worked for another person for pay on a weekly basis, or for at least 20 hours per months for three consecutive months, he/she is automatically presumed as an employee. This presumption is rebuttable. Those who meet this requirement have full rights resulting from employment relationship. (OECD questionnaire; Dutch Civil Code).

New Zealand: The Employment Relations Act (ERA) of 2000 defines an employee as someone of any age who is hired under a contract of service. Hence, the case law plays a decisive role in identification of an employment relationship. Courts look into the real nature of the relationship, based upon historically applied common law tests such as control, integration, and fundamental test (The last one examines whether a person performing the services is doing so on his/her own account). No statutory legal presumption exists. However, according to the ERA, a homeworker is deemed an employee, defined as a person who is engaged, employed, or contracted by any other person to do work for that other person in a dwelling house, including a person who is in substance so engaged, employed, or contracted even though the form of the contract between the parties is technically that of vendor and purchaser (OECD questionnaire; Employment Relations Act; ILO, 2013).

Norway: The Working Environment Act of 2005 defines an employee as anyone who performs work in the service of another, but there is no statutory legal presumption. The case law construes an employment relationship as a relationship where the employee is economically dependent on the employer and stands in a subordinated position to the employer. The case law considers various indicators that would give rise to subordination (OECD questionnaire; Working Environment Act).

Poland: A general form of statutory legal presumption exists where the enumerated conditions stipulated in the labour code are met. This presumption occurs if the employee undertakes to carry out a specified type of work for and under directions of the employer, in a place and at times designated by the employer, and the employer undertakes to employ the employee in return for remuneration. The labour inspectorate officers can conduct investigations and directly take a case of establishment of an employment relationship to court (OECD questionnaire; Polish Labour Code).

Portugal: A rebuttable presumption is established, if any of the following conditions is met; i) The activity is carried out in a place belonging to its beneficiary or determined by the beneficiary; ii) The work equipment and instruments belong to the beneficiary of the activity; iii) The activity provider respects the starting and end times of the provision, determined by its beneficiary; iv) A fixed amount is paid to the provider, with a certain frequency, as a consideration for the activity; v) The activity provider performs directorship or leadership duties within the organic structure of the company (OECD questionnaire; ILO, 2013).

Slovak Republic: A general form of statutory presumption exists where the enumerated conditions for dependent work are met. The dependent work is defined in the labour code solely as work carried out personally as an employee for an employer, according to the employer's instructions, in the employer's name, for a wage or remuneration, during working time, at the expenses of the employer, using the employer's means of production and with the employer's liability, and also consisting mainly of certain repeated activities (OECD questionnaire; Slovak Labour Code).

Slovenia: A general form of statutory presumption exists where the enumerated conditions for an employment relationship are met, which is defined in the labour code as a relationship between the worker and the employer, whereby the worker is voluntarily included in the employer's organised working process, in which he/she, in return for remuneration, continuously carries out work in person according to the instructions and under the control of the employer (OECD questionnaire; Employment Relationships Act). In addition, the 2013 Employment Relationships Act (ERA-1) defines an economic dependent worker as a self-employed person who on the basis of a civil law contract performs work in person; independently and for remuneration for a longer period of time in circumstances of economic dependency and does not employ workers. Economic dependency means that a person obtains at least 80% of his or her annual income from the same contracting authority (Article 213 of ERA-1). According to Article 214 of ERA-1 an economic dependent worker cannot be discriminated, is entitled to minimum notice periods in the event of termination of a contract and enforcement of liability for damage, and his/her contract cannot be

terminated based on unfounded reasons for termination according to ERA-1. Regarding the payment for the agreed work, ERA-1 ensures that payment for contractually agreed work be reasonable, taking into consideration the collective agreement and the general acts binding the contracting authority. This provision ensures that the economic dependent worker is in a similar position as other workers employed by the employer.

