Myths of employment deregulation: how it neither creates jobs nor reduces labour market segmentation

—

Edited by
Agnieszka Piasna and Martin Myant

Introduction

Martin Myant and Agnieszka Piasna

'In some Member States employment protection legislation creates labour market rigidity, and prevents increased participation in the labour market. Such employment protection legislation should be reformed to reduce over-protection of workers with permanent contracts, and provide protection to those left outside or at the margins of the job market.'
Annual Growth Survey (European Commission 2010:7)

'EPL reforms [...] appear as a key driver for reviving job creation in sclerotic labour markets while tackling segmentation and adjustment at the same time.'
(European Commission 2012: 4)

1. Arguments for labour market deregulation

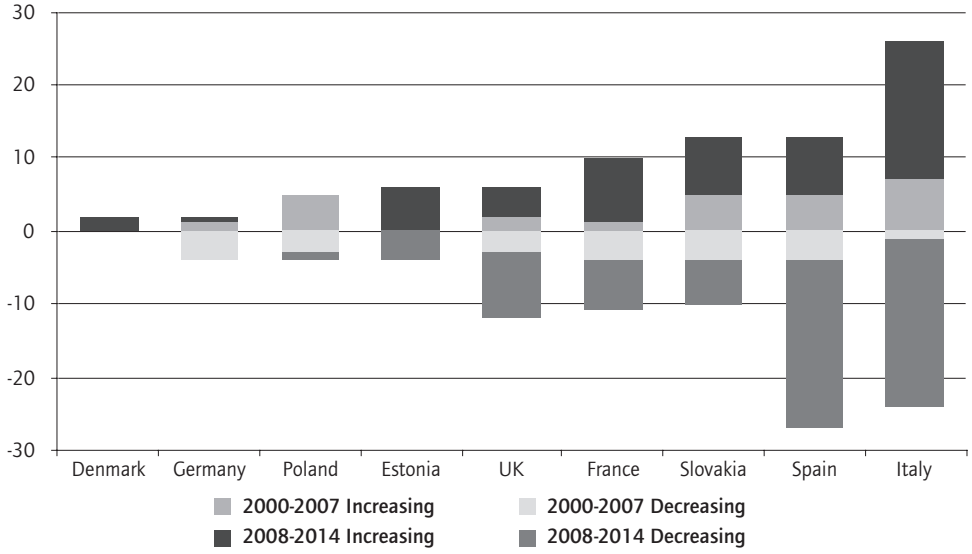
These two quotes are indicative of the efforts of the European Commission to argue that the levels of employment protection in at least some EU Member States have had harmful economic effects. More recent policy-oriented documents have appeared more cautious and nuanced. Definite statements are replaced by phrases such as 'often it is argued' (European Commission 2015: 30), 'theory suggests' (European Commission 2016: 91) and 'in some circumstances' employment protection legislation 'may' have negative effects and 'may' generate duality in labour markets (European Commission 2016: 91). This has not led to a visible change in policy recommendations. Nevertheless, there is an implicit, and welcome, acceptance that empirical evidence backing such policy recommendations is at best inconclusive. In this book we go further arguing, on the basis of experience in a large sample of EU Member States, that reducing employment protection does not bring economic benefits but also that post-crisis changes have led to increases in precarious employment and hence more pronounced, rather than reduced, labour market segmentation.

The target of criticism from the European Commission, following other international agencies and particularly the OECD, has been the extent and forms of protection against arbitrary dismissal, both individual and collective, enjoyed by employees in EU Member States. Legislation and court decisions, often backed or extended by the results of collective bargaining or by established practices, may prevent individual dismissals without good cause and require notice and compensation in cases of redundancy. However, these protections became subject to strong criticism from economists in international agencies. They were blamed for creating an inflexible, or 'sclerotic', labour market and hence for resulting in higher unemployment, higher long-

term unemployment, lower productivity growth and labour-market segmentation that left part of the population denied access to secure jobs (see e.g. Bentolila *et al.* 2011; European Commission 2010, 2012; Blanchard 2006; Blanchard and Portugal 2001; Rueda 2006).

Such reasoning stimulated pressure from the European Commission in the aftermath of the 2008 crisis for reductions in employment protection, reflected in the Country Specific Recommendations to individual Member States (see e.g. review in Clauwaert 2014) and, even more forcefully, in the terms required of the so-called Programme Countries (Greece, Ireland, Portugal and Cyprus) and others that sought EU, or other external, help to handle public debt crises, including Spain and Italy. This has led to changes in laws to make individual dismissals easier and to make collective dismissals simpler alongside a reduction in the scope and effectiveness of collective bargaining. There have in some cases been some compensating improvements for protections of certain kinds of more precarious employment, but the overall trend, albeit with big differences in its strength between countries, has been towards less regulated labour markets.

Figure 1 **Number of EPL reforms before and after the crisis in selected EU countries, by direction of measure – increasing (positive values) or decreasing (negative values) protection**



Note: Direction of reform classified by the European Commission.
Source: Labref database, https://webgate.ec.europa.eu/labref/public

Figure 1 illustrates the intensity of labour market reforms in nine countries analysed in more detail in this volume: Denmark, Germany, Poland, Estonia, UK, France, Slovakia, Spain and Italy. The number of measures differs greatly across countries, but a trend has been towards more reforms after 2008 with the majority reducing the protection for workers. This is most visible in the cases of Italy and Spain, while France

and Slovakia experienced a more balanced distribution of reforms that went in both directions. Nevertheless, labour market performance in the crisis, as becomes clear below, bears no obvious relationship to the extent or direction of these reform efforts. Some implemented many changes, without obvious benefits, while some changed very little, notably Poland and Germany, and seemed to fare relatively well after 2008.

Another measure of the deregulatory trend is the OECD Employment Protection Legislation (EPL) index that covers a selection of legal provisions in the area of employment protection. This is discussed in detail by Myant and Brandhuber (Chapter 1 in this volume) who indicate a number of serious limitations to its application. Nevertheless, it is widely used both in academic studies and in providing supporting arguments for policy measures, and provides a starting point for comparisons between countries. A high figure indicates a high level of protection and changes in the index in the period 2008 to 2013 (latest available at the time of writing) are summarised in Tables 1 and 2.

Table 1 **Strictness of employment protection – individual and collective dismissals (regular contracts, ordered by level of index in 2013)**

	2008	2009	2010	2011	2012	2013	Change 2008-2013
UK	1.713	1.713	1.713	1.713	1.713	1.618	-0.095
Estonia	2.328	2.328	2.066	2.066	2.066	2.066	-0.261
Slovakia	2.635	2.635	2.635	2.635	2.165	2.256	-0.379
Spain	2.660	2.660	2.660	2.558	2.558	2.284	-0.376
Denmark	2.275	2.275	2.275	2.320	2.320	2.320	0.045
Poland	2.391	2.391	2.391	2.391	2.391	2.391	0
Italy	3.032	3.032	3.032	3.032	3.032	2.794	-0.238
France	2.870	2.823	2.823	2.823	2.823	2.823	-0.048
Germany	2.978	2.978	2.978	2.978	2.978	2.978	0

Source: OECD database, version 3

Table 2 **Strictness of employment protection – temporary employment (ordered by level of index in 2013)**

	2008	2009	2010	2011	2012	2013	Change 2008-2013
UK	0.417	0.417	0.417	0.417	0.542	0.542	0.125
Germany	1.542	1.542	1.542	1.542	1.542	1.750	0.208
Denmark	1.792	1.792	1.792	1.792	1.792	1.792	0
Poland	2.333	2.333	2.333	2.333	2.333	2.333	0
Slovakia	2.167	2.167	2.167	2.417	2.292	2.417	0.250
Italy	2.708	2.708	2.708	2.708	2.708	2.708	0
Estonia	2.292	2.292	2.292	2.292	2.292	3.042	0.750
Spain	3.500	3.500	3.500	3.167	3.292	3.167	-0.333
France	3.750	3.750	3.750	3.750	3.750	3.750	0

Source: OECD database, version 3

The values suggest wide variations in protection for workers in stable employment relationships. The highest level of protection is recorded in Germany and the lowest in the UK. If the level as such is important, then we would expect a poor labour-market performance in Germany and a very good performance in the UK. Other countries should lie somewhere between them with Spain and Denmark around the middle of the range. If change is important, and the EPL index declined in six out of the nine countries analysed, then Poland and Germany would look likely to be poor performers, with no change in the measure, while Slovakia and Spain should have done well. Denmark even saw an increase, so we might expect a worsening labour market performance there. As we shall see, the actual outcomes are completely at odds with such predictions.

Table 2 shows the EPL index for temporary employment, which broadly measures the difficulties confronting employers in using fixed-term contracts. The highest figures are recorded for France, Estonia and Spain, which might point to low use of such contracts in those countries. The lowest figure is for the UK, suggesting a likelihood of large numbers on fixed-term contracts. In fact, the UK has a very low rate of fixed-term contract use while Spain has the second highest in the EU, surpassed only by Poland (see Table 3 further in the chapter).

In addition to the cross-country differences in levels of protection for regular and temporary contracts, the differences between the two within countries have received increasing attention from researchers and policy-makers. Calculating such a gap has become fairly easy as the two EPL indexes are measured on the same scale, creating an impression of their comparability. The gap in employment protection between regular and temporary contracts, together with the tightness of legislation for permanent contracts, is seen as a factor encouraging employers to favour fixed-term contracts. Thus reducing the 'EPL gap' is hypothesised to reduce dualism by leading to greater employment on permanent contracts. However, changes in the index on fixed-term contracts were generally small and the reduction of protection rights for regular contracts was not matched by a comparable tightening of conditions for temporary workers. The value remained unchanged in four out of the nine countries. It declined in Spain and increased in the UK, Germany, Slovakia and Estonia.

In assessing the effects of levels of and changes in EPL, two questions are important. The first is whether labour market deregulation has made any contribution to increasing employment and reducing unemployment for any significant groups. The conclusion is that there is no evidence to support any such hypothesis. The second is whether deregulation has had an effect on segmentation and here the indications are that any such effect has been negative, leading to worsened conditions for employees in the form of more precarious employment and fewer, rather than more, opportunities to find permanent and secure jobs.

To reach these conclusions we rely on detailed case studies of the sample of nine European countries (Chapters 3-11). That has not been the most commonly used method. Much of the past literature has used quantitative statistical analysis, relating changes in employment to changes in various indicators of labour market policies and institutions. We believe this method to be insufficient and, as indicated below, it has in fact failed to

provide clear answers as to the effects of EPL on employment and unemployment, and still less in demonstrating other effects on labour market behaviour. The need for a case study approach is justified in what follows, with a brief description of the theoretical bases for predictions of the negative effects of EPL and summaries of the differing labour market performances across the chosen sample of countries.

2. The uncertain results from past research

Interest in employment protection legislation as a cause of unemployment is comparatively recent, really taking off in the 1990s and encouraged by the OECD Jobs Study (OECD 1994). That gave support to the view that the USA benefited during the 1970s and 1980s compared with Europe from freer market forces. A measure was developed – the OECD's EPL index – facilitating comparisons over time and between countries. Academic studies proliferated, many pointing to a relationship between poor labour market performance and employment protection (e.g. Layard *et al.* 1991; Scarpetta 1996; Siebert 1997; Nickell 1997; Nickell *et al.* 2005). Another body of literature has assessed these claims critically, pointing to the absence of any such relationship (e.g. Howell *et al.* 2007; Schömann 2014; De Stefano 2014; Avdagic 2015). It seems that claims of a link are very sensitive to the choice of countries and time periods for comparison, a point that does not encourage confidence in the existence of any significant relationship. Indeed, the OECD's *Employment Outlook* of 2016 repeats a previous conclusion that 'flexibility-enhancing EPL reforms' have, 'at worst no or a limited positive impact on employment levels in the long run' (OECD 2016: 126).

These empirical studies tested hypothesised relationships derived from logical reasoning (OECD 2013: 69-70). However, there is no unequivocal theoretical argument pointing to net negative consequences from employment protection for employment, for productivity growth or for labour market segmentation. Instead, there are three lines of reasoning that can point in different directions and that give no indication of the likely strength of any possible effects. They can therefore be given credence only when backed by clear empirical evidence.

In relation to unemployment, logical reasoning suggests two possible effects from strict employment protection, the more obvious being that it will discourage dismissals at times of falling demand. The less obvious effect, pointing in the opposite direction, is a disincentive to increase employment at times of high or rising demand for fear that it will be difficult to shed unwanted labour should hard times return in the future. Plausible discouragements to recruitment include short trial periods, tough terms for collective or individual dismissals and restrictions on altering workers' terms of employment once they have been settled. Nothing can be concluded from reasoning alone either as to which of these two possible effects will be the more powerful or as to their significance, especially when set alongside other factors influencing employment.

The second line of reasoning links EPL to productivity. The postulated mechanism runs through its effects on turnover – high rates are assumed to increase the chances of getting the right person in the right job – and on the possible ease of making structural

changes in the economy. However, any relationship between turnover and productivity could run in either direction. Employment protection might be judged positively, insofar as it could lead to higher productivity and the maintenance of higher employment levels by encouraging commitment and skills acquisition. Reducing turnover and creating a stable labour force is advocated in much of the advice for human resource management practice and seen as increasing 'the returns to investment in human and organisational capital' (CIPD 2013: 15).

These two effects might both apply, but in different sectors. Indeed, precisely that difference has been used as one of the bases for postulating different varieties of capitalism (Hall and Soskice 2001), with differing degrees of employment stability, that can be as successful as each other but in different sectors and different kinds of innovation activities. However, there remains no reason to assume that employment protection legislation will have a big effect on productivity, either positive or negative, especially since, as indicated by Myant and Brandhuber (Chapter 1), job moves are mostly voluntary with dismissals counting for only a small proportion. Any conceivable positive effects would be likely only after a longer time period and the issue is therefore not pursued further in this book which concentrates on the effects of changes made from 2008.

The third line of reasoning relates to labour market segmentation. Here, the argument is that protection in a secure part of the economy has encouraged employers to offer new recruits only fixed-term contracts which are, by definition, less secure. Lower standards of protection for permanent contracts might be expected to reduce the barrier to entry into stable employment for more vulnerable workers. However, there are two reservations to expecting EPL to be a cause of segmentation.

The first is that many other factors put groups of workers at risk of exclusion and weaker protection may well exacerbate this risk. This is discussed by Rubery and Piasna in Chapter 2, which is devoted to the issue of labour market segmentation. Indeed, employment protection rights are an indicator of power relations between employees and their employers. Lowering protection will change the balance of power in favour of employers, leaving vulnerable workers less able to resist poorer conditions of work and employment offered by employers. This will increase rather than reduce segmentation. Evidence from a number of the countries studied here is consistent with the view that employment deregulation is one of the explanations for the growth in precarious forms of employment as economies started to recover from the crisis of 2008.

The second reservation is the doubtful appropriateness of the dividing line between two particular formal contract types as a proxy for a dividing line between primary and secondary labour market segments. An insecure permanent contract, or no formal contract at all, may offer no more, or even less, security to an employee than a formal fixed-term contract. Again, empirical evidence is required to demonstrate any significance of the division between these formal contract types. One researcher puts it thus: '… presenting the regulation of standard employment contracts and particularly the relevant regulation of dismissal as the main cause of segmentation in the labour market is unconvincing' (De Stefano 2014: 261).

Evidence in the chapters that follow justifies doubts over the importance of protection for permanent contracts as a cause of segmentation. Examples from a number of countries show employers using temporary contracts when laws made this possible. Stronger protection on permanent contracts may in some cases make this more attractive, a hypothesis referred to by Vlandas in relation to France (Chapter 9). However, either legislative changes making temporary contracts possible, as in Italy and Spain in earlier periods, or a learning process in which employers saw how to take advantage of opportunities made available within existing laws, as examined by Lewandowski and Magda in relation to Poland (Chapter 7), appear as the crucial stimuluses. Reducing protection on permanent contracts need therefore make little difference to employers' preference for using the kinds of contracts that are more advantageous to themselves. When new employees lack legal protections, collective strength or favourable labour market conditions, employers are very likely to consider more casual forms of employment as more favourable to themselves.

Thus any link between EPL, both on permanent and temporary contracts, and labour market segmentation remains unclear from logical reasoning. It requires empirical evidence which will need to use a more appropriate indicator of dualism than just the numbers with permanent and fixed-term contracts.

3. The need for case studies

Using individual case studies makes it possible to set the effects of particular legislative changes and employment protection legislation in general in a wider context. There are many other factors affecting economic and employment development, including the macroeconomic situation, public spending policies, changes in sectoral structures and policies on employment promotion and protection. It is very difficult to separate out the effects of changes in legislation which, in view of the importance of other factors, may anyway be relatively small. Comparisons between countries that ignore these contextual factors may give highly misleading results.

