

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

Edited by
Agnieszka Piasna and Martin Myant

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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

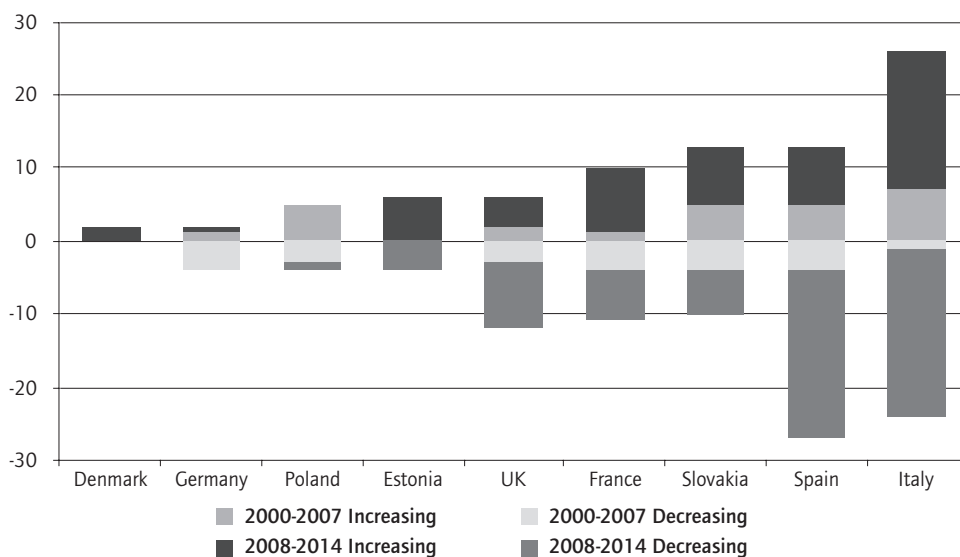
These two quotes are indicative of the efforts of the European Commission to argue that the levels of employment protection in at least some EU Member States have had harmful economic effects. More recent policy-oriented documents have appeared more cautious and nuanced. Definite statements are replaced 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.

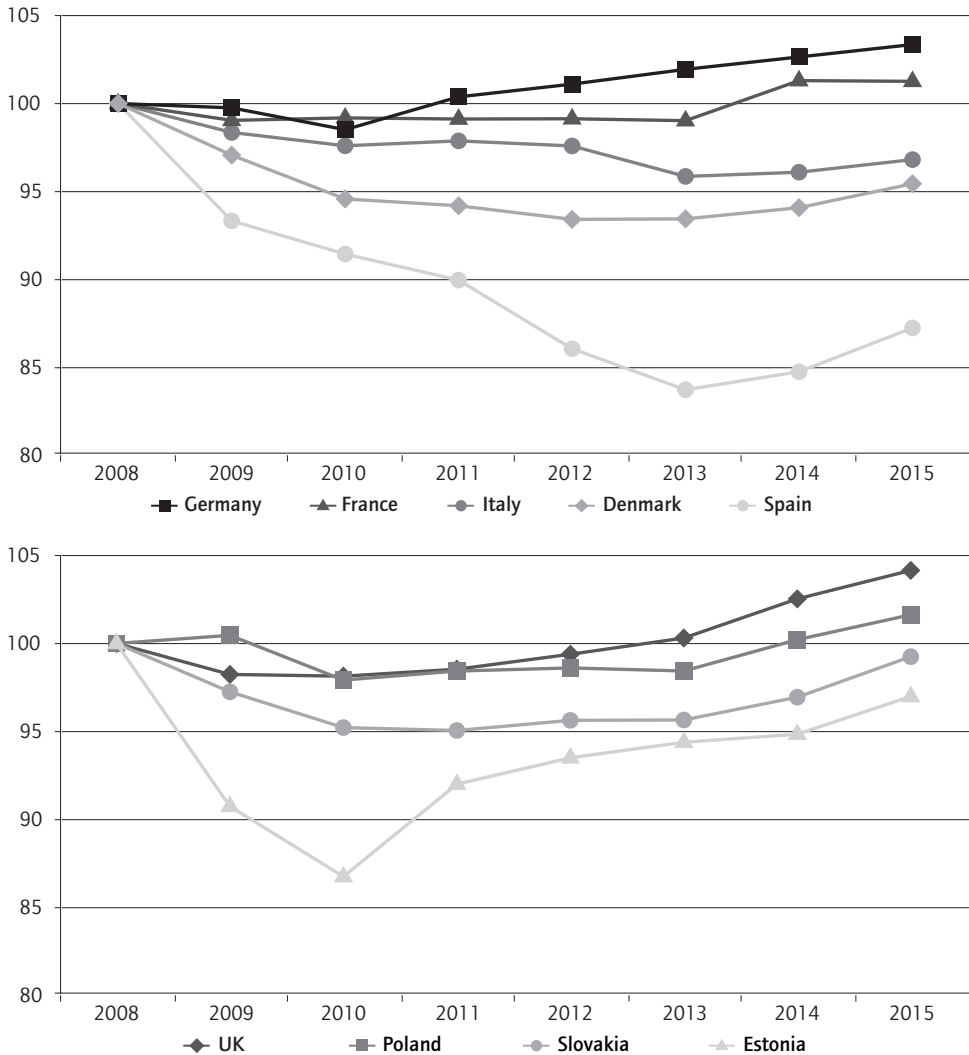
It is also possible to take note of de facto deregulatory measures that do not appear in the OECD EPL index, such as the introduction of significant charges for pursuing unfair dismissal cases in the UK or the exclusion from some protections of employees in firms below a certain size in Germany, covered 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)



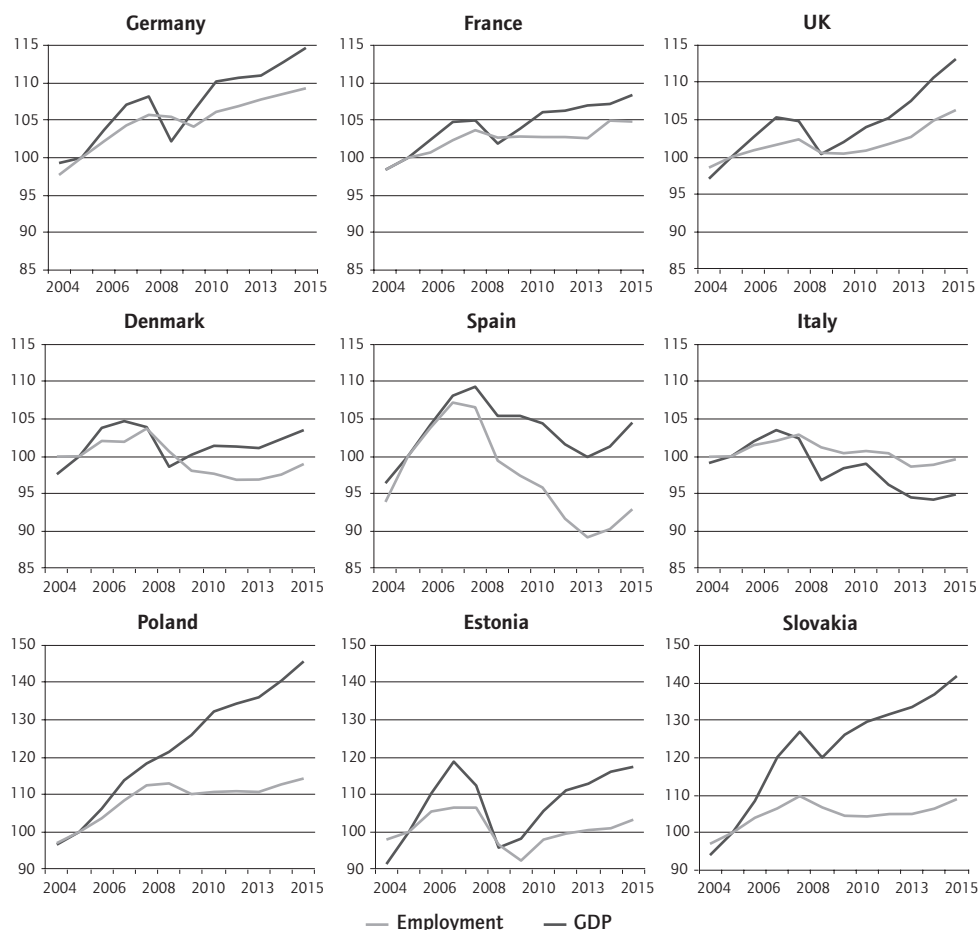
Source: Eurostat (EU-LFS, lfsa_pganws). Age 15-64

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; ifsa_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.