Spain: A rebuttable presumption applies to the employment status of a person who provides a service in exchange for remuneration at the risk of and under the management and within the organisational sphere of another person who is the beneficiary of that service. Article 11 of Act 20/2007 (Statute of Autonomous Workers) defines an economically dependent self-employed as somebody who provides labour to a customer and is dependent on this customer for 75% of its income. In addition he/she must: neither be responsible for employees nor sub-contract part or all the work to other firms; not perform his/her activity using workers employed by the customer; have his/her own productive infrastructure and own materials; perform his/her activity under own organisational criteria; receive an economic reward based on results obtained, as agreed on with the client and taking on risks and ventures. Owners of commercial and industrial establishments and offices open to general public as well as independent professionals and those who are setting up a company will not be considered, in any case, as economically-dependent self-employed. The Labour Inspectorate can impose sanctions to client-employers who hire false autonomous workers. Professional athletes and performing artists are deemed to be employees in all circumstances when they work for a club or a firm which pays them. (OECD questionnaire; Statute of Autonomous Workers – Act 20/2007; ILO, 2013).

Sweden: No statutory legal presumption exists and the criteria for the identification of an employment relationship have developed under the case law. However, with respect to the coverage of the Co-Determination Act, the term of "employee" includes any person who performs work for another without thereby being employed by that other person and who holds a position of essentially the same nature as that of an employee. The trade unions may make a claim before the Labour court that the employer is not complying with an existing collective agreement. Such a complaint is not dependent on the complaint being filed by – or on behalf of – the individual worker (OECD questionnaire; ILO, 2013)

Switzerland: The Civil Code (Code des obligations) defines the "employment contract" as a contract under which the employee undertakes to work in the service of the employer for a limited or unlimited period and the employer undertakes to pay him a salary based on the amount of time he works or the tasks he performs. There is no statutory legal presumption. However, there is a provision in the code that an employment contract is deemed to have been concluded where the employer accepts the performance of work in his service over a certain period which, given the specific circumstances, could reasonably be expected only in exchange for salary (Swiss Civil Code; OECD questionnaire).

Turkey: The employment contract is defined in the labour code as an agreement whereby one party (the employee) undertakes to perform work in subordination to the other party (the employer) who undertakes to pay him remuneration. There is no statutory legal presumption (Act 4857 – Turkish Labour Law).

The United Kingdom: The definition of "employee" means "an individual, who has entered into, or works under, a contract of employment" and the case law has developed the standards for identification of an employment relationship. The traditional standard is the common-law control test. It focuses on the degree of discretion and autonomy in carrying out the work. But other standards, such as the integration, economic-reality and mutual-obligation tests, have been used in determining an employment relationship in cases where the control test cannot give an adequate guidance on the issue. The integration test deals with the worker's degree of integration in the organisation. The economic reality test gauges the degree of a worker's economic dependency on the business to which he/she is providing services. Finally, the mutual

obligation test checks whether the contract establishes an obligation for the customer-employer to provide any work and whether the worker is under obligation to perform the work (e.g. Carmichael & Another v National Power plc. [1999] 1 WLR 2042). It should also be noted that the tests above are for identification of the employees. By contrast, certain provisions in labour law are referred to "workers", whose statutory definition is broader in scope than that of "employee" and includes also workers under a contract for services (OECD questionnaire; HM Revenue and Customs, 2013; ILO, 2013; EIRO, 2002d; Burchell et.al, 1999).

The United States: Each statute and jurisdiction has its own definition of an "employee" in the corresponding case law. The agencies that govern these statutes may construe an employment relationship for the purposes of ascertaining rights under the statutes. For example, even though, the common-law control test is the default standard in identifying an employment relationship, the US Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the Fair Labor Standards Act. The Court has held that each factor must be considered in a holistic manner. Among the factors which the Court has considered significant are: i) the extent to which the services rendered are an integral part of the principal's business; ii) the permanency of the relationship; iii) the amount of the alleged contractor's investment in facilities and equipment; iv) the nature and degree of control by the principal; v) the alleged contractor's opportunities for profit and loss; vi) the amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor; and vii) the degree of independent business organisation and operation. In addition, there are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where work is performed, the absence of a formal employment agreement, or whether an alleged independent contractor is licensed by State/local government are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status. There also exists a statutory presumption of employee status under certain jurisdictions. For example, Chapter 149, section 148B of the Massachusetts General Laws establishes a rebuttable presumption by stating that "an individual performing any service […] shall be considered to be an employee under those chapters unless: i) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and ii) the service is performed outside the usual course of the business of the employer; and, iii) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed" (OECD questionnaire; Massachusetts General Laws; US Department of Labor, 2009; Rubinstein 2012; Walz, 2008).