An illustrative example is an attempt by the OECD to show the effects of labour market deregulation in Estonia in the crisis and post-crisis period in comparison with the two other Baltic republics. It appeared that unemployment had fallen slightly more rapidly in Estonia following EPL reforms (OECD 2016: 139-143). However, making a credible claim that this might represent a causal relationship would depend on eliminating the effects of all the other differences among the Baltic republics. Most obviously, account would need to be taken of their different export structures, different industrial structures, different patterns of inward investment, the different consequences of the financial crisis – in relation to the fate of the banks and to effects on construction sectors which were of different sizes – different patterns of public spending and the different levels of help for investment from EU funds. The unemployment rate is also a measure of questionable value in countries experiencing high, but different, varying and possibly inaccurately recorded, levels of emigration, as was the case in the Baltic republics both before and after the financial crisis. In short, we need greater knowledge of the countries

concerned. When all relevant factors are taken into account it would seem unlikely that the small reduction in Estonia's employment protection would figure as an important factor not least when, as indicated by Eamets, Masso and Altosaar in Chapter 5, the fall in Estonian unemployment preceded the changes in employment legislation.

The individual country cases also enable us to follow the effects of labour market deregulation beyond just the effect on unemployment, or employment, levels. It is possible to a certain extent to give an assessment of the effects on labour market segmentation through the impact on precariously placed employees.

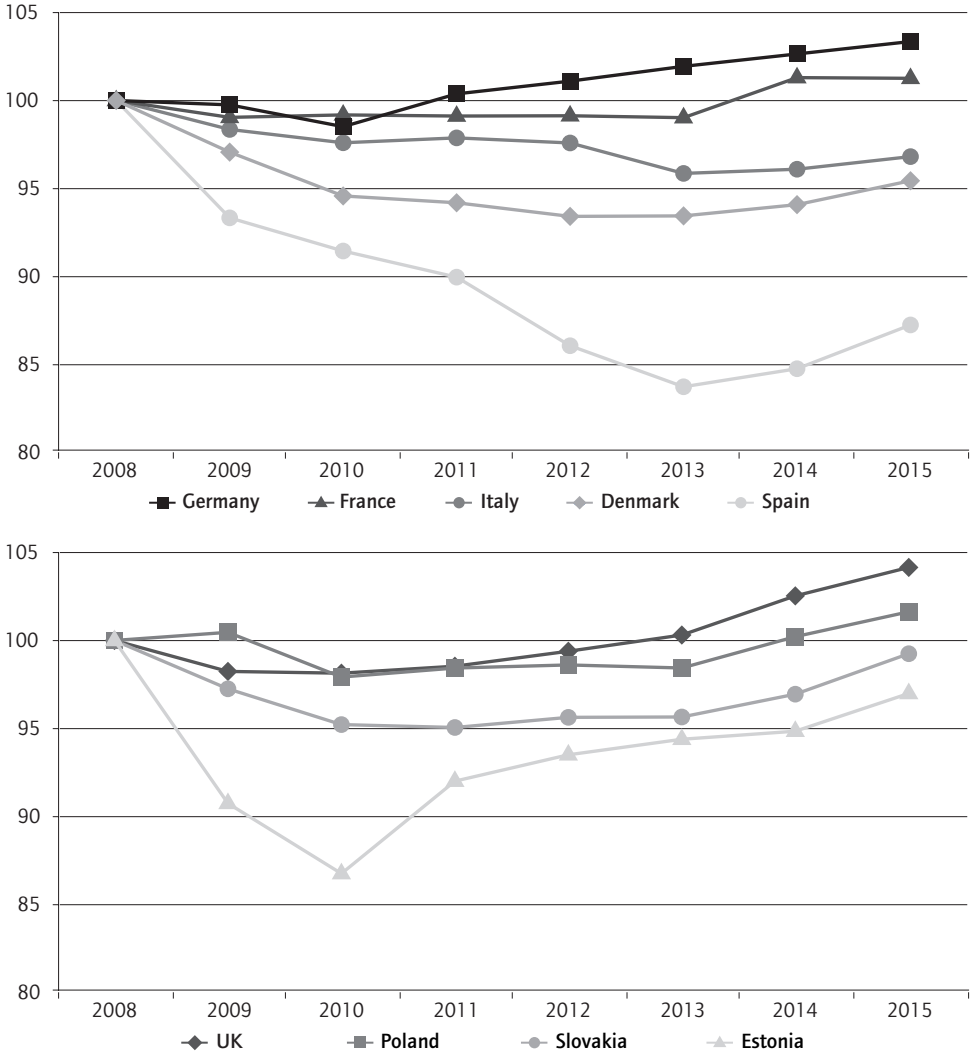
It is also possible to take note of de facto deregulatory measures that do not appear in the OECD EPL index, such as the introduction of significant charges for pursuing unfair dismissal cases in the UK or the exclusion from some protections of employees in firms below a certain size in Germany, covered respectively by Grimshaw *et al.* and Jaehrling in Chapters 11 and 8. It is also possible, to some extent, to set deregulatory reforms in the context of other changes in legal provisions and benefits, such as changes in pension and unemployment insurance systems which may have played a role in Denmark, covered by Refslund, Rasmussen and Sørensen (Chapter 10) and Spain, covered by Muñoz-de-Bustillo and Esteve (Chapter 3). The study of Italy by Fana, Guarascio and Cirillo (Chapter 4) illustrates the importance of institutional and historical backgrounds by showing significant differences within the one country in the impact of changes following deregulatory reforms.

Above all, individual case studies can take account of the differences in economic developments which were the most important factor behind changes in employment and unemployment.

4. The context for the country case studies

The developments in employment numbers differ across the countries analysed in this volume, thus offering a good representation of the variety of national experiences of the crisis. Figure 2 illustrates changes in total employment over the 2008-2015 period, relative to the stock of jobs in each country at the onset of the crisis in 2008. There is no clear geographical or regime-type divide between the countries, with Spain, Estonia and Denmark experiencing the biggest proportional losses in employment. The trend towards recovery can be observed in all cases, albeit with different intensities, but the underlying mechanisms here are not the same either. For instance, some differences can be related to migration which was predominantly inward in Germany and the UK and predominantly outward in Spain and Estonia. The extent of the deregulatory effort (as illustrated in Figure 1) certainly does not coincide with any improved capacity for job creation. Germany, for instance, managed quickly to resume and then maintain the upward trend in job creation without the help of any deregulatory reform in the post-crisis period that would show up in the OECD's EPL index.

Figure 2 **Developments in the stock of employment (2008=100)**



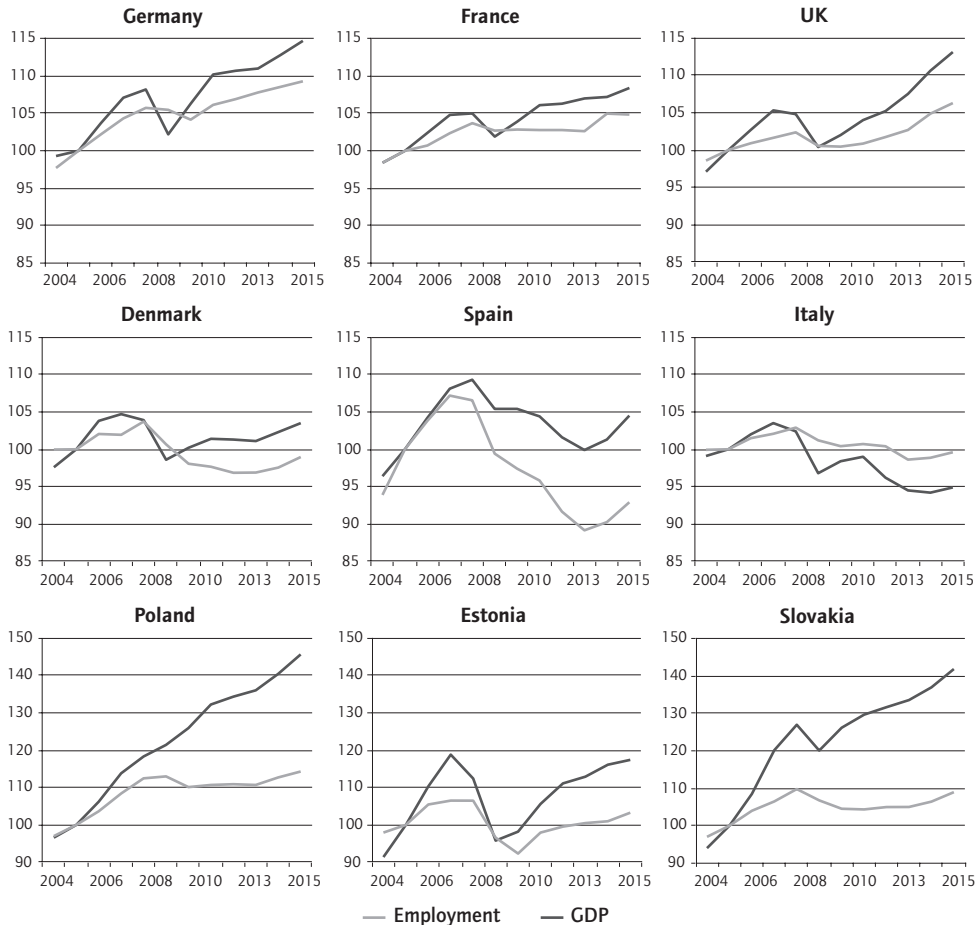
Source: Eurostat (EU-LFS, lfsa_pganws). Age 15-64

The principal cause of changes in employment was changes in the level of economic activity, measured in Figure 3 by GDP. This followed slightly different trajectories with a fall in 2009 in all countries apart from Poland, and then a further decline in those subsequently subjected to measures of sharp austerity which, from the current sample, applies to Spain and Italy. The relationship between GDP and employment changes also differs between countries. They moved most closely together in Spain while employment appeared the most resilient to GDP changes in the UK and Germany.

A simple comparison using the graphs presented here casts doubt on the importance of EPL as a major determinant of employment levels. Setting countries alongside each

other shows both similarities and differences. Thus, for example, there is a remarkable similarity in development over the whole period in employment and GDP between Poland and Slovakia, albeit with GDP suffering during the crisis more in Slovakia than in Poland. This stems in large part from their different economic structures, with Slovakia much more dependent on motor vehicle exports which were hit by low demand in 2009. However, that crisis effect made little difference to the overall dynamic. The similarity in trends between the two countries is noteworthy in view of the remarkable difference in the number of labour market reforms implemented: between 2008 and 2015, there was only one measure targeting employment protection legislation introduced in Poland but there 14 such measures in Slovakia, as indicated in Figure 1. Accordingly, the latter country experienced the biggest net fall in the EPL index for regular contracts of any of the countries considered here while Poland experienced no fall at all (see Table 1).

Figure 3 **Employment and GDP changes, 2004-2015 (2005=100)**



Note: the vertical scales are different in the cases of Poland, Estonia and Slovakia from those for the other six countries.
Source: Eurostat (nama_10_gdp; lfsa_pganws), own calculations

A large part of the explanation for these differences in employment elasticity in relation to GDP growth lies in different economic structures (cf. Myant *et al.* 2016). The crisis hit the construction sector particularly hard and this led to rapid declines in employment in those countries that had been experiencing construction booms, notably Spain and Estonia. Manufacturing was generally slower to shed labour as were public services which, in a number of countries, suffered instead from pay reductions.

The differing weights of particular sectors is therefore important in explaining aggregate employment changes. In fact, the growth in quasi-public service jobs in Germany, as shown in Chapter 8, explains much of that country's employment growth. These jobs were largely taken by women, many coming into the labour force, rather than by the former employees of declining sectors. The new jobs also often took the form of insecure, part-time positions such that total hours worked and the total numbers in permanent employment were below their 1991 levels in 2015.

Differences between labour market institutions and policies could also play a role in determining labour market outcomes, but more clearly in the kinds of employment relationships on offer than in total levels of employment. The UK labour market, described in Chapter 11, appears to be the least regulated, with laws setting a ceiling rather than a floor to employment practice. Reaching this level is not possible for all employees not least because awareness of the available protections and routes to their enforcement are very imperfect. The result is a large body of insecure employment, as is also the case in Germany where much of the labour force is excluded from the higher levels of protection afforded to those with regular contracts.

Different forms of insecure employment had varying fates through the economic crisis. Those with temporary contracts could be expected to lose their jobs the most rapidly. Thus a high level of temporary employment in Spain may have made it particularly easy to reduce the overall labour force. However, as indicated by Muñoz-de-Bustillo and Esteve in Chapter 3, many on permanent contracts were also dismissed in this period, contrary to an expectation that they might enjoy considerable security of employment.

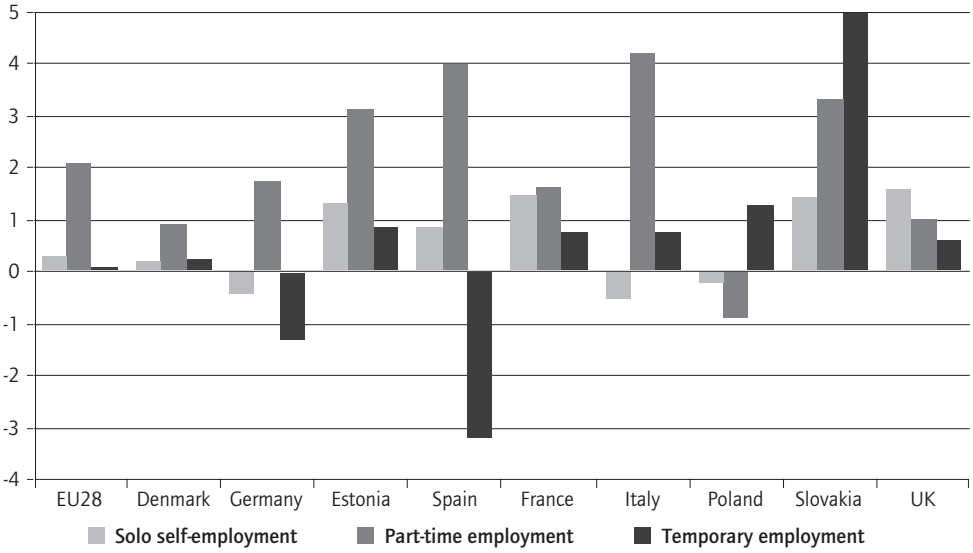
Overall, as indicated in Table 3, there was a visible move towards non-standard forms of work in the years after the crisis. However, the patterns differ across countries, with some forms of atypical work gaining ground in one country but diminishing in another. This is illustrated in Figure 4, which shows a breakdown for three forms of non-standard employment: solo self-employment, fixed-term contracts and part-time work, for the EU as a whole and the sample of nine countries. In some, but not all, cases the incidence of all forms increased. The shift between 2008 and 2015 towards part-time work is very clear for all countries apart from Poland. In Italy and Spain, the share of part-time work increased the most, by over four percentage points in this period. Solo self-employment increased most visibly in the UK, Slovakia, France and Estonia. The share of fixed-term contracts increased in the majority of analysed countries, with the exception of Spain and Germany.

Table 3 **Non-standard employment, share in 2015 and change 2008-15**

	2015			Change in percentage points 2008-2015		
	Solo self-employment	Part-time employment	Temporary employment	Solo self-employment	Part-time employment	Temporary employment
EU28	10.1	19.6	12.0	0.3	2.1	0.1
Denmark	4.5	24.7	8.0	0.2	0.9	0.2
Germany	5.3	26.8	11.8	-0.4	1.7	-1.3
Estonia	5.6	9.5	3.1	1.3	3.1	0.8
Spain	11.6	15.6	20.9	0.9	4.0	-3.2
France	6.7	18.4	14.2	1.5	1.6	0.8
Italy	15.7	18.3	10.8	-0.5	4.2	0.8
Poland	14.1	6.8	22.2	-0.2	-0.9	1.3
Slovakia	11.9	5.8	8.9	1.4	3.3	5.0
UK	11.4	25.2	5.2	1.6	1.0	0.6

Source: own calculations form EU-LFS (Eurostat [lfsa_egaps; lfsa_eppgan; lfsa_etgaed])

Figure 4 **Change in the share of atypical forms of work in total employment, 2008-2015, age 15-64, in percentage points**



Source: own calculations from EU-LFS (Eurostat)

This confirms that no single dividing line between two contract types can adequately express the extent of labour market segmentation. Nor can there be a one-size-fits-all solution to reduce labour market segmentation, as it takes multiple and diverse forms across the EU. Indeed, there are indications, although not firm evidence, that when one form of casual employment is made more difficult employers may shift to another. Thus in Slovakia, as discussed by Fabo and Sedláková in Chapter 6, a reduction in 2012 in the use of one form of casual arrangement was followed shortly afterwards by a growth in fixed-term contracts with no effect on the total employment level. In the UK, as argued

in Chapter 11, a toughening of the rules on temporary agency work in 2011 was followed by a rapid increase in zero-hours contracts. The Italian case (Chapter 4) may indicate a different phenomenon whereby employers react to financial incentives by offering formal, but insecure, contracts to previously unregistered workers.

It remains to be proven to what extent these differences in forms of employment relationship should be seen as indicative of labour market segmentation. In view of the general trend towards lowering employment standards and protections for all workers, it is more appropriate to talk about multiple and intertwined forms of precariousness that are not linked to any particular kind of work contract. Rather than legal rules, it is employers' practices that shape the form and extent of precarious work. The economic crisis only exacerbated the scope for employers' discretion in this regard.