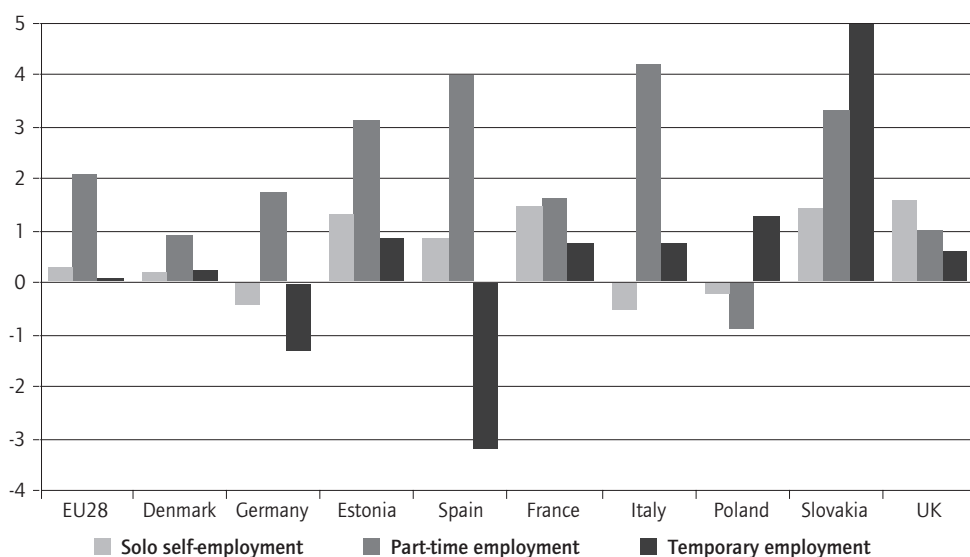
Overall, as indicated in Table 3, there was a visible move towards non-standard forms of work in the years after the crisis. However, the patterns differ across countries, with some forms of atypical work gaining ground in one country but diminishing in another. This is illustrated in Figure 4, which 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 from 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.

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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 OECD'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).

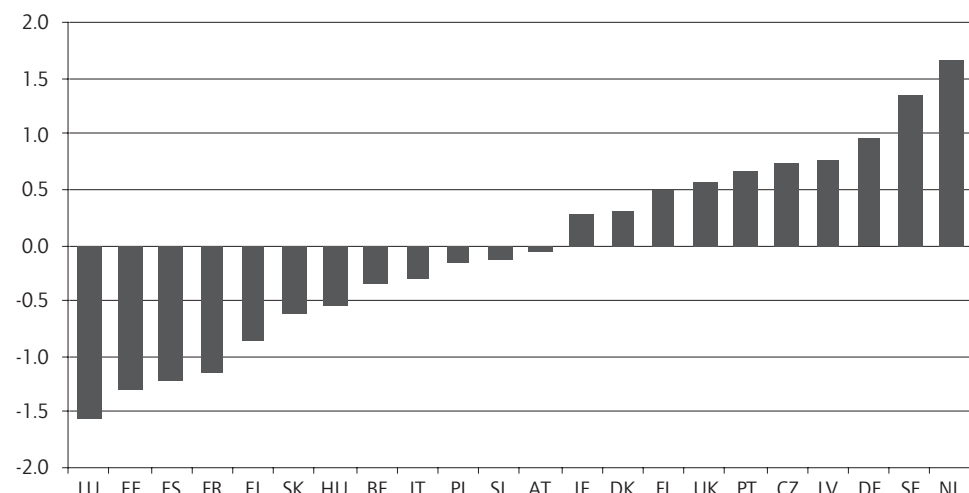
Nevertheless, the objective of 'helping to combat labour market segmentation' (European Commission 2015a: 30) appears as the justification for why one-half of Member States have deregulated regular employment. A common feature of the argument is the use of the gap between the EPL indexes on permanent 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

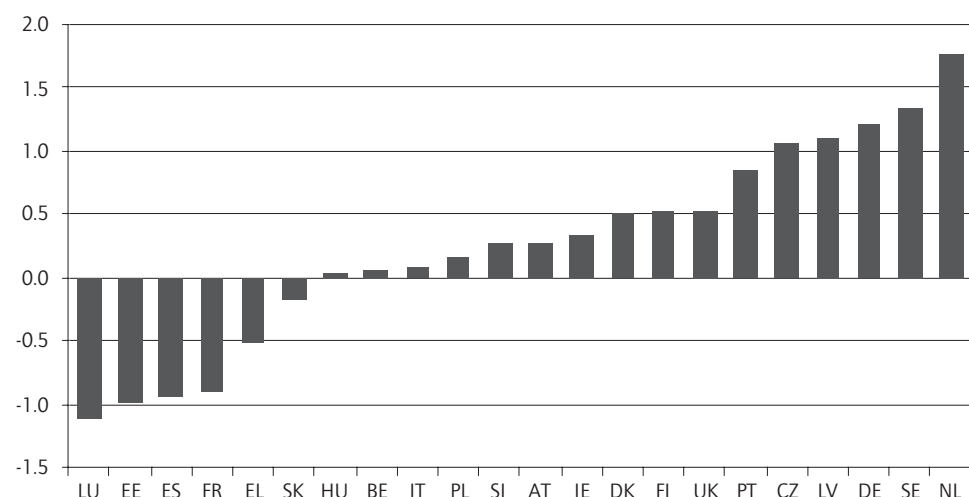
the gap between the index for temporary contracts and that for permanent contracts for individual dismissals only. Figure 2 shows that the picture changes only slightly when the gap is measured with the indicator including provisions for collective dismissals. For most countries, this simply raises the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

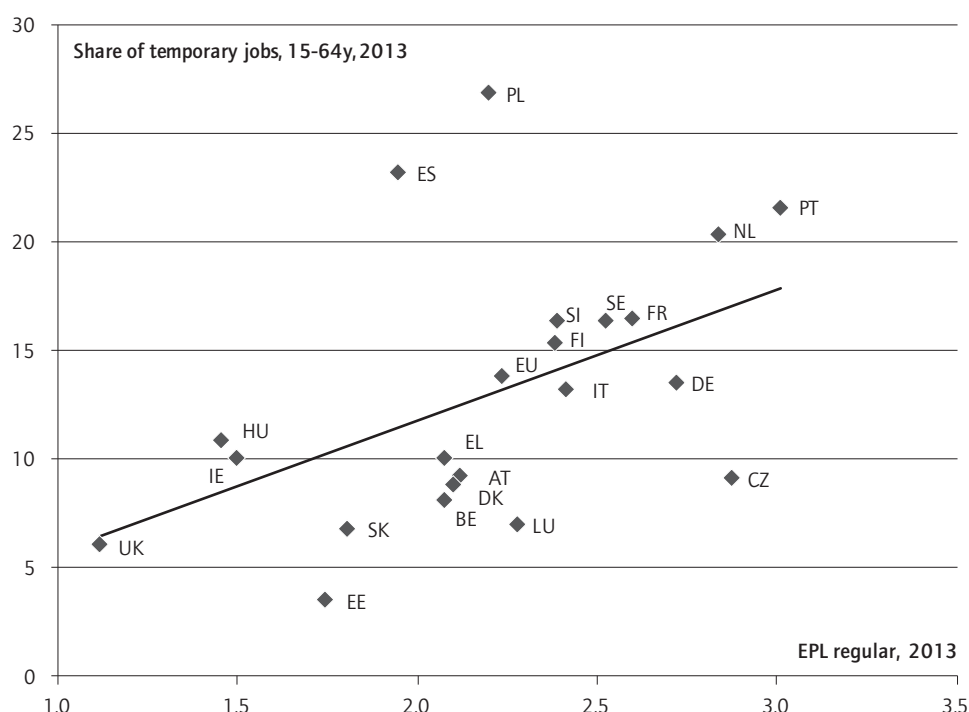
Figure 2 The arithmetical gap between the EPL index on regular (including collective dismissals) and temporary contracts, 2013