USING INDIVIDUAL SKILLS FOR IDENTIFYING THE CAUSAL EFFECT OF CONTRACT TYPE ON TRAINING

One key difficulty in estimating the impact of contract type on training is that, at any given point in time, workers endowed with fewer productive abilities are less likely both to have a regular, open-ended contract and to receive employer-sponsored training. To the extent that ability is not observable, one might incorrectly attribute an observed training pattern to contract type when, in fact, this is simply reflecting unobserved ability. One way to solve this identification problem is by finding a proxy variable that can capture unobserved ability while, at the same time, being unaffected by employer-sponsored training. Cognitive skill variables from the Survey of Adult Skills (PIAAC) can serve this purpose, as done in Section 3. Indeed, these skills are sufficiently general that they are likely to be acquired before entering the labour market. In order to show that this is the case, consider a simple linear model linking participation in training with the type of contract:

$$(*) \qquad t_i = \alpha_0 + \beta_0 temp_i + \gamma_0 X_i + \delta_0 s_{0i} + \varepsilon_i$$

where t_i is a dummy indicator for whether worker *i* participated in any employer-sponsored training in the 12 months prior to the survey, $temp_i$ is a dummy indicator that takes value 1 if worker *i* is employed in a temporary contract, X_i is a set of standard observable control variables (age, gender, being native, education, tenure, firm size, occupation) and s_{0i} is a measure of ability at the time before the training decision was made. The inclusion of s_{0i} in equation $(*)$ is meant to formalise the most obvious and common concern about the identification of the effect of contract type on training, namely that training might be more easily or frequently offered to more able workers who are also more likely to be in permanent contracts. Based on this intuition, one would expect δ_0 to be positive and $Cov(temp_i, s_{0i})$ to be negative.

In most databases, ability is not observable so that equation $(*)$ cannot be estimated directly. Omitting s_{0i} would lead to a negative endogeneity bias, preventing the correct identification of the parameter of interest β_0. The measures of cognitive skills contained in the Survey of Adult Skills (PIAAC) can be used to proxy ability before training, even if they are measured at the time of the survey, that is after training has taken place or, during training for a few workers, under the reasonable assumption that these competences are so general that they are not affected by employer-sponsored training, which most of the times covers specific subjects, such as the use of a new software or the functioning of a specific machine. In other words, given this assumption, equation $(*)$ can be simply estimated by including measures of current skills in the control set.[1]

The assumption that employer-sponsored training has no impact on cognitive skills as measured in PIAAC can be tested with PIAAC data following the strategy proposed by Leuven and Oosterbeek (2008) – that is, using those workers who had the possibility to attend training but ended up not doing so for exceptional and unexpected events - as a control group for workers who undertook training. Specifically, in the PIAAC survey two questions can be used for this purpose. First, all workers are asked whether during

1. Obviously other variables, such as educational attainment levels, are likely to pre-date training. However, as shown in Section 1, educational attainment classes typically represent a too coarse partition to effectively capture unobserved ability.

the prior 12 months there were any learning activities they wanted to attend but did not. Those answering affirmatively are then asked to indicate the reasons why they could not attend training. Those who declare that they could not attend because either "the course or programme was offered at an inconvenient time or place" or "something unexpected came up that prevented [them] from taking education or training" are retained as a control group for those who received training. Then the sample is restricted to trained and control workers only and the relationship between cognitive skills and training is examined. The absence of a significant correlation would confirm that training has no significant causal effect on cognitive skills. The key identification assumption here is that those in the control group do not participate in training for reasons that are orthogonal to their ability s_{0i} and other characteristics X_i, which, as a consequence, must be on average identical to those of the treated individuals. In the terminology of the treatment effect literature, such assumption can be formally stated as follows:

$$E(s_{0i}, X_i \,|t_i = 1) = E(s_{0i}, X_i \,|t_i = 0, rnd_i = 1)$$

where rnd_i is a dummy taking value 1 for those not taking training for random reasons. In other words, when comparing those who received training (the treated) with those who did not for random reasons, the unobservable s_{0i} and other (potentially observable) characteristics X_i are held constant. In other words they do not induce endogeneity of t_i if omitted in an equation relating cognitive skills to training:

$$(**) \qquad s_{1i} = \alpha_1 + \beta_1 t_i + \varepsilon_i$$

where s_{1i} stands for cognitive skills. The table below presents, country by country, estimates of β_1 obtained by fitting equation $(**)$. These estimates can be interpreted as representing the causal effect of training on cognitive skills. Somewhat surprisingly, training appears to have a negative effect on literacy in the Czech Republic, while for Italy the estimated effect is high although insignificant at conventional levels. In the estimation of equation $(*)$ – whose estimated coefficients are presented in Figure 4.14 in section 3 – Czech Republic and Italy are therefore excluded. By contrast, in no other country estimated effects are large or significant at the 5% level. However, in two of them, β_1 is significant at the 10% level for one type of skill (literacy for Ireland and numeracy for the Netherlands). For this reason, the model is alternatively re-estimated excluding each type of skill one-by-one from the specification, but no significant difference emerges. Similar results are obtained by estimating the same model using problem-solving skills as an alternative proxy for ability, for those countries for which this measure is available.

Table 4.A2.4. **Estimated percentage impact of training on cognitive skills.**

	Literacy			Numeracy			Problem solving		
Australia	-4.4	(1.30)		-4.5	(1.05)		-3.1	(1.08)	
Austria	1.4	(0.44)		-0.6	(0.16)		1.4	(0.51)	
Belgium	1.8	(0.48)		2.8	(0.64)		0.0	(0.01)	
Canada	-0.5	(0.28)		1.9	(0.81)		-2.1	(1.06)	
Czech Republic	-14.9	(3.79)	***	-8.8	(1.97)	**	-11.2	(1.78)	*
Denmark	-0.6	(0.23)		-0.1	(0.04)		-0.8	(0.33)	
Estonia	-2.3	(1.28)		-0.4	(0.19)		-2.9	(1.37)	
Finland	0.3	(0.14)		0.2	(0.09)		-1.2	(0.47)	
France	0.7	(0.12)		2.1	(0.36)		..		
Germany	-5.4	(1.46)		-3.7	(0.78)		-5.0	(1.60)	
Ireland	5.4	(1.75)	*	3.3	(0.88)		2.1	(0.52)	
Italy	13.6	(1.32)		19.5	(1.80)	*	..		
Japan	-1.2	(0.61)		0.0	(0.02)		-1.4	(0.61)	
Korea	0.8	(0.41)		0.8	(0.44)		1.6	(0.62)	
Netherlands	2.5	(0.64)		6.1	(1.66)	*	0.3	(0.11)	
Norway	4.5	(1.21)		5.0	(1.20)		3.0	(1.06)	
Poland	-3.0	(1.00)		-2.8	(0.79)		-1.7	(0.39)	
Slovak Republic	0.4	(0.11)		-0.2	(0.05)		2.5	(0.54)	
Spain	-4.1	(1.36)		-4.6	(1.60)		..		
Sweden	1.0	(0.30)		3.9	(1.00)		1.3	(0.39)	
United Kingdom	-4.1	(1.31)		-5.5	(1.22)		0.1	(0.03)	
United States	1.9	(0.49)		3.5	(0.71)		-0.5	(0.15)	

Note: Reported figures refer to the effect of employer-sponsored training on cognitive skills as a percentage of the country average. The sample is restricted to workers who attended employer-sponsored training courses in the last 12 months or who wanted to attend but did not because either the course or programme was offered at an inconvenient time or place or something unexpected came up that prevented them from attending. Data are based only on Flanders in the case of Belgium and England and Northern Ireland in the case of the United Kingdom. Absolute t-statistics in parentheses. ***, **, *: significant at the 1%, 5%, 10% level, respectively.

Source: OECD (2012), The Survey of Adult Skills (PIAAC).

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