Another question is whether it is possible to move from one type of employment contract to another. In other words, whether temporary contracts are a stepping stone into permanent contracts or a dead end. For this, information is needed on job flows; and the evidence from a number of the case studies points rather towards the dead end conclusion. In Estonia, the transition from unemployment is likely to be to a temporary contract and from that back to unemployment. In Germany, the chances of moving into permanent work are particularly poor for temporary agency workers and for those on so-called mini-jobs. In France and Poland, too, temporary work offers limited prospects for further advancement, especially for vulnerable groups of workers.

5. Conclusions

This introductory discussion, backed by the detail in individual chapters, points to two general conclusions. The first is that the regulation of employment does not stall job creation and that the role of the legal provisions governing dismissals has, in terms of their influence on employment systems, been over-estimated. This is in line with much of the previous research, but it conflicts with much of the recent policy advice. A remarkable finding from Slovakia is the continual insistence from employer organisations that strengthening the protections, as has periodically happened with changing governments in that country, would lead to less labour recruitment whereas individual employers have, in practice, made no changes to their employing practices. They evidently know that recruitment policy should be governed by other considerations, such as the state of demand and predictions of its future development.

The second is the increased use of non-standard forms of employment as economies have recovered from the crisis. This is contrary to the claims that labour market segmentation is exacerbated by protections for permanent contracts. It rather implies that the opposite hypothesis is closer to the truth; namely, that reduced EPL, alongside unfavourable labour market conditions and sometimes weak enforcement even of the laws that do exist, goes with a weakened position for labour and hence a stronger position for employers. The enthusiasm of employers for using casual forms of employment whenever possible can be illustrated from the experience in Poland, where fixed-term contracts have spread through the public sector, covering

broadcasting and education among other sectors, with no means for employees to offer serious opposition.

It can be added that an increasingly casualised labour force is likely to carry substantial social and economic costs. These would include the psychological effects of insecurity; the emigration of skilled and qualified individuals; the lack of employer interest in advancing the skills of the disposable workforce; restricted access to credit and, hence, social advancement; and a reluctance or inability to invest in pension schemes. Such themes have yet to be included in studies of the effects of employment security. They are also beyond the scope of this volume which focuses only on the current and recent policy agendas of reducing employment protection.

To that end, the following chapters set out the experiences of the nine countries in detail, preceded by two chapters on general themes: the OECD's EPL index; and labour market segmentation. Together, they confirm the weak foundations of policies for reducing employment protection and the need for alternative policies that could reduce labour market segmentation by expanding reasonable levels of protection and security to all employees.

References

Avdagic S. (2015) Does deregulation work? Reassessing the unemployment effects of employment protection, British Journal of Industrial Relations, 53 (1), 6-26.

Bentolila S., Dolado J. J. and Jimeno J. F. (2011) Reforming an insider-outsider labor market: the Spanish Experience, IZA Discussion Paper 6186, Bonn, Institute for the Study of Labor.

Blanchard O. (2006) European unemployment: the evolution of facts and ideas, Economic Policy, 21 (45), 5-59.

Blanchard O. and Portugal P. (2001) What hides behind an unemployment rate: comparing Portuguese and U.S. Labor Markets, American Economic Review, 91 (1), 187-207.

CIPD (2013) Megatrends: has job turnover slowed down?, London, Chartered Institute of Personnel and Development. https://www.cipd.co.uk/binaries/megatrends_2013-job-turnover-slowed-down.pdf

Clauwaert S. (2014) The country-specific recommendations (CSRs) in the social field: an overview and comparison Update including the CSRs 2014-2015, Brussels, ETUI.

De Stefano V. (2014) A tale of oversimplification and deregulation: the mainstream approach to labour market segmentation and recent responses to the crisis in European countries, Industrial Law Journal, 43 (3), 253-285.

European Commission (2010) Annual growth survey: advancing the EU's comprehensive response to the crisis, COM(2011) 11 final, 12 January 2010.

European Commission (2012) Labour market developments in Europe 2012, European Economy 5/2012, Luxembourg, Publications Office of the European Union.

European Commission (2015) Employment and social developments in Europe 2014, Luxembourg, Publications Office of the European Union.

European Commission (2016) Employment and social developments in Europe 2015, Luxembourg, Publications Office of the European Union.

Hall P. and Soskice D. (eds.) (2001) Varieties of capitalism: the institutional foundations of comparative advantage, New York, Oxford University Press.
Howell D. R., Baker D., Glyn A. and Schmitt J. (2007) Are protective labor market institutions at the root of unemployment? A critical review of the evidence, Capitalism and Society, 2 (1), 1-71.
Layard R., Nickell S. and Jackman R. (1991) Unemployment: macroeconomic performance and the labour market, Oxford, Oxford University Press.
Myant M., Theodoropoulou S. and Piasna A. (eds.) (2016) Unemployment, internal devaluation and labour market regulation in Europe, Brussels, ETUI.
Nickell S. (1997) Unemployment and labour market rigidities: Europe versus North America, Journal of Economic Perspectives, 11 (3), 55-74.
Nickell S., Nunziata L. and Ochel W. (2005) Unemployment in the OECD since the 1960s: what do we know?, Economic Journal, 115 (500), 1-27.
OECD (1994) OECD jobs study: facts, analysis, strategies, Paris, OECD.
OECD (2013) OECD employment outlook 2013, Paris, OECD.
OECD (2016) OECD employment outlook 2016, Paris, OECD.
Rueda D. (2006) Social democracy and active labour-market policies: insiders, outsiders and the politics of employment promotion, British Journal of Political Science, 36 (3), 385-406.
Scarpetta S. (1996) Assessing the role of labour market policies and institutional settings on unemployment: a cross-country study, OECD Economic studies, (26), 43-98.
Schömann I. (2014) Labour law reforms in Europe: adjusting employment protection legislation for the worse?, Working Paper 2014.02, Brussels, ETUI.
Siebert H. (1997) Labor market rigidities: at the root of unemployment in Europe, The Journal of Economic Perspectives, 11 (3), 37-54.

Chapter 1
Uses and abuses of the OECD's Employment Protection Legislation index in research and EU policy making

Martin Myant and Laura Brandhuber

1. Introduction

A new orthodoxy has emerged in labour market policy-making. Laws regulating employment protection are being blamed for high unemployment, for higher unemployment among particular groups and sometimes more generally for poor productivity and growth performance. As indicated in the Introduction, and despite substantial efforts by some researchers to show such causal relationships, supporting empirical evidence is at best inconclusive. Much of this research has relied on the comparative measures of employment protection provided by the OECD's EPL (Employment Protection Legislation) index.[1] This has come to prominence as a convenient numerical indicator which can be put into regressions comparing countries and time periods, giving an impression of rigour.

However, the indicator suffers from weaknesses in its construction such that it is an imprecise measure of legal protection for employment and an even less precise measure of the overall security of employment. Using it as a variable explaining labour market outcomes also requires a recognition of other causal factors, most obviously macroeconomic conditions and other labour market policies. Remarkably, the most serious economic studies, when taken together, do not show a consistent relationship between the EPL index and the hypothesised outcomes.[2] A reasonable conclusion would be that any effects of the elements included in the OECD's EPL index are small or non-existent, possibly because the indicator is a poor measure of legal protection, possibly because legal protection is a poor measure of actual employment protection or possibly because employment protection is anyway of minor importance to the investigated outcomes. Nevertheless, policy-makers continue to give advice, citing the EPL index, as if the alleged negative effects of EPL had been confirmed.

This chapter aims to assess critically the nature and use made of the index, starting in the first section with a description of how it is constructed followed in the second section

---

1. Strictly speaking, there is a family of indexes. The singular is used here for simplicity except when distinctions are being made.

2. A full discussion of all the existing academic studies would be beyond the scope of this chapter. The OECD's Employment Outlook of 2013 summarises some of the research results up to that year, accepting that 'many of the studies find no significant effects of EPL' on aggregate employment and on unemployment (OECD 2013: 71), while some studies, often of rather specific cases and time periods, are reported as pointing to other possible negative economic effects. There are indeed many studies that find no clear evidence of any detrimental effects (e.g. CIPD 2015), while the absence of effects both on unemployment and on unemployment for specific groups, notably the long-term unemployed, seems to be confirmed when use is made of a large sample of countries and a long time period (Avdagic 2015).

by a consideration of criticisms and reservations. The third section covers a discussion of the European Commission's use of the EPL index in general policy documents and the fourth section gives examples of specific policy recommendations. The conclusion leaves open the question of whether the EPL index should be abandoned completely, such that research would need to rely more on detailed country case studies, or whether it can and should be revised and improved.

2. Construction of the EPL indicators

Attempting to measure and compare employment protection legislation across countries began relatively recently. The first important step was Lazear's (1990) comparison of the statutory entitlement of severance payments and legally binding notice periods in cases of no-fault dismissals. This developed via the summary indicators published by Grubb and Wells (1993), taking in information on legal constraints in 11 European countries, into the well-known OECD index, using data from OECD countries since the mid-1980s.

The purpose of the measure can be interpreted in different ways. One EU publication presents the rationale as addressing 'the risks for workers associated with dismissal', thus setting requirements on 'the employer when dismissing workers'.[3] That would be in line with the view, again occasionally present in EU publications, that acknowledges the need for employment protection in view of 'the inherent inequality' in the relationship between employer and employee, giving the former a clearly stronger position (European Commission 2015: 79). Alternatively, the index can be seen as expressing the inconvenience and costs imposed on employers by legal restrictions. It will be argued here that some elements fit only with the second of these, particularly in relation to temporary contracts. In any event, it remains incomplete as an indicator of the protections employees enjoy in practice, be they on permanent or temporary contracts.

Following the OECD's *Employment Outlook* of 1999 (OECD 1999), the strictness of EPL is mapped as discrete indicators ranging from 0 to 6, with a higher value indicating a more stringent regulation of employment. Two major updates came in 2008 and 2013 bringing in further information on regulatory provisions, including some information from collective agreements and measures relating to temporary agency work (OECD 2013).

The overall summary indicator of EPL strictness comprises 21 items,[4] grouped into three sub-indicators:

1. Strictness of protection against individual dismissal of regular workers (EPR);
2. Strictness of protection due to additional regulations on collective dismissals (EPC);
3. Strictness of protection regarding temporary employment (EPT).

3. http://ec.europa.eu/europe2020/pdf/themes/23_employment_protection_legislation.pdf
4. Detailed information on all the sub-components of indicators can be found at www.oecd.org/employment/protection

A summary indicator of the first two sub-indicators (EPR & EPC → EPRC) and the indicator for protection under temporary employment (EPT) are the ones mainly used for policy analysis.

The computations of the indexes are based on standardised questionnaires, completed by government authorities of the respective states and the OECD Secretariat. The primary source is national labour law, supplemented by information from other sources such as collective bargaining agreements and case law. Specific regulations receive numerical scores according to the strictness of the legal provisions, and are assigned to one of the 21 items. Within each sub-indicator, weights are assigned to the individual components.[5]

Nine items fall under the provisions which aim to measure the strictness of the individual dismissal of workers on regular contracts (EPR). These cover the three different aspects; Procedural Inconveniences, Notice and Severance Pay; and Difficulty of Dismissal. The first, Procedural Inconveniences, includes provisions on notification procedures, such as how dismissals have to be communicated and who has to be notified in order to carry out a dismissal. The second grouping, Notice and Severance Pay, covers legal provisions on the length of the notice period and the extent of severance pay depending on the tenure. The last aspect, Difficulty of Dismissal, covers the definition of unfair dismissal; the period in which claims can be made; typical compensation after 20 years in a job; the possibility of reinstatement following an unfair dismissal; and the maximum time period in which it can be claimed. The respective sub-indicator of the strictness of the employment protection against individual dismissal of workers on regular contracts (EPR) is then obtained by simply averaging the three intermediate indicators.

The sub-indicator on the strictness of employment regulation in cases of collective dismissals (EPC) covers only the *additional* costs to the employer above the costs of the individual dismissals. Thus, the *overall* cost associated with collective dismissals results in adding up the two sub-indicators (EPR+EPC=EPRC).

The sub-indicator regarding regulations on temporary employment (EPT) is made up of eight items, two of which – items 16 and 17 – were added for the first time in 2008. These are grouped into two sub-categories: the regulation of fixed-term contracts (EPFTC); and the regulation of temporary work agencies (EPTWA). EPT is the average of EPFTC and EPTWA. The indicator on fixed-term contracts includes information about when, with how many repetitions and for how long a fixed-term contract can be used. The intermediate indicator for TWA employment includes information about the types of work for which TWA is legal, whether there are restrictions on the number of renewals, the maximum duration and whether authorisation is required for the use of TWA employment. The last item, 17, of the EPTWA concerns whether there is equal treatment in terms of pay and conditions for regular and agency workers within the same firm.

5. For detailed methodology and the weighting of the construction of the indicators, see www.oecd.org/els/emp/EPL-Methodology.pdf

It should be noted that the indexes for permanent and temporary employees differ radically in their construction. The EPRC quantifies the 'procedures and costs involved *in dismissing* individuals or groups of workers'. The EPT indicator instead measures 'the procedures involved *in hiring* workers on fixed-term or temporary work agency contracts'.[6] In fact, even that second generalisation does not hold in full for EPT, which also includes a measure that could give protection to temporary employees, albeit not in a consistent way. Thus some indicators will be reduced in value when restrictions on taking on temporary employees are relaxed. The one relating to agency work will be increased when employers' power to set their choice of pay and conditions is constrained.

The EU's Directorate-General for Employment, Social Affairs and Inclusion acknowledges this significant measurement difference between the two employment categories and accepts that the interpretation and comparison of the two indices have to be treated with caution. Indeed, they are not both measures of protection for employees and should not be added to, subtracted from or compared if that is the subject under investigation. However, it is suggested that they can be seen to measure one phenomenon if interpreted as showing the 'strictness or complexity that an employer has to deal with when faced with the two types of contracts' (European Commission, 2015a: 78). It might therefore affect employers' willingness to take on new recruits on permanent contracts and to allow transitions from temporary to permanent contracts. However, the difference between the two does not provide a measure of the differences in protection afforded to the two categories of employees, that element being largely absent from the EPT indicator. It therefore also remains an incomplete measure of employers' inconvenience in managing fixed-term contracts.

3. Reservations – what the EPL index does not show

Any attempt to use the EPL index should take account of a number of important reservations which mean that it will have greater or lesser reliability depending on the country and the exact comparison being made. A number of authors have, to varying degrees, criticised the OECD indicators (e.g. Bertola et al; Boeri and Cazes 2000; Boeri and Jimeno 2005; Cazes *et al.* 2012; Cazes and Nesporova 2003). Unfortunately, as underlined by Bertola *et al.* (2000: 57), 'empirical literature on the macroeconomic effects of employment protection has to rely on highly imperfect measures of the strictness of these regulations'. That, of course, assumes that empirical work has to find a simple quantitative measure before comparing countries. The validity of making do with so imperfect an indicator can be questioned in view of the five points set out below.

6. http://www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm

3.1. How the numerical scores are set

A considerable degree of arbitrary estimation goes into deciding individual scores. This can be illustrated in the particular case of item 17 (Equal treatment of regular and agency workers within a firm). In the latest version (version 3) of the index, this item accounts for one-sixth of the EPTWA indicator while item 13 (Types of work for which TWA employment is legal) accounts for two-sixths of the total EPTWA indicator. Whenever TA workers are entitled to receive the same pay and conditions as regular workers in the user firm, this results in a score of 6 for item 17, contributing to a higher overall indicator. This is indeed the case for almost all European countries. The UK receives a score of 3, because its law apparently specifies equal treatment only for working conditions and not for pay.

These rankings are all derived from individual countries' laws and there are questions over interpretation and likely effects in practice. Thus for the UK, TA workers are entitled, after a 12 week qualifying period, to the same basic terms and conditions of employment as if they had been employed directly by the hirer. Pay is not explicitly mentioned but is implicit within 'terms and conditions'. There is a means within the law for agencies to avoid equal pay for their employees – the so-called Swedish derogation – if permanent employment is granted by the agency. This amounts to a serious reservation to the equal pay provision. It is permissible in terms of the relevant EU directive, and is allowed in a number of EU Member States' laws, but it is not taken into account in formulating the index.

Germany receives a score of 4.5. There is equal treatment for pay *and* conditions, but the principle of equal treatment can be waived when employees are protected by a separate collective agreement, even if such agreements in practice do not lead to equal conditions. It need not be difficult to find a union prepared to sign such an agreement for people facing the alternative of unemployment. The Swedish derogation also applies under German law. For Hungary, also given a score of 4.5, it is six months before equal pay is required, a period that could be longer than many temporary contracts, rendering the legal provision ineffective. For Portugal, also scoring 4.5, TA are entitled to the minimum wage defined in the collective agreement applicable to the temporary work agency or to the user, or to the same work, whichever is the more favourable.

These, then, are different laws, but leading to the same score in these three countries. The UK scores less, seemingly suffering for using a synonym for the word 'pay' in its law. The outcomes could be rather different, ranging between quite good protection to possibly largely ineffective protection, depending on what happens in practice. Using the EPL index as an analytical device would therefore seem potentially dangerous and no substitute for a detailed investigation of the functioning of temporary agency work in individual countries.