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



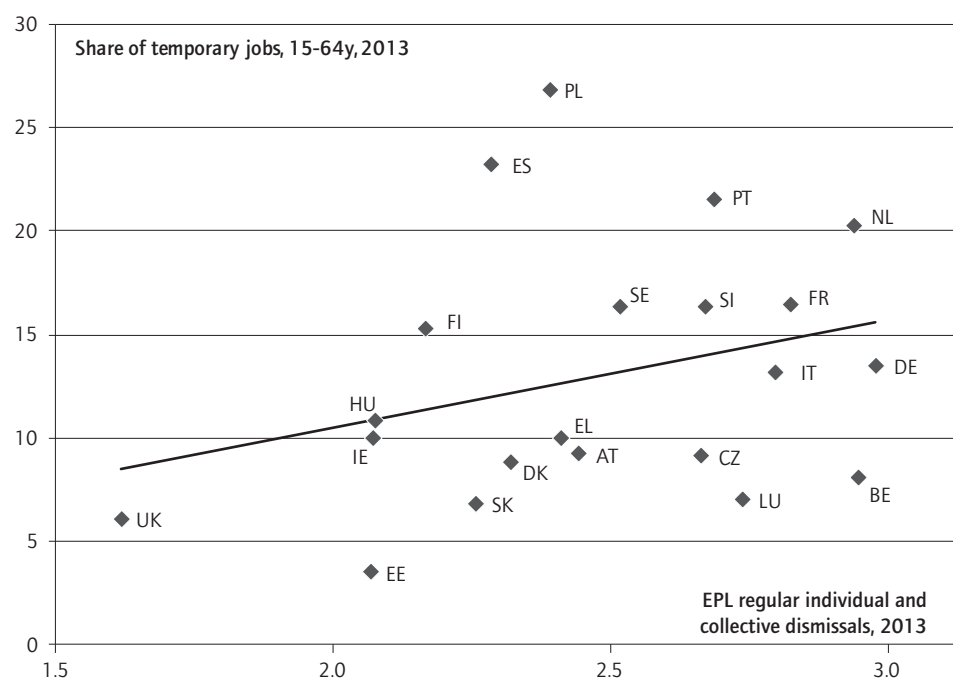
Source: European Commission 2015a: 31

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



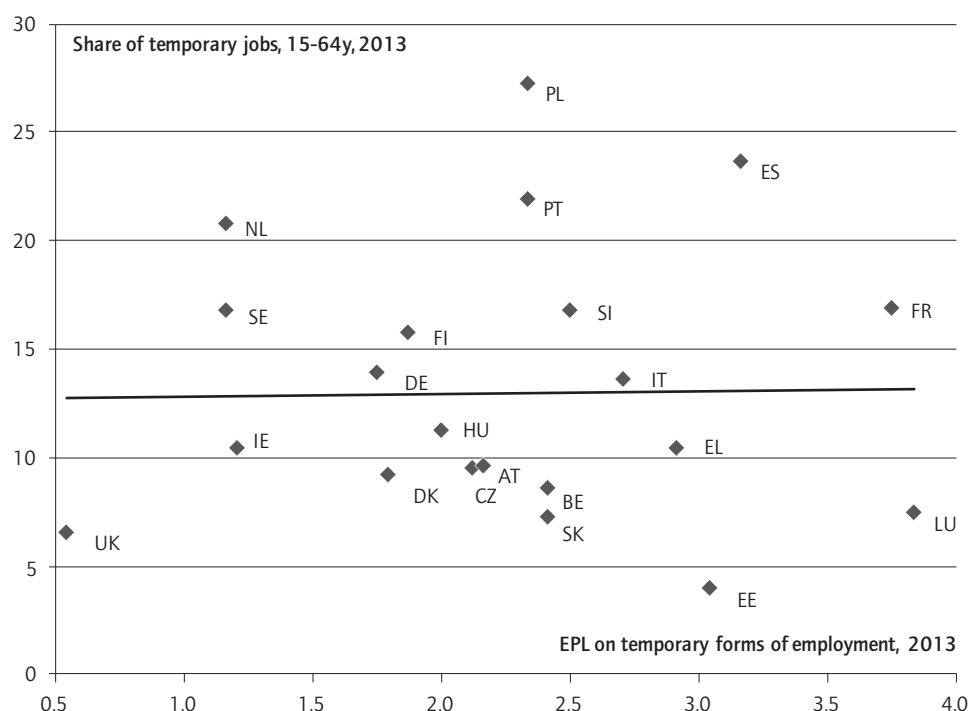
Source: OECD, Eurostat, Ifsa_etpgan, own calculations

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, Ifsa_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 provided 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 advised¹⁰ 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.

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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

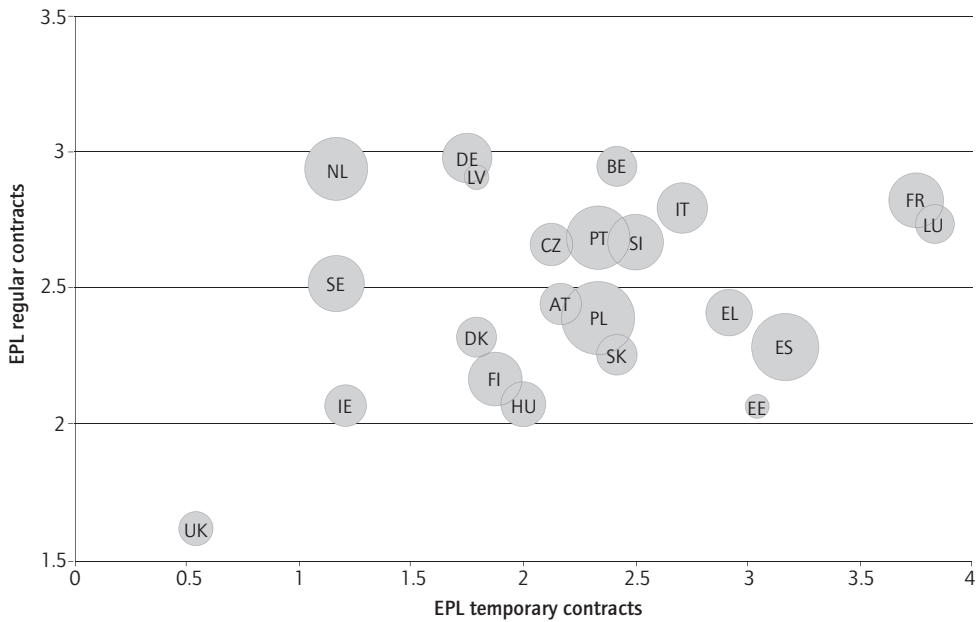
standards for employment conditions. In textbook labour economics, a freely operating labour market is held to be sufficient to establish a going minimum rate for labour, but an institutionalist perspective emphasises that the labour supply itself is also socially constructed and influenced by institutional 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, Mrozowski 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)

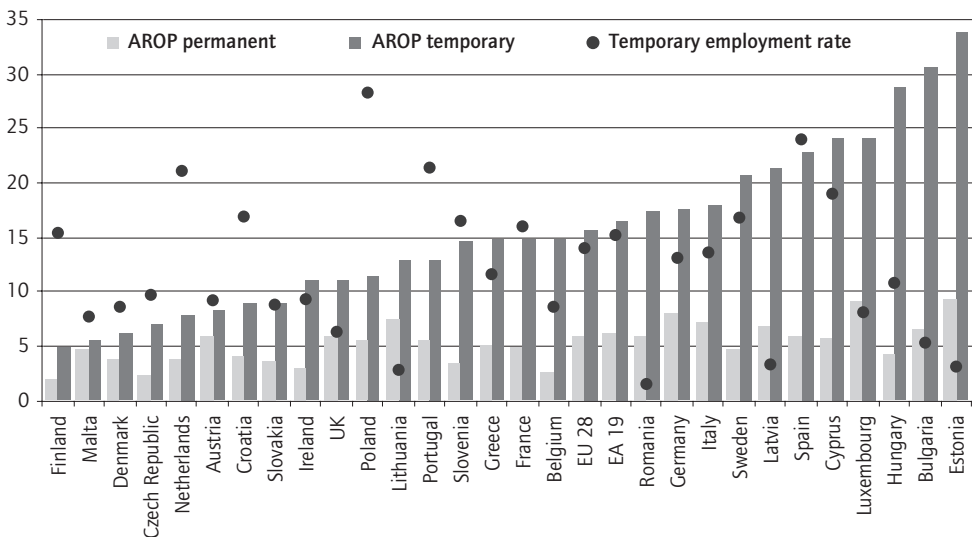
the policies towards a reduction of employment protection with the objective to curb the development of informal employment have clearly not worked (Rodgers and Rodgers 1989; Sehnbruch 2006). In these societies informal employment has grown alongside reductions in employment protection and, particularly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