3.2. Variations in enforcement

A second important reservation is that legislation may never be enforced, or may be enforced unevenly. These are *de jure* measures only. When this issue is taken up in studies, the key issue is frequently seen as inefficiencies in civil justice systems, leading to lengthy trials with uncertain results. The argument has then been used that employers are unable to rely on the formal legal position and that the practical level of employment protection could therefore be higher than the law would suggest (Cf. European Commission 2015: 98-101).

The emphasis on this aspect of the issue seems surprising. There is no serious doubt that abuses of employment law, at least in some countries, are widespread, making formal legal protections of questionable value to substantial parts of their labour forces. Furthermore, enforcement is likely to vary between types of employment. Following on from the previous section, Czechia scores 6 on the item for equal treatment for agency workers, but the Labour Inspectorate is clearly sceptical that this applies in practice, reporting that it has no means of checking temporary agency workers' terms of employment (Drahokoupil and Myant 2015). It is also highly likely that enforcement varies between countries. However, there are immense practical difficulties in including these considerations, even if the case for doing so is beyond serious question.

Some numerical measures do offer potential, such as the number of cases that are taken to court, how long courts take to make a ruling and, above all, whether judges are more likely to favour employers or employees. However, information on enforcement procedures is scarce and difficult to compare (e.g. Venn 2009; Bertola *et al.* 2000). Judgements may also vary with the economic conditions, meaning that an index taking this into account should not, strictly speaking, be used as an independent variable. Thus, Ichino *et al.* (1998) showed courts to be more likely to rule in favour of employees when labour market conditions are precarious.

Bassanini *et al.* (2009) and Venn (2009) argue that the OECD indicator does to a *certain* extent take account of the actual operation of employment protection, since it encompasses measures for the extent of compensation (item 7) and the likelihood of being reinstated following unfair dismissal (item 8). These, however, relate only to what has come before the courts. We are therefore left to trust, without any clear evidence, that what is set out in law does relate to what actually happens, or at least that divergences between the two are not so great as to invalidate the use of the indicator for comparisons between countries.

3.3 To whom the law applies

There are often greater degrees of legal protection for particular professions or occupational groups. These are ignored in constructing the index, which follows only general employment law provisions.

Depending on the country, legal provisions may also have different effects on firms of different sizes. In these cases, the OECD indicator uses only the strictest level of protection applying to larger firms. This leads to an overstatement of the effective strictness of employment protection in countries where small and medium enterprises are excluded from full protection and important to the economy. According to Venn (2009), about 50% of the total numbers in employment are thus excluded from the effects of EPL in Italy and Spain, including a significant proportion of those on permanent contracts.

Applicability of the index is also clearly limited to formal employment, making it particularly problematic for countries with a large informal sector. It also excludes those who are not covered by an employment contract, as is the case for those with self-employment status and for those covered by commercial contracts only. This latter applies to an estimated 13% of the labour force in Poland, contributing to the exceptionally high levels of temporary contracts recorded in that country. This is a form favoured by employers because of the lower employment costs and the greater ease of dismissal. In other countries, notably Hungary, there are significant parts of the labour force working legally without written contracts and with minimal protection (Drahokoupil and Myant 2015).

The implication is that the EPL index overstates the true level of protection and overstates more in some countries – those with a high share of either informal, legally or *de facto* unprotected employment – than others.

3.4 Elements of protection omitted from general employment law

A further reservation that is even more difficult to take into account is the omission from the index of elements not derived from general employment laws that may imply a greater degree of employment protection, at least for parts of the labour force. This relates to the omission from the index of what may be included in employment contracts – or practices in some countries amounting to 'implicit' contracts as hypothesised in Okun's analysis of employment behaviour (Okun 1981) – and of the results of collective bargaining which may or may not be legally enforceable, depending on the country. The first of these varies substantially between countries, depending on their kinds of legal system – whether it is a civil or common law system, and also the variations within those categories – and their inherited employment relations traditions. The last of these can be followed in some countries when collective agreements are centrally collected. Together, these factors could be influential enough to overrule any effects from general legal provisions. The EPL index would then be a valid enough indicator of differences in some written laws, but it would be a poor measure of factors that determine actual differences in employment stability.

From the 2008 update, some attempt has been made to incorporate and account for provisions set through collective agreements. In most countries where data can be accumulated – and that is itself a big restriction – they appear to be similar to the mandatory legal provisions. Denmark, Iceland and Italy are viewed as exceptional

cases, with collective bargaining agreements offering a substantially higher degree of protection than that set by the law (Venn 2009: 20). However, any systematic inclusion of the results of collective agreements runs into immense practical difficulties. Even where information is available, coverage rates can vary substantially, depending on the industry. Setting scores for a country as a whole is therefore problematic. Thus, for example, for the maximum cumulated duration of successive fixed-term contracts in Germany there are no legal limits, implying a score of 0 for this item. Legal limits can, however, be determined based on collective agreements, as is the case for the metalworking sector where the limit is 24 months. A final score of 1 has been chosen for this item, which would correspond to a maximum duration of 36 months.

This time, the implication is not necessarily that the EPL index overstates the amount of protection. The opposite may be the case, at least for that part of the labour force that has protection over and above the formal legal provisions. We are therefore left with an incomplete picture. The law is not the whole story and is likely to be of variable relevance within and between countries.

3.5. Weighting the elements

With such a wide range of sub-indicators, the weights chosen are likely to be important for the ordering and spread of countries. The OECD assigns weights to the sub-components such as 'to reflect their relative economic importance when firms are making decisions about hiring and firing workers' (Venn 2009: 17). However, it is accepted that there is no empirical basis for the chosen weights. They come from a subjective estimate within the OECD of what is likely to affect firms' decisions. This leads, for example, in the summary indicator of the strictness of employment protection of temporary contracts (in the version updated in 2008), to the applicability of fixed-term contracts (item 10) being judged as twice as 'important' as their maximum-allowed duration (item 12). Similarly, the indicator on individual and collective dismissals of regular workers (EPRC) weights the additional provisions for collective dismissals only by two-sevenths; provisions on individual dismissals for regular employment accounting for the other five-sevenths. This appears a surprising balance, implying that individual rather than collective dismissals are a greater worry for employers, while, as indicated below, the numbers of job separations following redundancy can be far greater than the numbers dismissed.

It is claimed (e.g Nicoletti *et al.* 2000; Venn 2009) that the outcome barely changes when moving from the subjective weighting scheme used by the OECD to one that simply weights all items equally. The country rankings appear to be relatively robust and influenced only in the mid-range, with the ranking of the most and least regulated countries remaining stable. However, that only considers one line of variation from the chosen weights. Others are possible and might lead to more substantial movements of countries along the index. Indeed, with an acknowledgement that weighting is, to a great extent, a subjective operation, users are invited to 'experiment' with their own weights and interpretations of the importance of the different components (Venn 2009:12). That advice appears sensible, but it would also seem sensible to seek evidence

that the weighting corresponds in reality to the relative importance of the individual sub-indicators, both to employers and to employees.

Seeking evidence to support the weightings and on the effects of individual elements is particularly relevant in view of how the index has been used. Thus, elements are assumed to play a role in influencing labour mobility and this appears prominently in the hypothesised mechanisms behind the possible effects of EPL.

In fact, the available evidence on turnover raises doubts over the usefulness of the EPL index, placing as it does such an emphasis on dismissal. Two possible alternative indicators for turnover would be job separations and the length of time in a job. Both are clearly dependent to a much greater extent on other variables, including macroeconomic conditions, the sectoral structure of the economy, active labour market policies and social policy provision, such as maternity rights and pensions systems. EPL can, at most, be no more than a minor, additional contributory factor (cf. CIPD 2013).

Following job separations, for which comparable data is, unfortunately, not available across all EU Member States, also shows that the voluntary tends to be significantly more important than the involuntary. The former peak in times of high labour demand, when there are other jobs to go to, while the latter peak in times of low labour demand when voluntary separations are at a minimum. Dismissals appear as a very small proportion of separations – 2.9% in one year in the UK (Kent 2008) in which voluntary separations constituted 71% of the total. The main forms of involuntary separation were the ending of temporary contracts and redundancy, accounting for 12.1% and 13.9% respectively of all terminations. The latter, by definition, would not be expected to create new job opportunities for youth, the long-term unemployed or those on temporary contracts, although an important mechanism hypothesised for EPL's negative effects is precisely that it does limit new entries to employment.

These points raise serious doubts about the usefulness of hypothesising a causal relationship between the EPL index and phenomena that depend on labour turnover. Indeed, relating turnover more generally to the EPL index, by comparing across countries, provides little sign of a significant relationship. One European Commission publication, using a definition of turnover as the sum of transitions into and out of unemployment, shows quite wide variations between countries. These are both wider than, and do not obviously follow, the EPL index.[7] A rather similar picture emerges from a comparison of length of job tenure with the EPL index. There are differences between countries, but also changes between years which suggest, at the minimum, a much larger role for other causal factors than EPL. Moreover, to repeat, it remains very unclear whether high turnover rates should be judged positively in terms of enhancing productivity. For individual employers, they are often taken as a sign of a dissatisfied, and hence probably less productive, workforce (cf. CIPD 2013).

This last point adds weight to the preceding reservations on the use of the OECD's EPL index. Several aspects of its construction are questionable. If used in quantitative

7. http://ec.europa.eu/europe2020/pdf/themes/23_employment_protection_legislation.pdf

studies, it should be used with great caution, bearing in mind the possible impact of the reservations set out above, and in conjunction with other factors that could be expected to have much greater importance in determining labour market outcomes. It should certainly not be used to seek simple correlations with possible economic outcomes.

4. The analysis behind EU policy thinking

We indicated above that the enormous body of academic research that uses the OCED's EPL index has not provided clear evidence of the negative effects of employment protection. Results that do show an effect from EPL do not appear robust when time periods are extended and country observations or additional explanatory variables are added. The OECD itself is cautious when discussing research results, accepting the weak evidence of any effects on aggregate employment but still suggesting that 'recent research on the labour market impact of employment protection has found that overly strict regulations can reduce job flows, have a negative impact on employment of outsiders, encourage labour market duality and hinder productivity and economic growth' (OECD 2013: 68). It only says 'can' and not 'does'. The empirical evidence would certainly not justify a stronger conclusion.

Nevertheless, the message pressed by the international agencies is that research using the OECD's EPL index has demonstrated a case for reducing employment protection for those on permanent contracts. The European Commission is part of that trend. It should be added that it effectively implies that the degree of employment protection is adequately expressed within the OECD's index such that 'EPL' can be used to refer both to employment protection in general and to the specific indicator of its extent.

The most sophisticated research reported by the European Commission comes in larger publications from DG ECFIN (Directorate-General for Economic and Financial Affairs) and from the Directorate-General for Employment, Social Affairs and Inclusion. In 2012, it was confidently claimed that employment protection was 'linked to reduced dynamism of the labour market and precarious jobs'. Thus, EPL 'reforms' were seen to be 'a key driver for reviving job creation in sclerotic labour markets while tackling segmentation and adjustment at the same time' (European Commission 2012: 4). Much of the emphasis in the alleged negative effects of EPL has been narrowed down to the issue of segmentation, with references to the easily available quantitative indicator of the share of total employment taken by temporary contracts.

Demonstrating a link between segmentation and the EPL index logically requires two stages. It needs to be shown that the use of temporary rather than permanent contracts is influenced by the elements included in the EPL index; and it needs to be shown that the dividing line between the two types of contract marks a meaningful division in employment conditions and prospects. This, in turn, requires demonstrating that it is difficult to move from a hypothesised secondary sector into a hypothesised primary sector because of the high level of protection of permanent contracts. It is easy to demonstrate that part of the labour force appears trapped in a cycle of insecure employment, but there is no clear evidence that this is a result of the degree of protection

offered to permanent contracts. Research has focused only on the first stage, seeking a statistical relationship, a precondition for demonstrating a causal link, between EPL on permanent contracts and the share of temporary contracts in total employment.

The OECD's survey of research results shows that easing regulations which restrict the use of fixed-term contracts has been followed, in those cases that have been studied, by employers substituting temporary contracts for permanent ones with no overall increase in employment (OECD 2013: 72). Some research also suggests that 'stringent regulations on regular contracts tends to encourage the use of temporary contracts' (OECD 2013: 73). EU publications have tried to find more evidence in relation specifically to EU Member States, assuming that, rather than testing whether, they have an adequate measure for segmentation. Their claims on the links between EPL and segmentation show a mixture between support for policies that imply a clear link alongside more nuanced statements revealing a recognition that evidence for this is extremely weak.

In an information sheet on employment protection legislation, the European Commission puts the view that 'for countries with segmentation problems the priority may be to reduce the gap between EPL for permanent and temporary contracts. Excessive use of temporary contracts and low transitions to permanent contracts may be due by too strict legislative constraints to individual and collective dismissals and/or to relatively flexible regimes for fixed-term contracts' (sic).[8] Such careful wording is repeated in other policy documents with recurrence of phrases such as 'often it is argued' instead of a firm statement with reference to evidence (European Commission 2015a: 30).

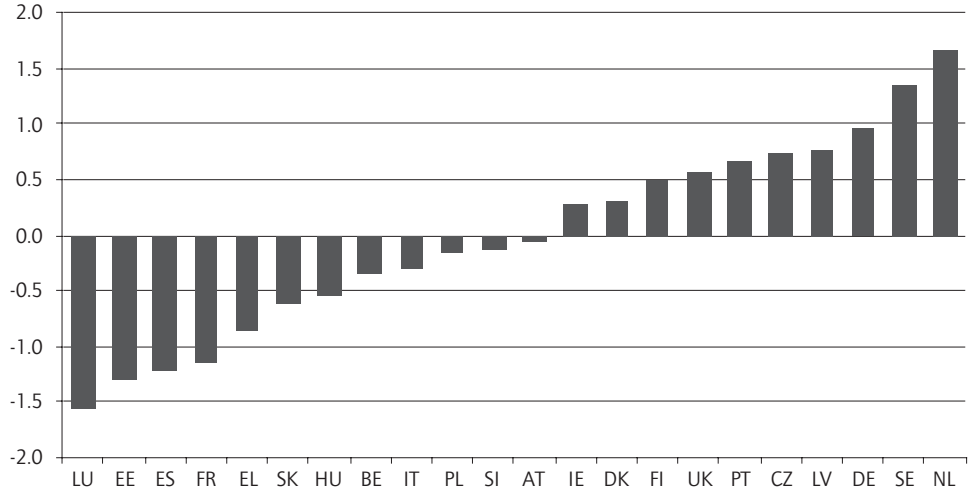
Nevertheless, the objective of 'helping to combat labour market segmentation' (European Commission 2015a: 30) appears as the justification for why one-half of Member States have deregulated regular employment. A common feature of the argument is the use of the gap between the EPL indexes on permanent and temporary contracts. This comes with periodic warnings against its use as a precise measure, justified not least because, as indicated above, the two indexes measure very different things. Nevertheless, the gap is quoted at times as something that 'may generate a duality in the market' (European Commission, 2015b: 91) so that narrowing the gap 'may' lead to a reduction in segmentation (p. 96). As indicated below, those notes of caution have not stood in the way of clear policy recommendations.

It is remarkable that countries pinpointed by the Country Specific Recommendations in 2014 for excessive dualism exhibit very different patterns in these gaps. The Netherlands showed the highest positive gap between the indicator of protection for regular and temporary employment, but is not singled out as a problematic case of dualism. On the other hand, the gap for Spain is negative, meaning that regulations for temporary employment are measured by the indicator as more rigid than those for regular jobs. However, it is Spain that is criticised for the gap between severance costs for fixed-term and indefinite contracts (Clauwaert 2015: 52 and 62). Figure 1 shows the results using

8. http://ec.europa.eu/europe2020/pdf/themes/23_employment_protection_legislation.pdf

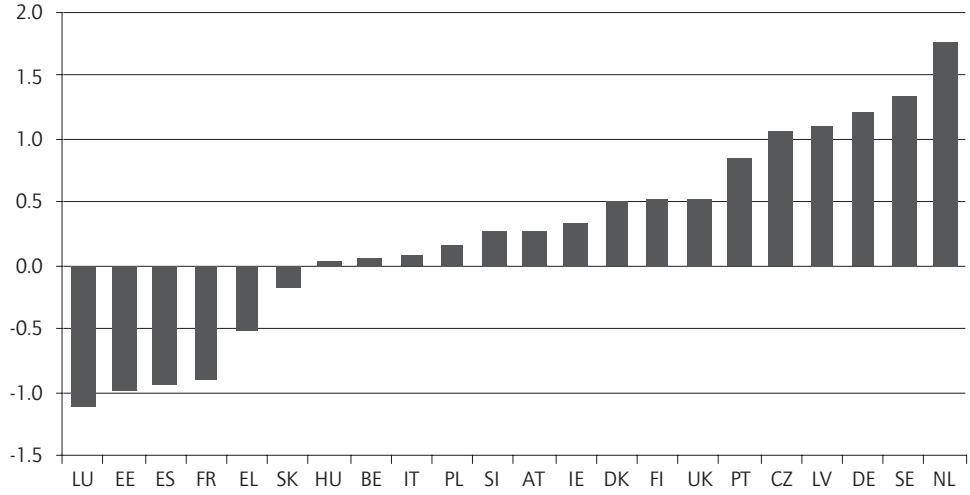
the gap between the index for temporary contracts and that for permanent contracts for individual dismissals only. Figure 2 shows that the picture changes only slightly when the gap is measured with the indicator including provisions for collective dismissals. For most countries, this simply raises the indicator for regular employment.

Figure 1 **The arithmetical gap between the EPL index on regular (individual dismissal only) and temporary contracts, 2013**



Source: calculated from OECD

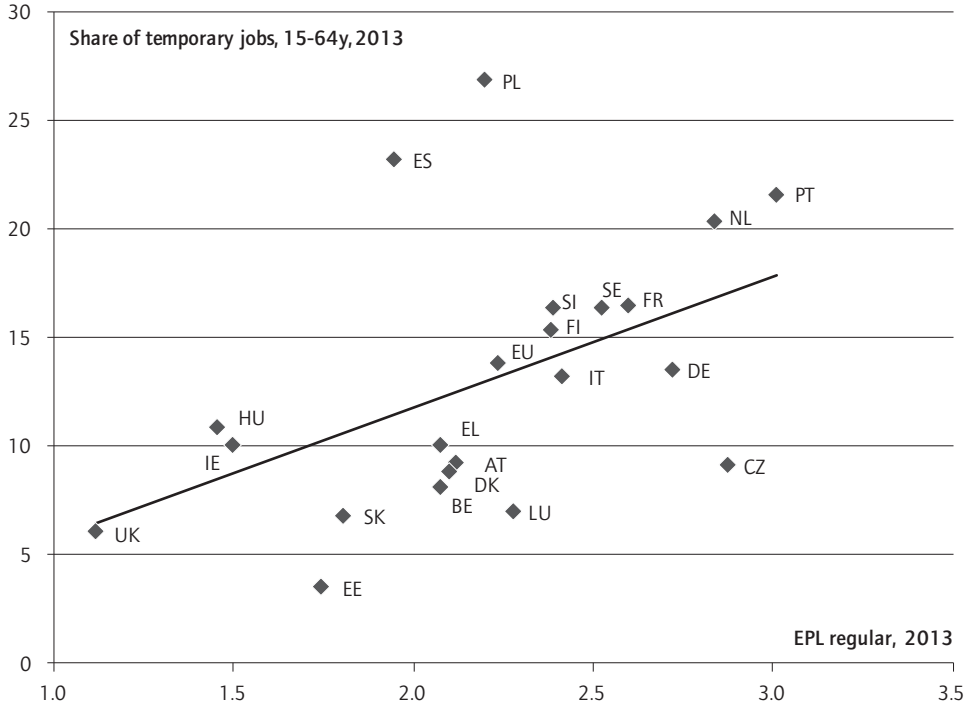
Figure 2 **The arithmetical gap between the EPL index on regular (including collective dismissals) and temporary contracts, 2013**



Source: calculated from OECD

One important publication from DG ECFIN affirms that, 'strict EPL is linked to reduced dynamism of the labour market and precarious jobs' (European Commission 2012: 4). The evidence cited for this includes a discussion of previous academic studies – for example acknowledging the absence of any significant effects of EPL on aggregate unemployment (European Commission 2012: 90) – and regressions using data from the experience of EU Member States. Many possible predicted relationships are weak or non-existent. A possible negative effect of EPL on segmentation, assumed to be measured by the relationship between EPL on regular contracts and the share of fixed-term contracts in total employment, shows up in regression results for the period 1999-2007, but the calculation does not include other, more likely, influences on the weighting between types of contract. Looking at the effects of past reforms also reveals, at best, a very weak relationship (European Commission 2012: 91). In fact, later publications seem to acknowledge that the results of policy changes give no confirmation to the primacy of EPL reductions in reducing segmentation. 'Other drivers' – mention is given to active labour market policies, lifelong learning and the structure of benefits – 'appear to have a higher relevance' (European Commission, 2015a: 90).

Figure 3 **EPL index on regular employment, individual dismissals only, and the share of temporary employment**



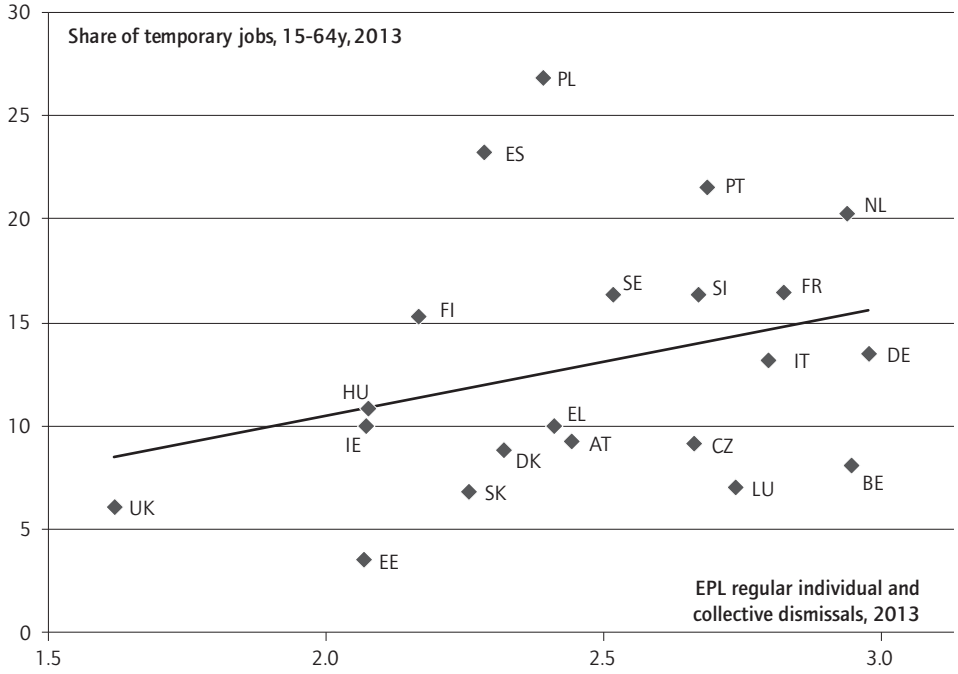
Source: European Commission 2015a: 31

The European Commission's Employment and Social Developments in Europe 2014 report supports its argument that protection for permanent employees is leading to labour market segmentation with a single chart, reproduced in Figure 3. This shows

a visible positive correlation during a single year, with temporary employment higher in countries with stricter EPL for regular jobs, as measured by the OECD indicator. It is concluded that 'a high level of employment protection helps explain the share of temporary jobs,' so that 'reducing EPL may be relevant' (European Commission 2014b: 31). It adds a warning against reading too much into this, accepting that countries with a low level of EPL do not necessarily see more job creation. The need is apparently for 'a broader approach', accepting that a range of other policies may be needed.

Indeed, the evidence of this figure cannot provide serious backup to any deregulatory policy measures. The R^2 for the relationship is 0.23. With the indicator for regular employment including provisions for collective dismissals, which would seem more justifiable if the likely cost to employers of permanent contracts is assumed to be the key issue, the relationship becomes weaker, as shown in Figure 4. The R^2 for this relationship is 0.09. This leaves little doubt that other causal factors are considerably more important. The result is also sensitive to the countries included. Excluding the UK, which is set to leave the EU, would reduce the value of R^2 to 0.04.

Figure 4 **EPL index on regular employment, including collective dismissals, and the share of temporary employment**



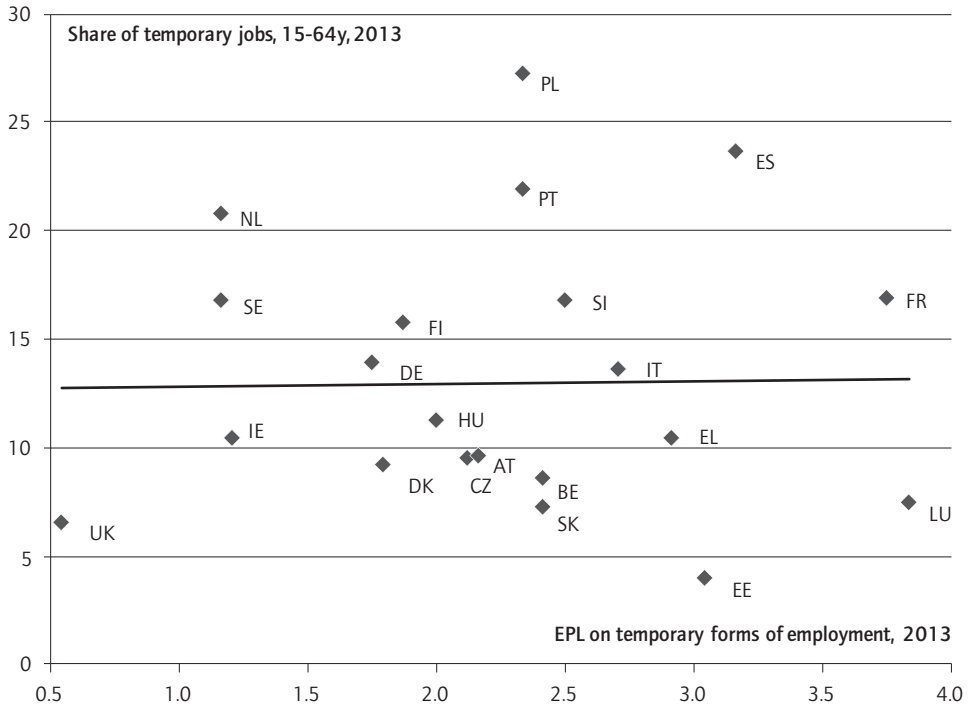
Source: OECD, Eurostat, lfsa_etpgan, own calculations

It is reasonable to hypothesise a relationship between employment protection for permanent employees and the share of temporary employment. Thus, the UK's position could be explained by employment protection rules that only apply after two years in a post, such that temporary contracts may often be of little relevance. That,

however, cannot be taken to demonstrate limited segmentation. It rather suggests that the boundary between the primary and secondary sectors of the labour market, understood as relating to security and other employment conditions and the scope for moving between sectors, does not coincide with the boundary between these contract types. Some of those on permanent contracts could well belong in a secondary sector, with very limited job security, while others anyway enjoy the higher security associated with primary sector jobs even without the protection of the general employment laws represented in the OECD's EPL index. However, even if such reservations could be waived, the correlation results point at best to a weak relationship. Indeed, the enormous variation across countries in the use of temporary contracts suggests that causes should be sought elsewhere, including employers' strategies, sectoral structures, macroeconomics and labour market conditions, including the extent of irregular employment and the enforcement of laws in general, as well as legal restrictions on the use of temporary contracts.

In fact, the most obvious relationship to the share of temporary employees could be expected from the EPL index precisely as regards temporary employees. This is not emphasised in EU publications. Figure 5, matching Figure 4, shows a remarkably weak relationship when comparisons are made between countries. The R^2 this time is 0.00.

Figure 5 **EPL index on temporary employment and the share of temporary employment, 2013**



Source: OECD, Eurostat, lfsa_etpgan, own calculations

However, a relationship can be demonstrated by following changes over time in individual countries rather than comparisons between countries in one year. Thus, both Italy and Spain experienced a sharp increase in the percentages of the labour force employed on temporary contracts after changes in employment law relating to those contracts (Horwitz and Myant 2015; Piazza and Myant 2016), as also mentioned in the OECD (2013) publication referred to above. That greater security was available for permanent contracts was presumably relevant to employers' choice to make greater use of temporary contracts, but it cannot be seen as the primary reason for that change in employers' behaviour. The important factor was the new opportunity to insist on switching to a form of contract that gave less security to employees but that they considered more favourable to themselves.

5. The EPL index in EU policy recommendations

The European Commission's policy recommendations rely on, but are less nuanced than, their larger publications. They point generally to reductions of EPL on permanent contracts, albeit also with some recommendations for increases in EPL on fixed-term contracts. The central aim, as indicated above, has been presented as reducing labour market segmentation (European Commission 2014: 24) and the policy measures winning praise, both from the EU and from other international agencies, leave little doubt that reducing protection for permanent employees was perceived as crucial to overcoming this perceived problem. This comes through via the Country Specific Recommendations for individual EU Member States. Two examples can illustrate the direction of policy thinking, those of Poland and Slovenia.

Poland suffers from the highest incidence of temporary contracts in the EU. The EPL index for permanent contracts is not exceptional, but when employers do not see the need to offer permanent contracts, labour market conditions are such that candidates are disposed to accept conditions of extreme employment instability or the downgrading of permanent into less secure contracts. However, the European Commission looks for a completely different cause for precarious employment in Poland. Its conclusion is that 'Rigid dismissal provisions, long judicial proceedings and other burdens placed on employers encourage the use of fixed-term and non-standard employment contracts…'[9] No evidence is provide for this relationship which is presented in a form similar to a hypothesis in the OECD's review of the topic (OECD 2013: 80). However, the EU's argument is that the way to a solution for those in non-standard employment consists primarily in the deregulation of standard contracts. Curbing the use of temporary and civil law contracts has appeared in the past as an EU recommendation and legal changes to bring that about are not difficult to find. They include better enforcement of existing employment law, which sets the conditions under which commercial rather than employment contracts should be accepted, and equal financial obligations falling on employers for all kinds of employment.

9. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0270

Another example of the pressure for deregulation is the case of Slovenia where strong advice, pointing in the same direction, came from the OECD and IMF as well as the EU. In 2012, the OECD advised[10] Slovenia to combat its labour market dualism by reducing the strictness of EPL on regular contracts, pointing to the high value of the index. The rigidity would, it was claimed, hamper economic adjustment. In March 2013, the National Assembly introduced a new labour market reform which relaxed employment and dismissal procedures, while also introducing some new provisions regarding fixed-term employment.

In 2013, the IMF judged that 'recent labor market and pension reforms are steps in the right direction. Labor market reform somewhat reduces the rigidity of permanent labor contracts and simplifies administrative procedures. With this reform, Slovenia's employment protection index as measured by OECD will reach the OECD average.'[11] The European Commission also quoted the OECD's EPL index for Slovenia, apparently 'among the most rigid in the EU' especially in relation to individual dismissals, as reducing 'the adjustment capacity of the economy' and causing 'labour market segmentation' (European Commission 2013: 16-17). No further evidence is provided to support these claims which, as argued above, deserve the status only of hypotheses for investigation. In fact, the favoured EU measure of segmentation as the share of temporary contracts sets Slovenia roughly in line with Sweden, Finland, France and Germany (see Figure 3). Nor is there evidence to suggest that specifically individual dismissals are important in the case of Slovenia. The evidence given above questions whether these are likely to make much difference to labour turnover.

It is worth noting at this point the implicit standard for judging whether an EPL level is too high – namely, the OECD average value for the index – although, in fact, a high score seems not to be a cause for criticism concerning countries not experiencing greater economic difficulties. Otherwise, the main targets should include Germany, Belgium and the Netherlands. There is nothing to suggest a serious assessment of the costs of and benefits from EPL or of particular items within the indexes. Despite those few recognitions in EU publications of the need for employment protection, in view of 'the inherent inequality' in the relationship between employer and employee (European Commission 2015: 79), the implication when it comes to policy is always that less is better. There are warnings to those – or, more precisely, to some of those – with high EPL index scores concerning permanent contracts. There are no warnings to those with a low index for permanent contracts that it should be increased.

6. Conclusion

The OECD's EPL index has spawned a vast body of empirical research. It has caught on in the context of an advancing policy agenda that advocates laxer regulation of employment. The index is then fed into econometric studies, some of which give some support to that agenda by showing worse economic performance, and particularly

10. http://www.oecd.org/slovenia/theneedforstructuralreforms.htm
11. http://www.imf.org/external/np/ms/2013/031813d.htm?id=348978

employment and unemployment levels, where regulation is stricter. However, unfortunately for advocates of that point of view, many studies point to the absence of any such relationship. A reasonable conclusion is that those positive results should not be taken as a guide to policy-making. It seems, however, that the sheer volume of empirical studies, even if they point in no clear direction, has been used to claim scientific backing for this particular policy direction.

However, even if the cumulative results of quantitative studies were to point in a clear direction, it remains unclear whether the EPL index measures the right things. It does not measure what may be the most important factors in determining employment stability, including macroeconomic conditions, the role of other institutions and practices and the enforcement of those laws that do exist. These reservations find some recognition in the publications of the EU and the other international agencies. There are frequently sections warning against reading too much into the EPL index and pointing to the ambiguity of the results of research derived from its use. However, the index is still freely used to back selective policy recommendations to individual countries.

It would seem better to view the EPL index as an approximate indicator of differences in some particular elements of employment law which are only one of several determinants of employment practice. There is little reason to expect it to have much importance for any aspect of economic performance and there is no persuasive evidence that it does have any such an influence. That leaves open the question of whether it can be adapted to take account of the criticisms listed above.

One alternative would be to use one of the alternative indexes, such as that developed at the Centre for Business Research of Cambridge University. Studies from that starting point seem to confirm the absence of links between employment law and unemployment (Deakin 2013). However, the same as with any synthetic index, it remains difficult to take account of the extent of the enforcement of laws and the importance of institutional factors not embodied in general legal frameworks. Another alternative, which also seems indispensable as support to any research method, would be to focus instead on the effects of particular laws and institutions through detailed country case studies.