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Chapter 3

The neverending story. Labour market deregulation and the performance of the Spanish labour market

Rafael Muñoz-de-Bustillo and Fernando Esteve

1. Introduction

Labor deregulation is not something new in Spain. Since the enactment of the Labour Code (*Estatuto de los Trabajadores*) in 1980, the first compendium of Spanish labour law of the democracy, there has been more than 50 labour market reforms (Fundación 1º de Mayo 2012). The first one was approved by a social democratic government in the Orwellian year of 1984 and marked the starting point of the growth of atypical employment in Spain. That reform allowed the use of temporary employment contracts regardless of the temporal or permanent nature of the job performed. Paradoxically, many of the subsequent reforms, including the last major reform of 2012 – piloted by a conservative government – aimed at reducing the dualisation of the labour market between temps and workers with open-ended contracts, a problem directly related to the 1984 reform and considered by many to be the main malaise of the Spanish labour market.

This chapter aims at reviewing the results of such reforms in terms of the evolution of the Spanish labour market, paying special attention to the last two reforms approved in 2010 and 2012 by two consecutive governments of different ideology (social democratic in the first place, conservative in the second) but sharing the same flavour in terms of objectives and tools, if not in intensity. In order to do so, section two provides the reader with a brief summary of the evolution and characteristics of the Spanish labour market. Section three presents evidence on the impact of the major reforms undertaken, paying special attention to those approved during the Great Recession. In doing so we follow a deductive approach and not one based on ‘hard’ data or a modelling strategy. The chapter ends with a summary of the major conclusions of the analysis.

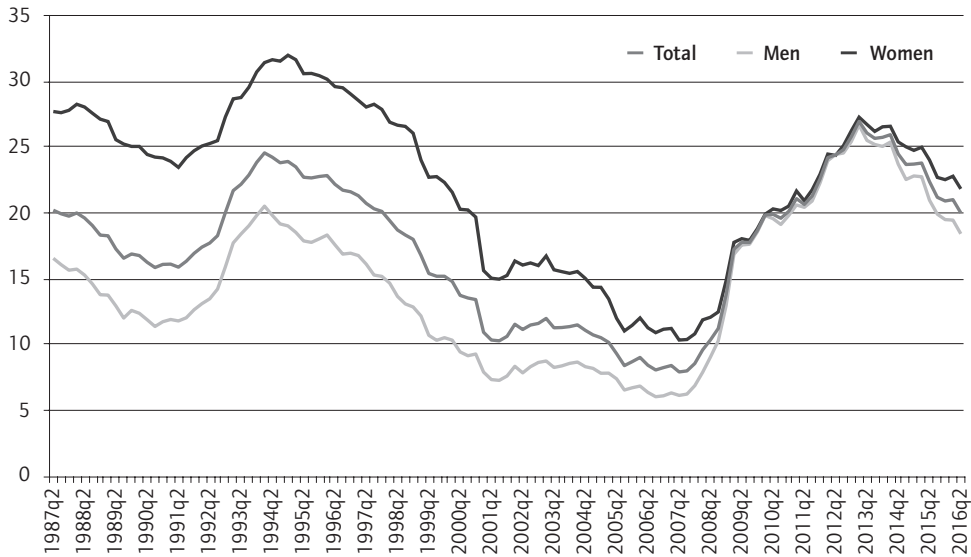
2. Spanish labour market through boom and bust

The dubious honour of being one of the countries with a higher unemployment rate and – until the crisis – the highest temporary employment rate explains that there is no lack of updated accounts of the characteristics of the Spanish labour market (Horwitz and Myant 2015; Muñoz de Bustillo and Antón 2011). In what follows we will profit from such abundance and limit our account of the characteristics of the Spanish labour market to five items that we consider describe the essence of its functioning.

(1) *A high unemployment rate across the cycle.* A quick glance at Figure 1, which reproduces the evolution of unemployment rate by gender from 1987 to 2015, is enough to see

how unemployment has been a structural characteristic of the Spanish labour landscape for the last three decades. Even after a decade of high economic growth and employment creation, during which Spain contributed almost one-third of the employment growth of the EU, in 2007 the unemployment rate, at its lowest for decades, was still as high as eight per cent (six per cent among men). Such a high unemployment rate over the cycle, related to the restructuring of the productive system and associated with the opening of the Spanish economy and the democratic transition, is the background to most of the changes in labour market regulation that have taken place in the last three decades.

Figure 1 Unemployment rate in Spain: 1987-2015



Source: authors' analysis from LFS data

In any case, it is important to acknowledge that, throughout this period, Spain experienced a huge increase in labour supply (from 14.7 to 23 million) related, in the first part of the period, to the belated incorporation of women in the labour market and, later, to the huge inflow of immigrants that took place in the decade before the crisis. Regarding the first item, female labour force participation grew from 27 per cent in 1978 to 54 per cent in 2015 (87 per cent in the case of women 35 to 39 years old), i.e. from four million to 10.5 million. Regarding the second, in a little over a decade Spain went from having a negligible foreign-born labour force, around one per cent in the mid-1990s, to 15 per cent in 2009, increasing the labour force by 3.4 million. Such an increase in labour supply, usually kept out of the list of the usual suspects in the Spanish unemployment malaise, is, from our perspective, another important element to take into consideration when explaining the evolution of the Spanish labour market. It is well known (Okun law) that, under the assumption of constant labour productivity (or constant labour productivity growth), the absorption of growing numbers of new entrants to the labour market requires higher levels of GDP growth. Without such extra growth, the increase in supply will translate into a lower decrease in unemployment rates.

Obviously, once the *ceteris paribus* assumption is relaxed, allowing for interaction between the variables, the result becomes uncertain. For example, the increase in the labour force might trigger changes in effective demand increasing GDP growth, or eliminate bottlenecks in certain sectors, such as construction or domestic services, that might translate into further GDP growth. However, such changes cannot be taken for granted or, at least, not at the level of intensity needed to compensate in full the unemployment implications of a large increase in the labour force. For those scholars who believe that the major restrictions on growth are found on the supply side of the economy, the expansive effects of the increase in the labour force will dominate the equation. For those who consider that there might be important short-term demand restrictions on growth, the increase in the labour force will not always be, by itself, enough to trigger the level of economic growth needed to offset fully its impact on unemployment.

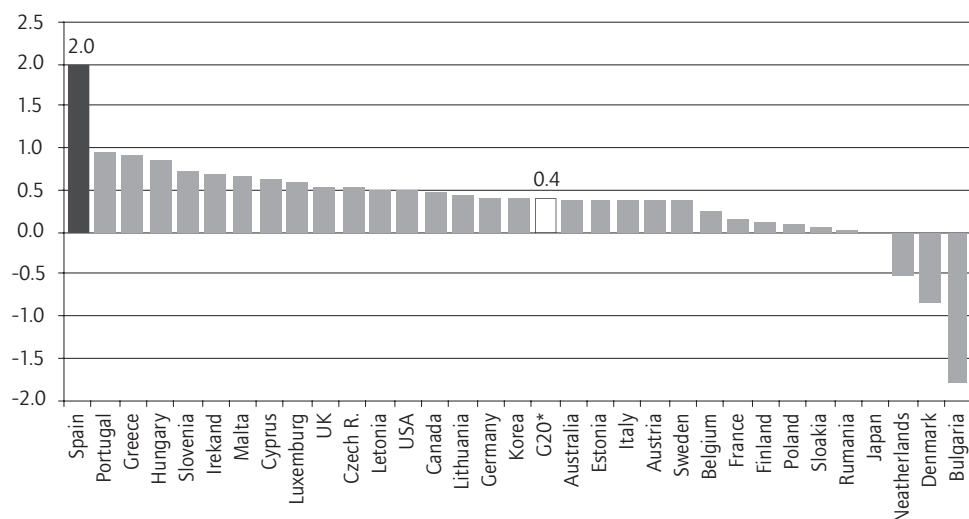
In conclusion, the changes in demand and supply of labour are clearly interrelated: immigration grew because labour demand was growing and such growth in demand was partially explained by the availability of labour; while the significant growth of the labour force also left its imprint in terms of a lower rate of reduction of unemployment during the long years of GDP growth.

(2) *High employment elasticity to changes in GDP.* Employment and unemployment in Spain are extremely sensitive to changes in the economic cycle. The behaviour of employment during the Great Recession 2008-2013 is a good example, although not the only one, of the high elasticity of employment to changes in GDP compared to other OECD countries. We can see in Figure 2 that Spain has the highest employment elasticity to changes in GDP of the countries in the sample, with a sensitivity that is five times higher than the G20 average. This means that negative demand shocks (such as the last crisis) produce much higher effects in terms of employment destruction than in other countries, amplifying the social impact of the crisis *vis-à-vis* other countries with similar, or larger, drops in GDP. In this sense, Spain seems to suffer from a case of labour market extra flexibility, at least in terms of numerical adjustment to changing economic conditions, and not the opposite.

Such a high elasticity is the result of different factors, acting at different levels of the economy. One of them is clearly the hypertrophy of the construction sector that characterised the Spanish economy during the boom years and until the burst of the construction bubble with the crisis. According to the estimates of Uxó *et al.* (2016), the reduction in the number of jobs directly or indirectly associated with construction and real estate add up to 69 per cent of jobs lost in the period 2007-2014. The end of the construction bonanza meant a sudden and abrupt halt in construction that no reduction in wages could compensate. On a different level, the high rate of temporary employment in the Spanish labour market (see below) allowed for an adjustment in real time of labour demand to the new conditions of the market.

(3) *A high percentage of non-standard employment.* We can see in Figure 3 that Spain was the *avant-garde* of the development of new precarious forms of employment. The above-mentioned labour reform of 1984 generalised the possibility of hiring on

Figure 2 Elasticity of employment to GDP in a sample of countries, 2008-2013



(*) G20 of high income countries. Elasticity of employment to GDP is defined as the percentage variation of employment divided by the percentage variation of GDP.

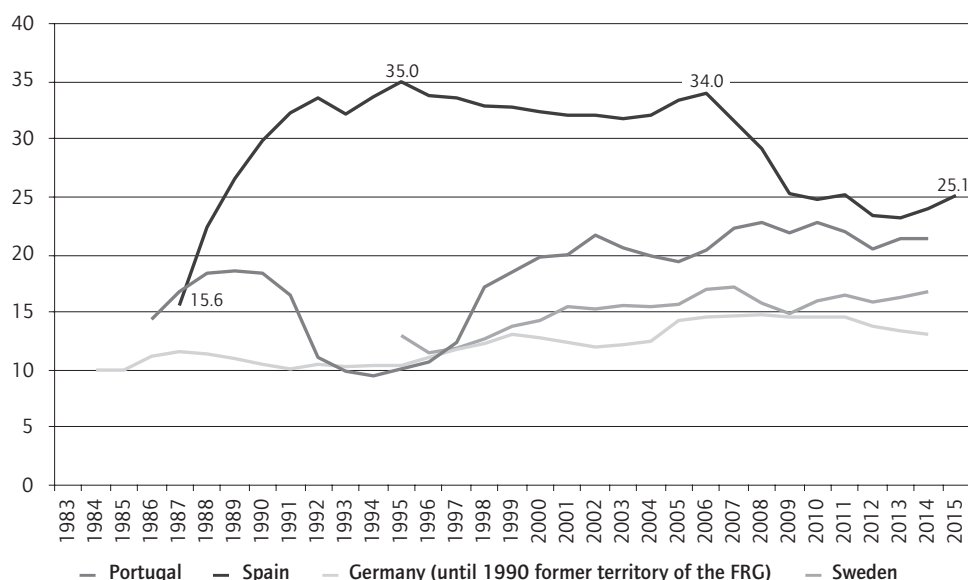
Source: ILO, OECD and World Bank 2015: 33-34

a temporary basis, regardless of the temporary or permanent nature of the job. By doing so, even if with the best of intentions,¹ the legislator started a dynamic of mass hiring using the different new types of temporary contracts. The result was that, in less than a decade, more than one-third of employees were hired by means of a temporary contract. In the following decade, many different measures were approved to reduce the temporality rate, both by promoting different means for the transformation of temporary into open-ended contracts and by limiting the use of chain temporary contracts and increasing their termination cost, although the temporality rate proved resilient to these efforts. In fact, only with the coming of the economic crisis and the concentration of the destruction of employment on temporary workers did the Spanish temporality rate show a major reduction. However, such a change in trend seems to be contingent on the crisis since, with the recovery of the economy, the temporality rate is again on the rise (from 23 per cent to 25 per cent in two years).

Together with its extension and prevalence, another important characteristic of temporary contracts in Spain is their relatively short duration: for example, in October 2014 as many as 25 per cent of all temporary contracts had a duration of fewer than seven days while only 0.4 per cent were for more than one year.² In terms of the type

1. The reform aimed at facilitating the creation of employment after years of economic stagnation and growing unemployment. To give an idea of the ethos of the moment, in the presentation of the project of the Labour Code few years earlier, the Minister of Labour, Mr. Calvo Ortega, defended that 'in this moment, the dialectic between open-ended employment and temporary employment is false and unreal, and the authentic dialectic, in a moment of crisis, is temporary employment, part-time employment or unemployment' (Valdés Dal-Ré 2005: 38).
2. Almost 43 per cent of temp contracts do not specify a duration.

Figure 3 Temporary employment as a percentage of total dependent employment in Spain, Portugal, Germany and Sweden: 1983-2015



Source: authors' analysis from European LFS data and Spanish EPA

of workers affected, as is to be expected, most new entrants to the labour market have temporary contracts; thus, high temporality among young employees is the rule. However, that does not mean that older workers are protected against this type of employment relationship; in fact in 2014 workers over 40 years old made up 35 per cent of all temporary employees (Muñoz de Bustillo and Pinto 2016).

Temporary employment is clearly the dominant type of precarious employment in Spain, but other types of non-standard employment are also present in the Spanish labour market. In this respect, Spain, even now, has a larger than average presence of self-employment and a growing percentage of part-time (PT) employment.

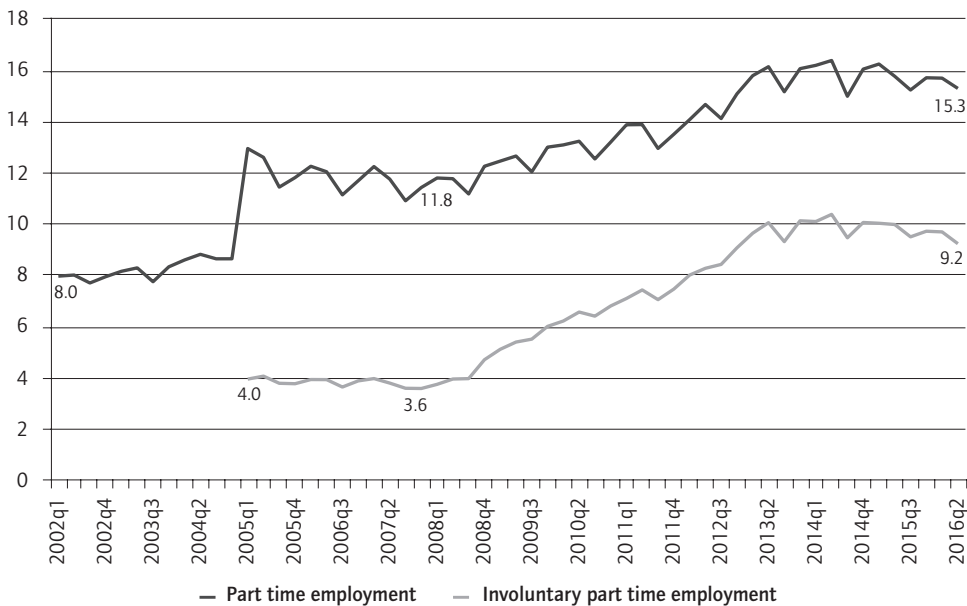
Regarding the former type of employment, there is a growing concern that self-employment is being used in a denaturalised way as a substitute for a standard employment relationship, often called 'bogus self-employment'. In fact, the Self-Employment Code of 2007³ created the figure of 'economically dependent self-employee' (TAED, in the Spanish acronym: *Trabajador Autónomo Económicamente Dependiente*) to address the issue of self-employees working almost exclusively for one customer/client. There are no statistics about the extension of this type of 'employment' relationship, but it is estimated that around 13 per cent of the self-employed are

3. *The self-employed workers statute*, 20/2007 law of 11 July. Chapter III deals with the professional regimen of the economically dependent autonomous worker.