References

Avdagic S. (2015) Does deregulation work? Reassessing the unemployment effects of employment protection, British Journal of Industrial Relations, 53 (1), 6–26.

Bassanini A., Nunziata L. and Venn D. (2009) Job protection legislation and productivity growth in OECD countries, Economic Policy, 24 (58), 349-402.

Bertola G., Boeri T. and Cazes S. (2000) Employment protection in industrialized countries: the case for new indicators, International Labour Review, 139 (1), 57-72.

Boeri T. and Jimeno J. F. (2005) The effects of employment protection: learning from variable enforcement, European Economic Review, 49 (8), 2057-2077.

Cazes S. and Nesporova A. (2003) Employment protection legislation (EPL) and its effects on labour market performance, ILO High-Level Tripartite Conference on Social Dialogue Malta, Valetta, 28 February - 1 March. http://praha.vupsv.cz/fulltext/ul_312.pdf

Cazes S., Khatiwada S. and Malo M. (2012) Employment protection and collective bargaining: beyond the deregulation agenda, Employment Working Paper No. 133, Geneva, International Labour Organization.

CIPD (2013) Megatrends: has job turnover slowed down?, London, Chartered Institute of Personnel and Development. https://www.cipd.co.uk/binaries/megatrends_2013-job-turnover-slowed-down.pdf

CIPD (2015) Employment regulation and the labour market, Policy report, January 2015, London, Chartered Institute of Personnel and Development. http://www.cipd.co.uk/binaries/employment-regulation-and-the-labour-market_2015.pdf

Clauwaert S. (2015) The Country-Specific Recommendations (CSRs) in the social field. An overview and comparison. Update including the CSRs 2014–2015, Background analysis 2015.03, Brussels, ETUI. http://www.etui.org/Publications2/Background-analysis/The-country-specific-recommendations-CSRs-in-the-social-field.-An-overview-and-comparison-Update-including-the-CSRs-2015-2016

Deakin S. (2013) Addressing labour market segmentation: the role of labour law, Working Paper No.52, Geneva, International Labour Office. Governance and Tripartism Department.

Drahokoupil J. and Myant M. (2015) Labour's legal resources after 2004: the role of the European Union, Transfer, 21 (3), 327-341.

European Commission (2012), Labour market developments in Europe 2012, European Economy 5/2012, Luxembourg, Publications Office of the European Union. http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-5_en.pdf

European Commission (2013) Macroeconomic imbalances Slovenia 2013, European Economy Occasional Papers 142, Luxembourg, Publications Office of the European Union. http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp142_en.pdf

European Commission (2014) Draft joint employment report from the Commission and the Council, accompanying the Communication from the Commission on the annual growth survey 2015, COM(2014) 906 final, 28 November 2014.

European Commission (2015a) Employment and social developments in Europe 2014, Luxembourg, Publications Office of the European Union.

European Commission (2015b) Employment and social developments in Europe 2015, Luxembourg, Publications Office of the European Union.

Grubb D. and Wells W. (1993) Employment regulation and patterns of work in EC countries, OECD Economic Studies, 21, 7-58.

Horwitz L. and Myant M. (2015) Spain's labour market reforms: the road to employment – or to unemployment?, Working Paper 2015.03, Brussels, ETUI.

Ichino A., Ichino P. and Polo M. (1998) Il mercato del lavoro e le decisioni dei giudici sui licenziamenti, in Cassese S. and Galli G. (eds.) L'Italia da semplificare. I. Le istituzioni, Bologna, Il Mulino, 459-492.

Kent K. (2008) Job separations in the UK, Economic and Labour Market Review, 2 (9), 44-47.

Lazear E. P. (1990) Job security provisions and employment, The Quarterly Journal of Economics, 105 (3), 699-726.

Nickell S., Nunziata L. and Ochel W. (2005) Unemployment in the OECD since the 1960s. What do we know?, The Economic Journal, 115 (500), 1–27.

Nicoletti G., Scarpetta S. and Boylaud O. (2000) Summary indicators of product market regulation with an extension to employment protection legislation, OECD Economics Department Working Papers No. 226, Paris, Organisation for Economic Co-operation and Development.

Noelke C. (2011) The consequences of employment protection legislation for the youth labour market, Working Paper 144, Mannheim, Mannheimer Zentrum für Europäische Sozialforschung.
OECD (1994) The OECD jobs study: evidence and explanations, Paris, Organisation for Economic Co-operation and Development.
OECD (1999) Employment outlook. June 1999, Paris, Organisation for Economic Co-operation and Development.
OECD (2013) Employment outlook 2013, Paris, Organisation for Economic Co-operation and Development.
Okun A. (1981) Prices and quantities: a macroeconomic analysis, Washington, D.C., The Brookings Institution.
Piazza G. and Myant M. (2016) Italy's labour market reforms of 2012: did they reduce unemployment?, Working Paper 2015.11, Brussels, ETUI.
Venn D. (2009) Legislation, collective bargaining and enforcement: updating the OECD employment protection indicators, Social, Employment and Migration Working Papers 89, Paris, Organisation for Economic Co-operation and Development.

All links were checked on 24.10.2016.

Chapter 2
Labour market segmentation and deregulation of employment protection in the EU

Jill Rubery and Agnieszka Piasna

1. Introduction and policy context

European employment regulation has been repeatedly identified by policymakers as too stringent (Schömann 2014) which has resulted in policy recommendations that have aimed towards creating more flexible labour markets (OECD 1994). This diagnosis has been reaffirmed, particularly by international policymakers, in the post-2008 economic and jobs crisis; high employment protection is now regarded as harmful for employment and responsible for an increase in precarious jobs as well as further social costs (European Commission 2012: 4).

The labour market reforms pushed through by the European Commission after 2010 aimed to reduce employment protection legislation (EPL), with the expectation that they would revive 'job creation in sclerotic labour markets while tackling segmentation and adjustment at the same time' (European Commission 2012: 4). The focus on reducing labour market segmentation has also been emphasised in the new employment guidelines, which outline common priorities and targets for employment policies for all Member States:

> Guideline 7: Enhancing the functioning of labour markets. [Member States] should reduce and prevent segmentation within labour markets [...]. Employment protection rules, labour law and institutions should all provide a suitable environment for recruitment, while offering adequate levels of protection to all those in employment and those seeking employment. (Council of European Union 2015: Annex)

The policy of deregulation of employment protection was originally legitimised as a means of promoting employment at the margins. Pursuing deregulation of temporary work was hoped to achieve more dynamic and flexible labour markets that excluded fewer of the hard-to-employ. However, the growth of precarious groups of labour market 'outsiders', associated with the rise in non-standard forms of employment (King and Rueda 2008; Standing 2011), is now seen as exacerbating labour market segmentation. To reduce segmentation, the policy strategy is to reduce protection for regular workers in a process of levelling down. It is hoped that decreasing their rights will close the protection gap between the 'insiders' and the 'outsiders':

> In some Member States employment protection legislation creates labour market rigidity, and prevents increased participation in the labour market. Such employment protection legislation should be reformed to reduce **over-protection**

> [emphasis added] of workers with permanent contracts, and provide protection to those left outside or at the margins of the job market. (European Commission 2010: 7)

With narrower differences in potential dismissal costs and litigation risks between non-standard and regular contracts, so the argument goes, employers would no longer be 'incentivised' to provide non-standard work, and as a result segmentation would be reduced.

Duality and segmentation of the labour market are correctly diagnosed by policymakers as a problem. Not only do they perpetuate social inequality and exclusion but they also hinder swift adaptation of companies to the business cycle (see the review in Kalleberg 2003). However, diagnosis and measures recommended to solve the problem are based on a number of simplistic assumptions about what segmentation is and what its drivers are, as well as about the role of employment regulation for 'outsiders' and in segmented labour markets.

In this chapter we argue that the current, overwhelmingly deregulatory reform agenda is too narrowly specified. Above all, the debate needs to be turned away from the focus on deregulation and towards the role of reregulation for inclusive labour markets (see discussion in Lee and McCann 2011). With the focus on cost-related disincentives for employers to use standard forms of employment, the dominant debate fails to recognise a more complex set of problems that may put groups of workers at risk of exclusion. Labour market segmentation – that is, the employment of workers on different terms and conditions that are not fully or mainly explained by their productivity – is the outcome of wider macroeconomic and institutional contexts. In particular, it reflects multiple and interlinked layers of disadvantage that render some groups more vulnerable to pressures from employers; yet policies rarely target the behaviour of employers, despite their direct role in shaping employment trends. Furthermore, insufficient attention has been paid to the macroeconomic links between employment dynamics and social protection, for example the increased demand for social protection if wages fail to meet the subsistence level. To overcome these problems there is a need for policies to be directed towards increasing the inclusiveness of regulations and protecting groups vulnerable to austerity measures, but this approach is absent in current European policymaking.

This chapter addresses these weaknesses and fallacies. In doing so, we complement the debate that challenges the link between deregulatory policies and positive employment performance by extending the focus to look at social justice and the distributional effects of such policies. We begin with a theoretical review to identify what segmentation is and what are its drivers; these include both supply- and demand-side causes of segmentation and their interactions. We then review empirical evidence of the links between employment protection and segmentation, as well as current analysis in support of multiple and overlapping forms of segmentation that challenges a simplistic interpretation of an 'outsider/insider' divide. A consideration of the case for reregulation to create more inclusive labour markets follows. In the final section we develop some policy principles; recommendations for a new reform agenda in which employment regulation works to alleviate segmentation and promote inclusive labour

markets. We argue that regulation is an important mechanism for providing a more level playing field, both between capital and labour and between workforce groups.

2. Theoretical approaches to the root causes of segmentation: mainstream versus institutional accounts

In current debates it is often orthodox or mainstream economists (Bentolila, Dolado and Jimeno 2011; Blanchard and Landier 2002; Boeri and Garibaldi 2007; Lindbeck and Snower 2002) who together with some political scientists (Rueda 2005) make most frequent reference to labour market segmentation and thereby call for a more comprehensive deregulation approach. From this perspective segmentation is a form of distortion of otherwise perfectly functioning markets and derives from unnecessary regulations and institutional constraints (Botero *et al.* 2004). Far from protecting the most vulnerable, employment regulation is argued to be a cause of reduced employment opportunities in the core economy, thereby driving those most in need of protection into unemployment or non-standard and informal employment. While initially the case against regulation was made on the grounds of reduced economic performance, the lack of empirical evidence to support a link between regulation and overall employment outcomes (Howell 2005; Howell *et al.* 2007; OECD 2006) has brought this social justice argument against regulation to the fore (Rubery 2011). The emphasis is now more on the harm generated by employment regulation in favouring insiders over outsiders. Those most vulnerable to discrimination risk being concentrated in the outsider groups, intensifying the differences between groups. This approach attributes the main source of inequality to worker-worker divisions and their struggles for security and power. Despite many critiques (see e.g. Rubery 2011), arguments based on the concept of the insider/outsider divide have been providing legitimacy for employment deregulation across the EU since 2008. For example, the European Commission (2010: 7) called for reforms 'to reduce over-protection of workers with permanent contracts, and provide protection to those left outside or at the margins of the job market'.

This takeover of the term 'segmentation' by the mainstream has deflected attention away from the institutionalist perspectives on dualism and segmentation developed in the 1970s in the United States (Doeringer and Piore 1971; Jacoby 1994; Osterman 1994; Reich, Gordon and Edwards 1973). These were subsequently taken up and developed by European scholars (Marsden 1999; Rubery 1978, 2007; Sengenberger 1981; Wilkinson 1981) who extended the institutionalist approach by embedding theories of segmentation processes within country-specific employment regimes that influence the form that segmentation takes. These institutionalist approaches take an opposing position to that of the mainstream, which believes that an atomised labour market would reward people according to their productivity potential without creating stark divides. This view follows on from the related assumption that companies would adapt their employment systems to utilise the full potential of labour supply to maximise productivity. In contrast, institutional segmentation theorists stress the multiple factors that lead to differentiation of employment conditions and rewards for reasons other than individual productivity. Employing organisations' investment in skills, due to their need for a core, reliable workforce, is a primary cause of outsider/

insider divisions. Moreover, employing organisations earn different levels of economic rents due to operating in far-from-perfectly competitive product markets. They may use their economic power to differentiate their terms and conditions of employment due to their product market position and competitive strategy rather than labour market considerations (Simón 2010). Institutional segmentation theory thus considers the main source of inequality to be worker-capital divisions. Employer strategies pursued at the firm or organisation level regarding selection of, investment in, rewards to and retention of workers create segmented or divided labour markets (Osterman 1994; Rubery 1978, 2007). These divisions may be influenced by workers' socio-economic characteristics but it is employer actions that reinforce and reproduce these divisions by, for example, restricting employment opportunities for those who do not conform to the ideal type of an independent adult in full health as required by the standard employment relationship model (Bosch 2004; Rubery 2015). Once in employment, the tendency for non-standard workers to receive less training from employers can also contribute to strengthening existing structures of labour market segmentation (Forrier and Sels 2003).

These demand-side divisions interact with labour supply divisions that result from social stratification and family position, including age and gender. In this context of a general tendency towards differentiation rather than harmonisation, employment regulation may serve to extend employment rights to cover more workers, even if some may still be excluded. Characteristics of the labour supply are nonetheless an important factor shaping the allocation of good and bad jobs. Workers are not randomly distributed across primary and secondary segments but rather 'join' each segment according to their bargaining power and a structure of constraints. Labour market vulnerability, which might be related to gender, education, age or migrant status, results in certain workers' placement in the secondary labour market. Consequently, labour supply divisions support and reinforce the co-existence of primary and secondary sectors (Doeringer and Piore 1971). There is therefore still a need to develop policies for reregulation to reduce worker-worker divisions.

Trade unions may also respond to this product and labour market differentiation by seeking to create and develop areas of strength (Rubery 1978). This search for leverage or bargaining power leads to trade unions being regarded as the cause of outsider/insider divisions and worker-worker forms of competition. However, following their raison d'être as a sword of justice (Flanders 1970) and not as a promoter of vested interests, trade unions also pursue more general strategies of promoting wider social justice and using their positions of strength to extend protection. Thus, while in some contexts trade unions reinforce employment divisions, they also extend rights and protections to groups at risk of exclusion if left to employer discretion. There is also evidence that unions engage in protecting the marginal workforce for ideological reasons (Benassi and Vlandas 2016). The task in building more inclusive and less segmented labour markets is to find ways to maximise the role of employment regulation and trade union organisation in making protection more universal.

A particular point of disagreement between the mainstream view of labour markets and the institutionalist perspective is over the need for regulations to set minimum

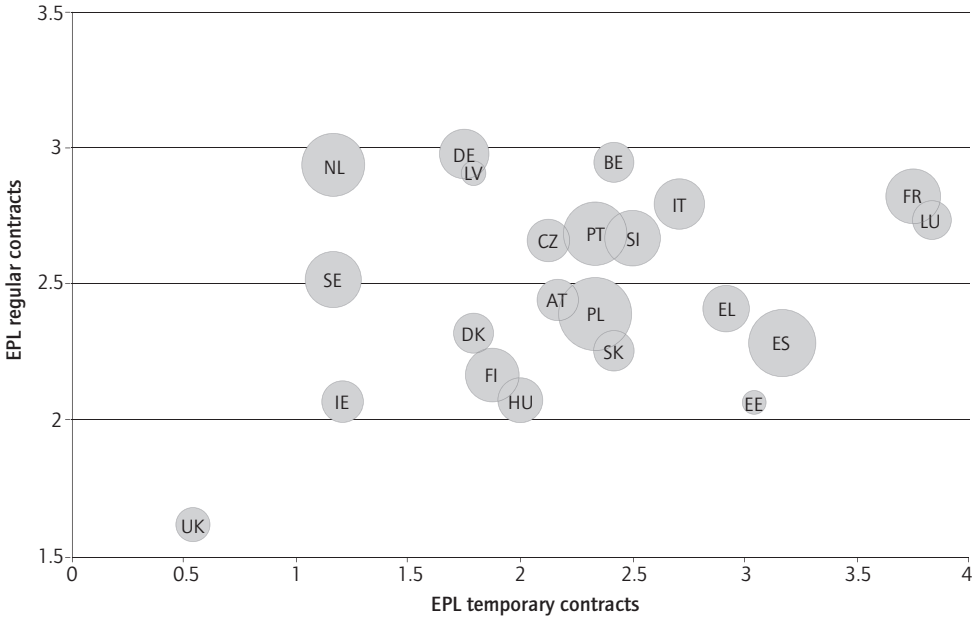
standards for employment conditions. In textbook labour economics, a freely operating labour market is held to be sufficient to establish a going minimum rate for labour, but an institutionalist perspective emphasises that the labour supply itself is also socially constructed and influenced by institutional norms which can be changed if the labour supply is short, for example through changes to immigration rules, the retirement age and childcare provisions. Likewise, employers can accelerate investments in labour-saving technology, increase offshore activities or relax hiring rules to overcome temporary labour shortages. Many groups are vulnerable to the monopsonistic power of employers (Manning 2003), particularly in periods of high unemployment, revealing the need for regulations to establish minimum standards and protect the most vulnerable against exploitation. This also protects higher productivity employers who provide reasonable labour conditions from being undercut by those exploiting the vulnerability of labour supply groups.

3. Deregulation and segmentation: review of empirical evidence

In this section we review some of the data and research studies on the links between reducing employment protection and reducing segmentation. We first take the OECD's EPL index as a crude approximation of the levels of employment regulation at country level and observe that levels of protection are not related in any systematic way to the incidence of temporary work (Figure 1). A high share of temporary contracts can be found both in countries with relatively less stringent rules regarding the use of such contracts (e.g. the Netherlands) and in countries with the strictest rules (e.g. France). Latvia, where a rather high level of protection of regular contracts coincides with a looser regulation of temporary work, has one of the lowest temporary employment rates in the EU. Spain and Poland, which top the rankings in terms of the incidence of temporary work, provide relatively low protection for regular work. This is the opposite of what would be expected from reading the mainstream economic view on the causes of labour market dualisation and suggests that in fact the whole set of institutional arrangements, including employer norms and practices, play a role. For these reasons, deregulation through the removal of employment protection cannot be expected to reduce segmentation in any predictable way.

Moreover, existing empirical evidence provides very little support for the expectation that deregulation will create additional jobs or reduce unemployment. Although lowering employment protection for temporary work has been associated with an increased likelihood of having a temporary job, there is no evidence of increased employment; in some countries, such reforms even tend to lower overall employment (Kahn 2010). Thus, such policies appear rather to encourage a substitution of temporary for permanent work (Maciejewska, Mrozowicki and Piasna 2016). Lowering protection for regular work, meanwhile, has only small and insignificant effects on employment and temporary jobs on average (Kahn 2010). Moreover, when disaggregated by country, such reforms tend to lower overall employment as well as the share of employed workers in permanent jobs. These developments are likely to reflect the short-run impacts of such reforms, which make it easier for firms to dismiss workers on the grounds of substandard work. Similarly, in both transition and developing countries

Figure 1 **Employment protection legislation and temporary employment rate in the EU**



Notes: Bubble size corresponds to temporary employment rate (2014). EPL for 2013 (Version 3).
Source: Eurostat (2016) and OECD (2016)

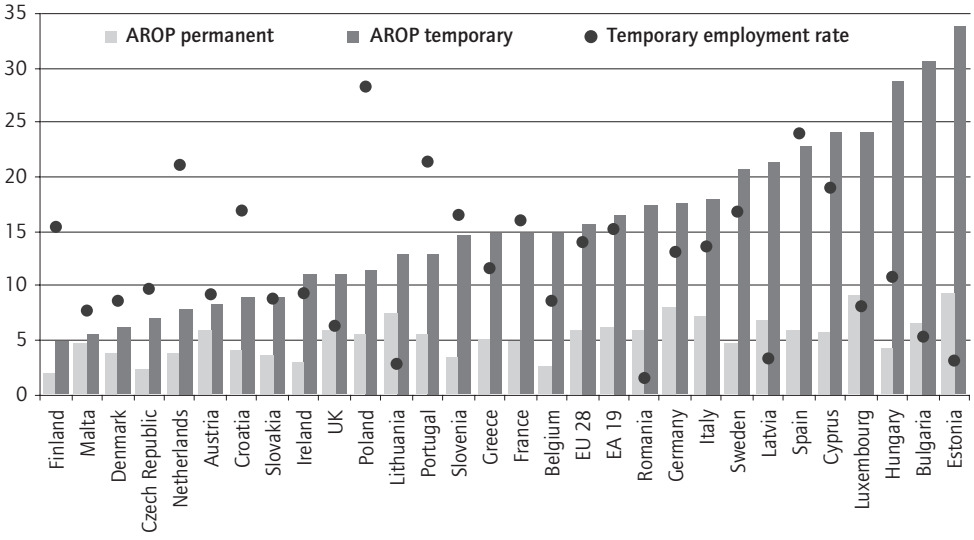
the policies towards a reduction of employment protection with the objective to curb the development of informal employment have clearly not worked (Rodgers and Rodgers 1989; Sehnbruch 2006). In these societies informal employment has grown alongside reductions in employment protection and, particularly in developing countries, women tend to be disproportionately represented in the informal sector.

Furthermore, increases in temporary work are directly linked to a spread of negative socio-economic consequences normally associated with non-standard work. Among other things, having a temporary contract increases the risk of unemployment or repeated spells of temporary employment. For instance, in Germany, holding a fixed-term contract increases the likelihood of a next job also being temporary or of becoming unemployed after termination of the contract (Giesecke and Groß 2003). Thus, increased labour market flexibility leads to a reinforcement of existing segmentation and not to a dismantling of barriers in the labour market.

Temporary work represents a substantial socio-economic risk for employees and an increased probability of severe negative effects on working careers in terms of wage penalties and career mobility, key indicators of social inequality. Such consequences were found to hold true for two quite distinct labour market regimes: Germany and the UK (Giesecke and Groß 2004). In the US too, non-standard employment strongly increases workers' exposure to bad job characteristics, i.e. low pay and no access to health insurance and pension benefits (Kalleberg, Reskin and Hudson 2000). In countries relying on the principle of earnings-related social insurance, non-standard

employment (associated with low pay) over a long period of time can have a substantial impact on the level of social protection (Emmenegger *et al.* 2012b). All this can be expected to reinforce segmentation rather than reduce it. The intersection of different forms of labour market disadvantage can be illustrated by comparing the risks of in-work poverty (the at-risk-of-poverty rate, or AROP) associated with different forms of employment across the EU countries (Figure 2). Temporary workers tend to be at a much higher risk of in-work poverty than workers with permanent contracts: 16% compared to 6% in the EU28 in 2014 (after social transfers). However, this gap differs across countries, ranging from below one percentage point in Malta to nearly 25 percentage points in Hungary, Bulgaria and Estonia, suggesting that the relative disadvantage related to non-standard employment is not uniform across countries. On the other hand, regular work is not shielding all workers equally from poverty risks, with nearly one in ten at risk of poverty in Estonia and Luxembourg. Where there are significant in-work benefits (for example in the UK) the poverty effects of non-standard contracts may be reduced but the burden on the state increased.

Figure 2 **In-work at-risk-of-poverty (AROP) rate by type of employment contract, and temporary employment rate, 2014**



Notes: in-work at-risk-of-poverty rate refers to the percentage of employed persons with an equivalised disposable income below the risk-of-poverty threshold, which is set at 60% of the national median equivalised disposable income (after social transfers).
Source: Eurostat

Finally, some evidence suggests that standardisation of protection across employment statuses by lowering protection for regular workers risks further commodification of labour. Streeck (2009) has argued that in Germany more or less all economic actors have become exposed to greater market risks as a consequence of the political strategy of liberalisation. More vulnerable segments have fewer resources to resist such market pressures, especially if not protected by regulation. In effect, this leads to further dualisation, with a deterioration in the conditions for outsiders and with risks still more

concentrated in clearly identifiable social groups (Häusermann and Schwander 2009). Moreover, policies may lead to the creation of new categories of outsiders who were previously treated according to the same rules as insiders (Emmenegger *et al.* 2012a). For instance, low-skilled manual workers who benefitted from standards set in labour legislation and from collective bargaining in the post-war period have experienced increasing precariousness and declining wages as the processes of tertiarisation, outsourcing and subcontracting have eroded workers' rights. Conditions of regular employment, especially for vulnerable groups, may also risk being levelled down to those of non-standard employment if they were based solely on legal provisions. If wages were not regulated or agreed otherwise, employers could level them down to a legal minimum for workers they deem easy to substitute or regard as auxiliary to the core operations.

Overall, there is no reason to expect that deregulation would lead to employers offering 'good jobs' more often to secondary segment workers; for instance, to women, migrants, or lower-skilled, older or younger workers. On the contrary, decreased protection and greater labour market volatility can be expected to further increase segmentation. Moreover, together with increasing individual insecurity, spreading flexibility through the whole employment system could also greatly increase welfare state costs as more people would be reliant on support between spells of employment.

4. Reregulating for more inclusive labour markets

Contrary to the mainstream view, institutional segmentation theorists do not expect a deregulated labour market to generate a level playing field and equal treatment for all. In rejecting that proposition, segmentation theory argues for a more positive role for employment regulation in reducing the problems, at both a macro- and a microeconomic level, which may stem from unfettered labour markets. Table 1 outlines the multiple social and economic objectives of employment regulation in current labour markets and their benefits for the macro and micro economy, while also identifying the main sources of exclusion for those who are 'outsiders'. The task is therefore to find ways to retain the identified benefits while extending more protection and benefits to vulnerable groups, workers holding non-standard jobs or those outside employment altogether.

Employment regulation plays an important role in underpinning macro-institutional arrangements. Regulation theory (Boyer 1979) has emphasised the role of collective wage-setting mechanisms in securing steady real wage increases in the post-second world war period, thus supporting the expansion of the mass consumption market. In contrast, the decline in the aggregate wage share and rising inequality have been attributed in part to the growth of non-standard employment and the reduction of trade union influence (Onaran and Obst 2015). Policies to promote labour hoarding by employers also ensure that employers play some role in the decommodification of labour by ensuring that they do not avoid all labour costs when the demand for labour decreases (Supiot 2001) by immediately passing the costs of social reproduction of labour onto the state or the family. This macroeconomic role is particularly important in recessions because it helps to stabilise both employment and the economy over the business

Table 1 **Contributions of employment regulation to macroeconomic and microeconomic stability, efficiency and wellbeing**

	Stability	Productivity	Income security	Opportunity	Fairness
Macro economy	Stabilises economy in downturn/ employers contribute to decommodification costs.	Supports higher productivity through investment in training.	Provides basis for taxation to fund social protection and lowers demands on welfare system.	Greater use of total talent by reducing discrimination. More capacity for planned life course.	More just/higher trust society.
Micro economy	Employers retain skills/ better able to expand in upturn. Career protection for those in stable and regular employment.	More firm-specific knowledge and investment in training, reinforcing the position of those in stable and regular employment.	Access to stable income and social protection / some forms of employment excluded from social and employment security.	Increased access for vulnerable groups. Employers benefit from more formalised/ meritocratic recruitment.	Reduced dependence on employer discretion but higher levels of trust/ fairness at work and protection for vulnerable groups.

cycle by reducing incentives to employers to lay off workers and encouraging work-sharing as an alternative. Although EPL favours those already in stable employment, the alternative of more rapid employment adjustment may simply intensify the downturn in demand, with negative consequences across the entire workforce. The recent financial and economic crisis has served to re-establish the importance of robust employment protection. Overall, the degree of employment change has been highly variable across countries and linked to regulation (Messenger and Ghosheh 2013). Heyes (2011) convincingly argues that countries which have maintained relatively strong employment protection tended to experience fewer labour market disruptions in the early period of the crisis. Thus, practices which directly benefit those in regular employment may protect overall employment and limit the downturn. They also ensure that firm-specific skills are not unnecessarily destroyed and careers put to waste. These benefits are difficult to extend immediately to those outside employment such as young people, but those who focus on the negative impacts of employment regulation – for example the supposed dampening impact on job creation from restrictions on hiring and firing – tend to look only at microeconomic effects and not consider how far job creation may be helped by a more stable overall macro economy. Nevertheless, work-sharing mechanisms need extending to those who are in non-standard jobs or outside employment when the downturn starts.

Employment protection also contributes to productivity growth in the long run. In particular, arrangements which promote investment in the workforce on the one hand and commitment from those in employment on the other may foster long-term productivity growth. Marsden (1999) points to these mutual benefits of the standard employment relationship as contributing to its widespread usage and persistence over time. This approach sees regulation as a means to extend regular employment (that is, better paid and characterised by a better quality of work) in order to stimulate higher productivity across a range of jobs and organisations. This contrasts with the pessimistic mainstream perspective (Lindbeck and Snower 2002), according to which efforts to extend insider status to jobs where this is not market-led will result in job destruction, increasing unemployment or the growth of the informal sector.

The potential for quality employment relationships to underpin long-term productivity enhancement is the key source of leverage available to workers; but at the same time it represents the core reason why employment is always likely to be segmented between those in an employment relationship and those outside the organisation. If the principle of disposable and interchangeable labour were to spread through the employment system, the likely outcome would be lower national income and overall productivity, even though profits may rise. Employment regulation thus also feeds into macroeconomic struggles over the declining wage share and living standards. The task for the reform agenda is to identify how far mutual benefits can be extended and generalised to all workers, without rejecting the overall objectives of stability and high productivity.

Another function of employment regulation is to provide income security, both through guaranteed pay and hours for those in work and through social protection for those unable to work. Formal employment reduces workers' recourse to social protection, as those with formal contracts are more likely to receive income in periods when they cannot work, such as sickness or maternity leave or in periods of low demand, as well as rights to return to employment. It also provides the fiscal foundation on which welfare states are built, and universal protection may not be sustainable where employment arrangements become primarily based on informal employment that falls outside of the tax system (see for example Martínez Franzoni and Sanchez-Ancochea 2013, on Costa Rica). However, this is also an area where specific regulatory rules with respect to requirements to meet earnings, hours or continuity thresholds may deny many of those in non-standard forms of employment access to social protection (Vosko 2010). This suggests extending the focus of employment reforms beyond harmonising the treatment of non-standard workers in the workplace – for example through the Temporary Agency Work Directive of 2008 that was promoted by trade unions – to developing more inclusive social protection rules. For example, if governments were genuinely concerned about the plight of those outside regular employment, more moves would be made towards establishing citizens' pensions or extending rights to unemployment protection for those with intermittent work histories or low earnings.

Labour market exclusion and barriers to access may also be considered the outcome of employers' selective hiring and retention policies. Rights to non-discrimination, for example, can provide important protection against exclusion and marginalisation. This is important at a macroeconomic level as it should ensure that there is less underutilisation of potential and talent in the wider society and that those who experience discontinuities in their careers (due to work-family conflicts or to redundancy) do not find themselves confined to low productivity jobs. Indeed, the key barrier to re-entry into the labour market often lies in employer attitudes towards those following non-linear careers, in particular women (Gangl and Ziefle 2009). It should be noted that the groups that stand to benefit the most from regulated access to employment are those with protected characteristics who might otherwise face discrimination. The enforcement of anti-discrimination legislation is still weak but the existence of regulation at least alerts employers to the need to use objective criteria in hiring new staff. Constraints on employer discretion are vital to stopping the reinforcement of stereotypes and discrimination, the existence of which cannot be attributed to employment regulation.

Employment regulation is also needed to ensure fair treatment at work. The centrality of employment in people's lives, and the dependence of their livelihoods on it, means that there is a direct connection between fairness at work and in society at large. Research suggests that while regulation is needed to ensure fair treatment, the effects are not necessarily negative for employers, as both fair treatment (Karriker and Williams 2009) and employee engagement (for a review, see Summers and Hyman 2005) can be expected to have positive productivity effects. Moreover, fairness and distributive justice are necessary preconditions for the effective use of more individualised pay and motivation strategies (Guest 2004). Fairness at work needs to be underpinned by regulations and procedures, as systems reliant on voluntary action by managers may result in inconsistency due to turnover among managers and the differences in their attitudes. Fairness should apply to employment conditions, rights to non-discrimination and dignity at work, as well as workers' voice and participation. While it is the insiders that benefit directly, it is those outside the labour market that may face potentially higher risks of unfair conditions and arbitrary management if they do succeed in entering employment.

5. Towards a new reform agenda

There are three reasons why the current policy agenda of reducing employment protection is not helping to promote a more inclusive employment system. The first is that the focus is on levelling down employment protections and not on levelling *up* for those not currently covered, so that the outcome is one of overall reduction of protection rather than extension. This is exacerbated by many examples in practice where protection for the more vulnerable is also being reduced (Table 2): for example, minimum wages have been cut in monetary terms in Ireland (in 2011) and Greece (2012); regulations on the use of temporary contracts have been eased in Lithuania (2010), Italy (2012), Spain (2013) and Slovenia (2013); while notice periods were reduced and linked to job seniority in Portugal (2009) and Slovenia (2013). Moreover, access to redress has been limited for workers in shorter spells of employment through the extension of the qualifying period of employment for claiming unfair dismissals (e.g. doubling it to two years in the UK in 2012), and coverage of collective agreements for workers in the periphery or the small firm economy has been dismantled by constraining extension mechanisms in Greece (2010), Romania (2011) and Portugal (2012) (for further examples see country case studies in this volume).

The second reason is that policies need to be targeted to meet the specific causes and outcomes of segmentation processes. This is because segmentation takes multiple and overlapping forms, so that discussing the labour market as if it constituted two segments of insiders and outsiders is an oversimplification (De Stefano 2014). As primary and secondary characteristics of employment and workers co-vary (Hudson 2007), it is more useful to talk about multiple disadvantages, inequalities or risks, rather than of a division of the labour market into two discrete parts (Goldthorpe 1984). The definition of 'outsiders' is not only broader than just the distinction between temporary and permanent employment, but also differs across regime types (Häusermann and Schwander 2012).