TAEDS.⁴ The transformation of an employment relationship into a mercantile one has important implications for the well-being of workers regarding the reduction of their rights in terms of employment protection, paid vacation, unemployment benefits, etc., as well as the transfer of labour costs covered by the firm in the case of employees (such as social security contributions) to the worker. Such a reduction of rights has been only marginally confronted with the creation of this new figure of TAED.

In relation to the growth of part-time employment, it is important to acknowledge that PT employment never enjoyed much popularity in Spain. We can see in Figure 4 that, before the crisis, the rate of PT employment was around 11 per cent. With the crisis, there has been an important increase in the use of PT by firms, reaching an all-time high of almost 16 per cent by the end of 2015. More interesting than this change is the overarching involuntary nature of PT in Spain: 62 per cent of PT workers are working part-time because they had not been able to find a full-time job. The crisis has produced an increase in involuntary PT working across most EU Member States, but there are very few countries – with non-marginal PT rates – in the EU (Italy and Cyprus) which have such a high involuntary part-time employment rate.

Figure 4 Part-time and involuntary part-time employment rates (per cent of total employment) in Spain: 2002-2016



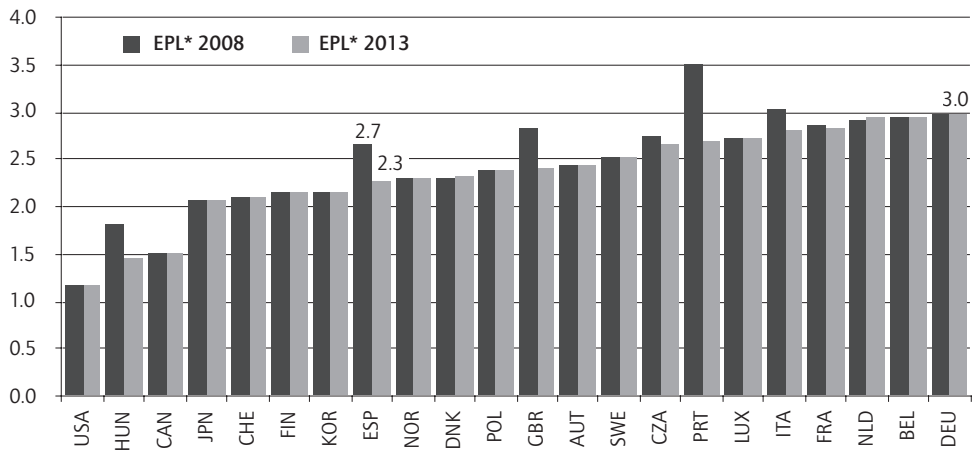
Source: authors' analysis from Spanish EPA

4. Estimates based on INE data. UPTA: *Los autónomos dependientes crecen un 14,5% desde marzo de 2013* (Miércoles, 7 de Mayo de 2014). http://upta.es/index.php?option=com_content&view=article&id=523:2014-05-07-10-41-08&catid=1:latest-news&Itemid=18

(4) *A dual labour market.* The existence of a large group of temporary workers alongside a still-large but decreasing group of workers enjoying once-standard (full-time, open-ended) employment relationships is often considered the culprit of the Spanish unemployment malaise. For example, a 2012 OECD report stated: ‘Tackling labour market dualism is key in Spain, and therefore the reform’s objective of rebalancing labour protection by lowering excessive employment protection for workers with permanent contracts is a step in the right direction’ (OECD 2012: 2). In the same line of reasoning, Wölfl and Mora-Sanguinetti (2011) argue that: ‘Very high *de facto* severance payments in permanent contracts has resulted in a rigid dual market with adverse effects on unemployment and productivity’ (p. 2). This has also been the mantra guiding the labour market reforms developed in the last two decades. In the next section we will have the chance to discuss the logic behind the argument in more detail. Here we will examine the extent to which the claim of high *de facto* employment protection can be sustained with the data normally used when addressing this issue: the OECD employment protection legislation (EPL) index.⁵

As we can see from Figure 5, which reproduces the widely-used employment protection legislation index of regular employees, developed by the OECD, Spain does not stand out in terms of EPL regarding employees with open-ended contracts. Certainly not in 2013, after the last major labour reform that left Spain with an EPL below the simple average of the countries of the sample; but not even before the crisis, when Spain had an EPL index higher than the average but still lower than the index of Germany, Belgium or the Netherlands.

Figure 5 EPL of regular employees



Source: OECD 2013, EPRC_V3: weighted sum of sub-indicators concerning the regulations for individual dismissals (weight of 5/7) and additional provisions for collective dismissals (2/7). It incorporates 13 detailed data items.

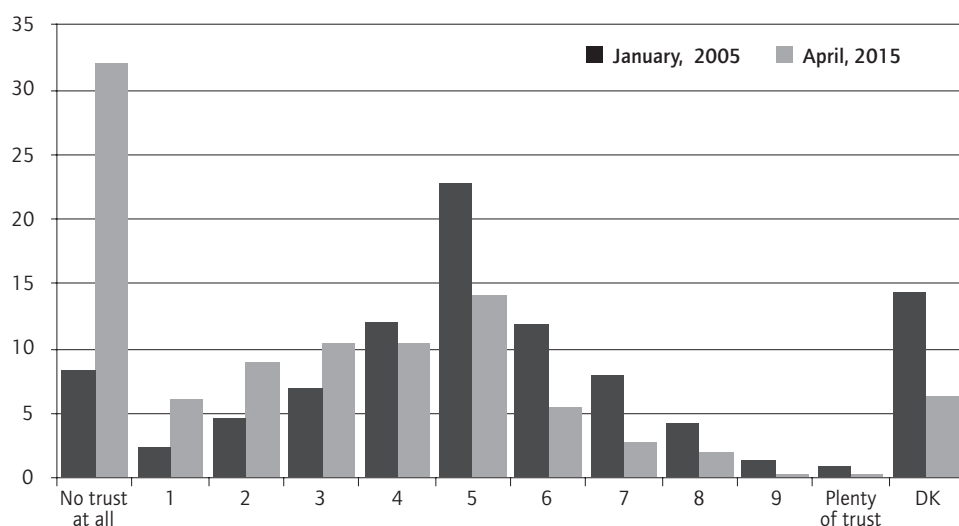
5. For details and a critical review of the OECD EPL index, see chapter 1 in this volume.

Interestingly, where Spain does stand out is in the EPL index for temporary workers, with a value for 2013 (EPT_V3) of 3.17 (68 per cent higher than the average for the sample of countries in Figure 5, which is 1.88). This value puts Spain at the forefront in terms of restrictions on the use of temporary employment. Looking at the position of Spain in both sets of indexes from a cross-country perspective, we would have to conclude that the Spanish oddity is the higher level of restrictions imposed on temporary contracts, and not the privileged position enjoyed by employees with open-ended contracts *vis-à-vis* their OECD colleagues.

(5) *A relatively high coverage of collective agreements and moderate wage increases through social dialogue in a context of relatively weak and battered trade unions.* The last element to address in our brief review of the characteristics of the Spanish labour market is the structure and extension of collective agreements and the role and strength of trade unions. In this respect, four elements stand out: (a) a relatively high (but decreasing) coverage of employees by collective bargaining, related to the *erga omnes* principle under which collective agreements (CA) signed by the representative trade union and employer organisations are automatically extended to all workers in the scope of activity of the CA, as well as the principle of *ultra-activity*, according to which the CA was enforceable, even after the end of its period of validity, until a new CA was signed (although this is now extinct since the 2012 reform); (b) the dominance of the CA at the provincial level, although with a reasonably high level of coordination since the main lines of wage bargaining are frequently set through negotiations between the trade union and employer organisations at the national level. The 3rd *Agreement for Employment and Collective Bargaining*, setting wage growth at 1% for 2015 and 1.5% for 2016 is an example of such a type of coordination; (c) low membership rates but high participation in trade union elections (conducted every four years); and (d) a deterioration in the public image of trade unions (as well as other institutional actors) due to own errors (corruption cases in specific regions), a lack of effectiveness in fighting back against austerity policies and a fierce public opinion campaign during the toughest years of the crisis, among other things.⁶ In this respect, Figure 6 is illustrative regarding the loss of trust faced by trade unions in Spain, with the average level of trust (on a scale of 0-10) dropping from 4.5 to 2.6 in a decade.

6. This campaign was orchestrated by the Conservative government and by major media. For example, trade unions were accused of fighting for the interests of those employed: 'I ask the trade unions when are they going to think about those without a job; when will they stop thinking about their specific interests (...) instead of the interests of the workers' (María Dolores de Cospedal, Secretary General of Partido Popular, *El Mundo*, 17/03/2012); or of having strange and unclear finances: 'The mystery of trade union financing' *El Mundo*, 18/11/2013). Special groups of workers, such as public employees (the public sector employees' union CSIF reacted with a campaign in defence of the dignity and work of public employees) and teachers (who started a campaign in defence of public education) were also targeted. There has also been an increase in the use of an article of the Penal Code (315.3) against picketers (around 300 instances, according to one trade union); etc.

Figure 6 Trust in trade unions in Spain: 2005 and 2015



Source: authors' analysis of *Barómetro* 2588 and 3080 (CIS)

3. Impact of the labour market reforms on employment and working conditions

We can see in Figure 7 that, in terms of GDP reduction, Spain reached the bottom in 2013; while employment started growing the following year. Altogether, the crisis has meant a return to 2005 in terms of GDP and to 2002 in terms of employment level. The official discourse, making use of the logic *post hoc ergo propter hoc*, links the recovery of the economy to the policy of fiscal consolidation followed by the conservative government (and by the previous social democratic government during the second half of its mandate) and by the structural reforms applied, especially in the area of the labour market. In sharp contrast, other researchers argue that the policy of austerity pursued since May 2010 can only be credited with deepening the crisis (the second dip of 2011-13) and delaying the recovery (Muñoz de Bustillo 2014a, 2014b), linking the improvement of the economy to factors of a different nature such as the relaxation of the deficit reduction goal by the European Commission (or the failure to fulfil it in 2014 and 2015, an election year),⁷ the development of an aggressive expansionary monetary policy by the ECB, the depreciation of the euro or the fall in energy prices (Rosnick and Weisbrot 2015; Tilford 2015).

7. In 2015, Spain had a public deficit of five per cent, well beyond the 4.2 per cent target agreed with the European Commission.

Table 1 Main changes in labour market regulation during the crisis

Measures	Comments
New open-ended contract (<i>Contrato de trabajo por tiempo indefinido de apoyo a los emprendedores</i>) for workers under 30 years old for firms with less than 50 employees. (ii)	Firms benefit from different incentives, including 50 per cent of the unemployment benefits not taken up by the hired employee; a lump sum subsidy of EUR 3 000 per employee; other incentives for encouraging the hiring of specific groups of workers; and one year trial periods.
Measures to facilitate changes by the employer in the working conditions specified in the labour contract or collective agreement. Such changes include geographical mobility and changes in working time, pay, functions, etc. (i) (ii)	The mere expectation of future losses is considered as a cause enough for implementing such changes. This might lead to the deterioration of employment security and working conditions
Firm-level collective agreements are given priority over national, regional or sectoral agreements. (i) (ii)	Potential bargaining problems for small firms (80 per cent of firms with employees have fewer than six, the required number to have a trade union representative). This might weaken bargaining power and lower wages.
Removal of the requisite of administrative authorisation for collective dismissals (<i>Expedientes de Regulación de Empleo</i> , ERE). (ii)	The existence of such a requisite acted as an incentive for firms to negotiate collective dismissals, often 'softening' the impact of plant downsizings and improving the conditions of fired workers.
Changes addressed to facilitate dismissals for economic, technological, organisational or productive reasons with minimum severance payments (20 days per year). (i)	Reduction in dismissal costs; risk of increasing the rate of dismissals. Lower compensation for fired workers now facing a long period of unemployment (in 2012, 30 per cent of the unemployed had been unemployed for more than two years).
Reduction of redundancy payments for non-justified dismissals. (ii)	From 45 days per year (up to 42 months) to 33 days per year (up to 24 months).
Changes addressed to facilitate dismissal without severance payment in case of justified absenteeism (in the case of sickness, for example). (i)	Increase of insecurity, potential risk of increasing <i>presenteeism</i> with undesired social effects and the deterioration of working conditions.
Extension of collective dismissals to the public sector (excluding civil servants). (ii)	Radical change of the stability of employment principle, once a basic element of the public employment compact.
Reduction of pay and social benefits (sickness, days off, leave, etc.) and longer working hours for public sector employees. (i) (ii)	Worsening of working conditions for public employees and eventual demonstration effect for private workers.
Possibility of increasing the number of working hours (complementary hours) of part-time employees. Reduction in the period of notice for changes in working time. (ii)	Greater flexibility for firms to adapt PT working to their needs. Increase in uncertainty regarding working hours.
Temporal flat-rate social security contribution (EUR 50/month) for new self-employed workers. (iii)	Facilitation of self-employment. Reduction in social security income.
Reduction in subsidies (in working time and money) to trade union and employer associations. (iv)	Weakening of trade unions with lower income and fewer human resources to carry on activities in a moment of high demands.
Freezing of minimum wages in 2011 and 2013 (v). Increase of 0.6 per cent in 2012 and 0.5 per cent in 2014.	Possible increase of the incidence of low pay and negative effects on negotiated wages.

(i) *Real Decreto-ley 10/2010, de 16 de junio, de medidas urgentes para la reforma del mercado de trabajo.*

(ii) *Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral.*

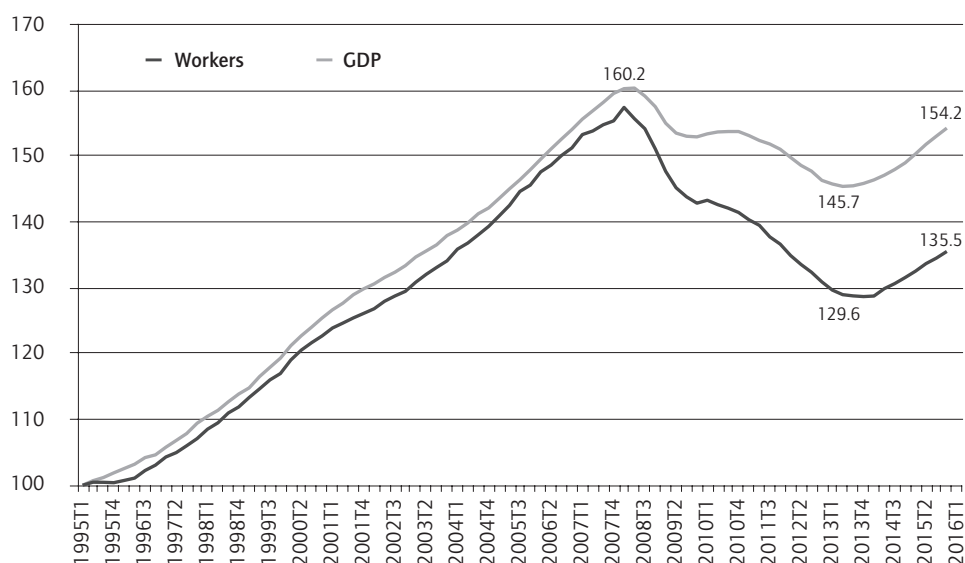
(iii) *Ley 14/2013, de 27 de septiembre, de apoyo a los emprendedores y su internacionalización.*