Table 2 **Announced and/or adopted changes to selected aspects of labour regulation**

	AT	BE	BG	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HR	HU
Reform of industrial relations and collective bargaining systems (including decentralisation of CB)		●	●	●				●	●	●	●	●	●	●
Changes to individual/ collective dismissal rules		●		●	●			●	●		●	●	●	●
Changes to working time legislation	●	●			●	●	●		●		●	●		●
Changes to rules on atypical contracts	●	●	●		●	●	●	●	●	●	●		●	●
Creation of new types of contract, in particular for youth		●	●		●	●		●	●		●	●	●	●
	IE	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
Reform of industrial relations and collective bargaining systems (including decentralisation of CB)	●	●		●			●	●	●	●			●	
Changes to individual/ collective dismissal rules		●	●		●		●	●	●	●	●	●	●	●
Changes to working time legislation	●	●	●	●	●		●	●	●	●	●	●	●	●
Changes to rules on atypical contracts	●	●	●		●		●	●	●	●	●	●	●	●
Creation of new types of contract, in particular for youth		●	●	●	●		●	●	●	●	●	●	●	●

Note: no data available for Malta.
Source: ETUI/ETUC (2014, p. 62), based on ETUI own research, covering the period 2010-2014

Country-specific solutions are thus needed to bridge key labour market divisions and reduce inequality. A one-size-fits-all approach for European employment policy does not work; the role played by part-time work in Sweden and the Netherlands, both countries where there are part-time work opportunities in higher- as well as lower-level jobs, differs from that in the UK and Germany, where part-time work is concentrated in low-paid employment forms. This in turn differs from southern and eastern European countries where part-time work is seen as both irregular and undesirable even among mothers of young children. To develop more inclusive work options for mothers in these different contexts requires different policy priorities. In Sweden, for example, opportunities to increase hours of work, especially when children are no longer a major consideration, may be the most important issue, as there are relatively high numbers of underemployed part-timers, including many who are considered part-time unemployed (Haataja, Kauhanen and Nätti 2011). In the UK, extending part-time work opportunities to those higher up in the occupational hierarchy, particularly in the private sector where wage opportunities are very flat, may take priority (Rubery and Rafferty 2013), while in the eastern European countries it may be more effective to promote flexible working and childcare accommodations within the framework of full-time work in order to reduce the time spent by young mothers out of the labour market.

In the case of temporary workers (and temporary agency workers in particular), it is important to know if the primary motivation for employers is to evade employment protection or to be able to pay lower wages or offer poorer terms and conditions of

employment. If the latter, then inclusive labour market policies need to focus on developing a higher and more common floor to employment standards; as, for example, is happening in Germany with the development of its national minimum wage, where previously those in temporary agency work could be paid a much lower rate negotiated under a specific collective agreement for temporary agency workers (Schulten and Schulze Buschoff 2015). If temporary workers are paid similar rates and the main advantage that they represent to employers is the ease of hiring and dismissal, then policies to harmonise protections between permanent and temporary contracts might be more appropriate. To reduce the problems associated with temporary work, an extension of the minimum length of a contract may be the solution; for example, based on Italian data, Gagliarducci (2005) argues that repeated spells of temporary employment decrease the probability of holding a permanent job. However, when the duration of a temporary job is longer, then the chances of a transition to permanent employment increase, suggesting that it is not temporary employment per se but the instability associated with it, and possibly the experience of unemployment between jobs, that has negative consequences for the career prospects of individuals.

Finally, a new reform agenda has to move beyond the insider/outsider debate in order to avoid overstating the division of interests between labour force groups. The discussion about outsiders and insiders is very much based on the idea of the labour force being composed of (usually) two distinct and competing parts (de Stefano 2014). The first step towards a more inclusive labour market policy may be to recognise that there are many additional and overlapping subdivisions in the labour market, as outlined above. However, it is also important to consider whether the interests and needs of these groups are necessarily conflicting or whether, on the contrary, all can benefit from regulation. Preferences among insiders and outsiders may in fact converge in terms of both groups highly valuing employment protection regulations (Emmenegger 2009). Those most at risk from exclusion may value job security even more than those in stable employment because they compete for jobs more often and may face discrimination at the hiring stage; there is in fact conflicting survey evidence as to whether temporary workers value employment protection more, less or the same as regular workers. Deregulation that leads to a reduction in the number of relatively secure jobs and lower protection of insiders would also remove any opportunity for labour market outsiders to escape their status because their bargaining power would be reduced, further deepening existing inequalities (Tsakalotos 2004). Moreover, boundaries between who can be considered an insider and who an outsider may be rather unclear and change over time. Many of those found in precarious work (for example, young people or women) are frequently economically dependent on male insiders (Pierson 2001). This is interpreted by some as a cause of intergenerational conflict, but although young people may generally feel disadvantaged in comparison to their parents' generation, this does not mean that they do not share their parents' preferences for retaining job security to provide their families with some financial security (Iversen 2005; Neugart 2008).

6. Conclusions

Labour market segmentation is not caused by employment regulation. Labour markets offer a very high degree of opportunity to vary the terms and conditions of employment in ways which do not reflect the innate productivity potential of workers. However, a simple division of workers into 'insiders' or 'outsiders', based on a type of employment contract, is an oversimplification that emphasises the opposing interests of these two groups. In fact, the labour supply is highly stratified by factors such as social class, access to networks and education, family responsibilities, geographic constraints, age, and vulnerability to discrimination. Overlaid on and interacting with these issues of discrimination in the workforce are the policies and practices of organisations that have different capacities and degrees of willingness to provide good employment conditions and decent work; this is further influenced by trade union power (actual or threatened), legal rules and social norms.

Regulation is an important mechanism for providing a more level playing field, both between capital and labour and between workforce groups. This does not mean that employment regulation does not require reform and development. Indeed, policies and practices that in the past have provided for social inclusion may now be confined to a narrower range of jobs and work groups. There is therefore a strong need to refocus the debate on how to promote more inclusive labour markets in ways which protect the general workforce and promote a high productivity and high trust society. This means avoiding a process of levelling down, masquerading as policies designed to increase equality, and instead identifying mechanisms to level up employment standards and social protection for those who fall outside the employment protection net. Job and income stability, as well as ensured fair treatment at work, are even more important for those who are vulnerable and disadvantaged than those who have stronger individual bargaining capacities.

References

Benassi C. and Vlandas T. (2016) Union inclusiveness and temporary agency workers: the role of power resources and union ideology, European Journal of Industrial Relations, 22 (1), 5-22.

Bentolila S., Dolado J. J. and Jimeno J. F. (2011) Reforming an insider-outsider labor market: the Spanish Experience, Discussion Paper 6186, Bonn, Institute for the Study of Labor.

Blanchard O. and Landier A. (2002) The perverse effects of partial labour market reform: fixed-term contracts in France, The Economic Journal, 112 (480), F214-F244.

Boeri T. and Garibaldi P. (2007) Two tier reforms of employment protection: a Honeymoon effect?, The Economic Journal, 117 (521), F357-F385.

Bosch G. (2004) Towards a new standard employment relationship in Western Europe, British Journal of Industrial Relations, 42 (4), 617-636.

Botero J. C., Djankov S., La Porta R., Lopez-de-Silanes F. and Shleifer A. (2004) The regulation of labor, The Quarterly Journal of Economics, 119 (4), 1339-1382.

Boyer R. (1979) Wage formation in historical perspective: the French experience, Cambridge Journal of Economics, 3 (2), 99-118.

Council of the European Union (2015) Council Decision (EU) 2015/1848 of 5 October 2015 on guidelines for the employment policies of the Member States for 2015, Official Journal of the European Union, L 268, 15October 2015.

De Stefano V. (2014) A tale of oversimplification and deregulation: the mainstream approach to labour market segmentation and recent responses to the crisis in European Countries, Industrial Law Journal, 43 (3), 253-285.

Doeringer P. B. and Piore M. J. (1971) Internal labor markets and manpower analysis, Lexington, Heath.

Emmenegger P. (2009) Barriers to entry: insider/outsider politics and the political determinants of job security regulations, Journal of European Social Policy, 19 (2), 131-146.

Emmenegger P., Häusermann S., Palier B. and Seeleib-Kaiser M. (2012a) How we grow unequal, in Emmenegger P., Häusermann S., Palier B., and Seeleib-Kaiser M. (eds.), The age of dualization: the changing face of inequality in deindustrializing societies, Oxford, Oxford University Press, 3-26.

Emmenegger P., Häusermann S., Palier B. and Seeleib-Kaiser M. (eds.) (2012b) The age of dualization: the changing face of inequality in deindustrializing societies, Oxford, Oxford University Press.

ETUI and ETUC (2014) Benchmarking working Europe 2014, Brussels, ETUI.

European Commission (2010) Annual growth survey: advancing the EU's comprehensive response to the crisis, COM(2011) 11 final, 12 January 2010.

European Commission (2012) Labour market developments in Europe 2012, European Economy 5/2012, Luxembourg, Publications Office of the European Union.

Eurostat (2016) Labour Force Survey. Retrieved 14 September 2016, from http://ec.europa.eu/eurostat/data/database

Flanders A. D. (1970) Management and unions: the theory and reform of industrial relations, London, Faber.

Forrier A. and Sels L. (2003) Temporary employment and employability: training opportunities and efforts of temporary and permanent employees in Belgium, Work, Employment and Society, 17 (4), 641-666.

Gagliarducci S. (2005) The dynamics of repeated temporary jobs, Labour Economics, 12 (4), 429-448.

Gangl M. and Ziefle A. (2009) Motherhood, labor force behavior, and women's careers: an empirical assessment of the wage penalty for motherhood in Britain, Germany, and the United States, Demography, 46 (2), 341-369.

Giesecke J. and Groß M. (2003) Temporary employment: chance or risk?, European Sociological Review, 19 (2), 161-177.

Giesecke J. and Groß M. (2004) External labour market flexibility and social inequality: temporary employment in Germany and the UK, European Societies, 6 (3), 347-382.

Goldthorpe J. H. (ed.) (1984) Order and conflict in contemporary capitalism, Oxford, Oxford University Press.

Guest D. E. (2004) Flexible employment contracts, the psychological contract and employee outcomes: an analysis and review of the evidence, International Journal of Management Reviews, 5-6 (1), 1-19.

Haataja A., Kauhanen M. and Nätti J. (2011) Underemployment and part-time work in the Nordic countries, Online working papers 31/2011, Helsinki, Kela Research Department.

Häusermann S. and Schwander H. (2009) Identifying outsiders across countries: similarities and differences in the patterns of dualisation, Working papers on the reconciliation of work and welfare in Europe 9, Edinburgh, RECWOWE Publication.
Häusermann S. and Schwander H. (2012) Varieties of dualization? in Emmenegger P., Häusermann S., Palier B. and Seeleib-Kaiser M. (eds.) The age of dualization: the changing face of inequality in deindustrializing societies, Oxford, Oxford University Press, 27-51.
Heyes J. (2011) Flexicurity, employment protection and the jobs crisis, Work, Employment and Society, 25 (4), 642-657.
Howell D. (ed.) (2005) Fighting unemployment: the limits of free market orthodoxy, Oxford, Oxford University Press.
Howell D., Baker D., Glyn A. and Schmitt J. (2007) Are protective labor market institutions at the root of unemployment? A critical review of the evidence, Capitalism and Society, 2 (1), Article 1.
Hudson K. (2007) The new labor market segmentation: labor market dualism in the new economy, Social Science Research, 36 (1), 286-312.
Iversen T. (2005) Capitalism, democracy, and welfare, New York, Cambridge University Press.
Jacoby S. (1994) Managing the workplace: from markets to manors and beyond, in Kerr C. and Staudohar P. D. (eds.) Labor economics and industrial relations: markets and institutions, Cambridge MA, Harvard University Press, 340-374.
Kahn L. (2010) Employment protection reforms, employment and the incidence of temporary jobs in Europe: 1996-2001, Labour Economics, 17 (1), 1-15.
Kalleberg A. L. (2003) Flexible firms and labor market segmentation: effects of workplace restructuring on jobs and workers, Work and Occupations, 30 (2), 154-175.
Kalleberg A. L., Reskin B. F. and Hudson K. (2000) Bad jobs in America: standard and nonstandard employment relations and job quality in the United States, American Sociological Review, 65 (2), 256-278.
Karriker J. H. and Williams M. L. (2009) Organizational justice and organizational citizenship behavior: a mediated multifoci model, Journal of Management, 35 (1), 112-135.
King D. and Rueda D. (2008) Cheap labor: the new politics of 'Bread and Roses' in industrial democracies, Perspectives on Politics, 6 (2), 279-297.
Lee S. and McCann D. (eds.) (2011) Regulating for decent work: new directions in labour market regulation, Geneva, ILO.
Lindbeck A. and Snower D. (2002) The insider-outsider theory: a survey, Discussion Paper 534, Bonn, Institute for the Study of Labor.
Maciejewska M., Mrozowicki A. and Piasna A. (2016) The silent and crawling crisis: international competition, labour market reforms and precarious jobs in Poland, in Myant M., Theodoropoulou S. and Piasna A. (eds.) Unemployment, internal devaluation and labour market deregulation in Europe, Brussels, ETUI, 229-254.
Manning A. (2003) Monopsony in motion: imperfect competition in labor markets, Oxford, Princeton University Press.
Marsden D. (1999) A theory of employment systems: micro-foundations of societal diversity, Oxford, Oxford University Press.
Martínez Franzoni J. and Sanchez-Ancochea D. (2013) Can Latin American production regimes complement universalistic welfare regimes? Latin American Research Review, 48 (2), 148-173.
Messenger J. C. and Ghosheh N. (eds.) (2013) Work sharing during the great recession: new developments and beyond, Geneva, ILO.
Neugart M. (2008) The choice of insurance in the labor market, Public Choice, 134 (3), 445-462.
OECD (1994) The jobs study, Paris, OECD.

OECD (2006) OECD employment outlook: boosting jobs and incomes, Paris, OECD.
OECD (2016) Statistics on employment protection. Retrieved 14 September 2016, from http://stats.oecd.org/
Onaran O. and Obst T. (2015) Wage-led growth in the EU15 Member States: the effects of income distribution on growth, investment, trade balance, and inflation, Brussels, Foundation for European Progressive Studies.
Osterman P. (1994) Internal labour markets: theory and change, in Kerr C. and Staudohar P. D. (eds.) Labor economics and industrial relations: markets and institutions, Cambridge MA, Harvard University Press, 303-339.
Pierson P. (2001) Coping with permanent austerity: welfare state retrenchment in affluent democracies, in Pierson P. (ed.) The new politics of the welfare state, Oxford, Oxford University Press, 410-456.
Reich M., Gordon D. M. and Edwards R. C. (1973) Dual labor markets: a theory of labor market segmentation, The American Economic Review, 63 (2), 359-365.
Rodgers G. and Rodgers J. (eds.) (1989) Precarious jobs in labour market regulation: the growth of atypical employment in Western Europe, Geneva, ILO.
Rubery J. (1978) Structured labour markets, worker organisation and low pay, Cambridge Journal of Economics, 2 (1), 17-36.
Rubery J. (2007) Developing segmentation theory: a thirty year perspective, Économies et Sociétés, 28 (6), 941-964.
Rubery J. (2011) Towards a gendering of the labour market regulation debate, Cambridge Journal of Economics, 35 (6), 1103-1126.
Rubery J. (2015) Re-regulating for inclusive labour markets, Conditions of work and employment series 65, Geneva, ILO.
Rubery J. and Rafferty A. (2013) Women and recession revisited, Work, Employment and Society, 27 (3), 414-432.
Rueda D. (2005) Insider–outsider politics in industrialized democracies: the challenge to social democratic parties, American Political Science Review, 99 (1), 61-74.
Schömann I. (2014) Labour law reforms in Europe: adjusting employment protection legislation for the worse?, Working Paper 2014.02, Brussels, ETUI.
Schulten T. and Schulze Buschoff K. (2015) Sector-level strategies against precarious employment in Germany: evidence from construction, commercial cleaning, hospitals and temporary agency work, Diskussionspapier 197, Düsseldorf, Hans-Böckler-Stiftung.
Sehnbruch K. (2006) The Chilean labor market: a key to understanding Latin American labor markets, Basingstoke, Palgrave Macmillan.
Sengenberger W. (1981) Labour market segmentation and the business cycle, in Wilkinson F. (ed.), The dynamics of labour market segmentation, London, Academic Press, 243-260.
Simón H. (2010) International differences in wage inequality: a new glance with European matched employer–employee data, British Journal of Industrial Relations, 48 (2), 310-346.
Standing G. (2011) The precariat: the new dangerous class, London , Bloomsbury Academic.
Streeck W. (2009) Re-forming capitalism: institutional change in the German political economy, Oxford, Oxford University Press.
Summers J. and Hyman J. (2005) Employee participation and company performance: a review of the literature, York, Joseph Rowntree Foundation.
Supiot A. (2001) Beyond employment: changes in work and the future of labour law in Europe. Oxford, Oxford University Press.

Tsakalotos E. (2004) Market constraints, economic performance and political power: modernizers versus leftists, Socio-Economic Review, 2 (3), 415-424.
Vosko L. F. (2010) Managing the margins: gender, citizenship, and the international regulation of precarious employment, Oxford, Oxford University Press.
Wilkinson F. (ed.) (1981) The dynamics of labour market segmentation, London, Academic Press.