(iv) General State Budget, different years. Overall reduction of no less than 60 per cent (CCOO, 2016)

(v) *Real Decreto-ley 1717/2012 and 1046/2013.*

Source: updated from Muñoz de Bustillo and Antón 2015: 473

Figure 7 Evolution of real GDP and employment in Spain: 1995-2016 (1995q1=100)



Source: authors' analysis from *Contabilidad Nacional de España, Base 2010*, INE

The master lines of Spanish labour market reform, as expressed in numerous European Commission and IMF documents, aimed at two major goals. The first one is increasing the flexibility of open-ended employment (understood as facilitating changes in working conditions and dismissals) through different measures such as the creation of new open-ended employment contracts with lower redundancy payments and the redesign of the system of collective agreements. The second one, obviously connected to the previous, is the development of a process of internal devaluation through wage reduction in order to increase international competitiveness. Table 1 presents a summary of the major measures taken. In what follows we will attempt to gauge their impact in terms of trends in employment and working conditions since their enactment.

3.1 Reducing labour market segmentation

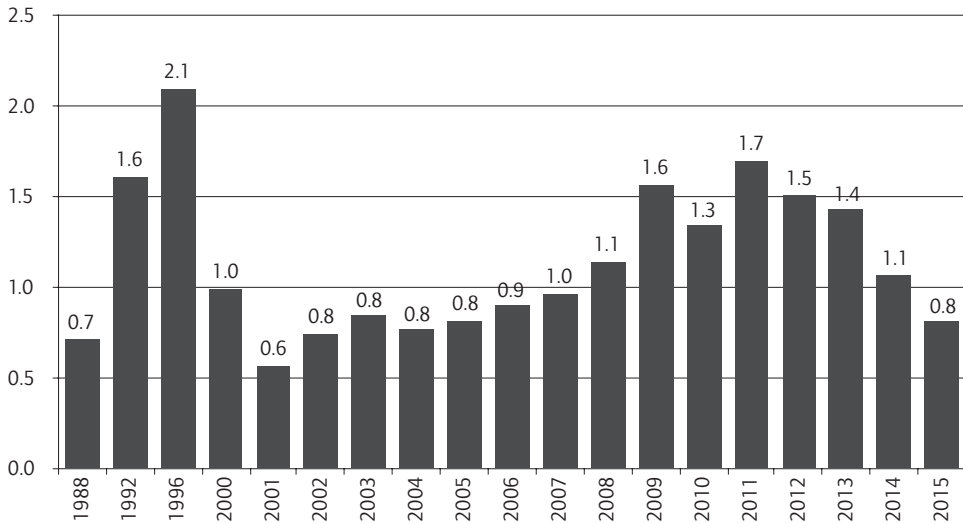
Since the mid-1990s and aiming at reducing labour market segmentation, understood in a simple, almost caricature-like way as a dual labour market with *outsiders* (employees with temporary contracts) and *insiders* (employees with open-ended contracts protected from the ups and down of the economy),⁸ different governments have approved measures directed at decreasing the use of temporary contracts by firms and favouring the use of open-ended contracts. In the former case, measures were taken in order to make it more difficult for firms to resort to temporary employment by limiting the use of chain temporary contracts, i.e. the maximum time a given worker can be successively hired by a given firm using temporary contracts (now 24 months in

8. For a more nuanced concept of labour segmentation, see Rubery and Piasna (2016).

the last 30), and increasing its cost through the introduction of a termination payment related to the duration of the contract (currently 12 days per year). Regarding open-ended contracts, different measures were taken to reduce dismissal costs (Table 1, rows five and six) by: (1) reducing redundancy payments in cases of unjustified dismissal from 42 days per year (with a maximum of 42 months) to 33 days per year (maximum of 24 months); and (2) facilitating the use of the procedure of justified/fair dismissal for economic, technical or organisational reasons, with lower dismissal costs (20 days per year with a maximum of 12 months).

The rationale behind such a policy is two-fold: a) employment protection for employees with open-ended contracts in Spain is comparatively high. However, we have seen in section 2 that this is not so. In fact, in aggregate terms, we can see in Figure 8 that redundancy payments, although comparatively higher than in the rest of the EU,⁹ are relatively low, at around 1.5 per cent of total labour costs during the crisis, in the context of massive termination of employment and dismissals.

Figure 8 Payments to dismissed employees as percentage of total labour costs



Source: *Encuesta de Coste Laboral*, different years

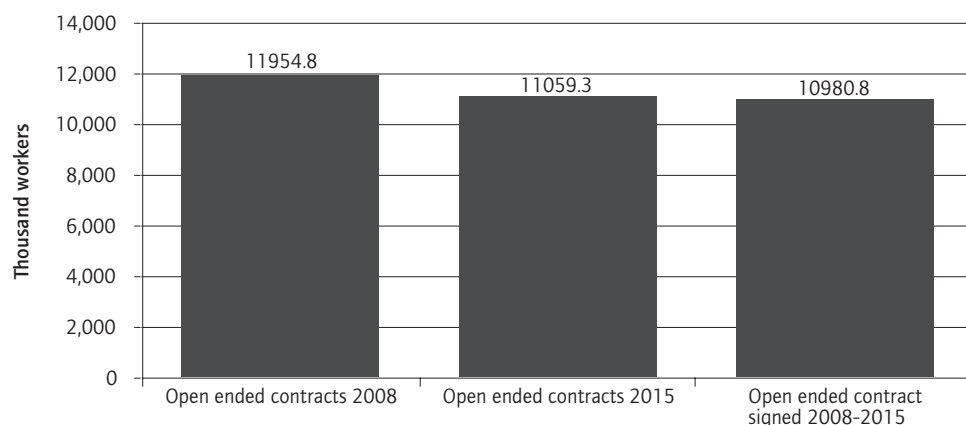
b) The allegedly high dismissal cost of employees with open-ended contracts transforms them into virtually permanent employees, regardless of the situation of the firm, delaying and slowing the adaptation of firms to changes in the economy and making their survival more difficult. Once again, the available information contradicts such

9. In 2012, the share of payments to dismissed employees as a percentage of total labour costs in Spain was the highest of all EU countries for which there is available data (Eurostat, Labour Costs Survey 2008 and 2012 – NACE Rev. 2). The average for the EU was 0.39. It is important to keep in mind that this type of payment is just one of the costs associated with the dismissal of workers. The average position held by Spain in terms of the EPL of regular workers, shown in Figure 5, implies that Spain ranks lower than others in some of the items constituting the index of employment protection such as, for example, notice periods (one month in Spain compared to up to six months in Sweden, Finland or Denmark for employees with twenty years of seniority in the firm) (OECD 2008).

an interpretation. Open-ended contracts in Spain are much less secure than usually believed. It is true that the destruction of employment in the first years of the crisis concentrated on temporary employees (89 per cent of jobs lost from the first quarter of 2008 to the first quarter of 2011).¹⁰ However, as the crisis dwelled and temporality rates decreased, the destruction of open-ended employment increased. Thus, across the whole period of (aggregate) employment destruction, almost one-third of the total employment destroyed corresponded to employees with open-ended contracts (around one million). The contribution of this group of workers was larger in construction (62 per cent) and manufacturing (40 per cent).¹¹ All in all, this means that *insiders* were far from fully protected against losing their job during the crisis.

Following Toharia and Malo (2009), another way to gauge the actual level of job security enjoyed by 'permanent' employees in Spain is by looking at the relationship between the number of dismissals and total private sector employees. According to their calculations, dismissals were, before the crisis, equivalent to around five per cent of total private open-ended employment. Our own analysis for the 2008-2013 period points to an average rate of 8.5 per cent. The equivalent rate for the 2007-2015 period is 7.6 per cent. Such a rate means that, in a ten-year timeframe, almost one-half of open-ended employees in the base year would have been affected by dismissals.

Figure 9 Open-ended employment and open-ended contracts signed in Spain: 2008 and 2015



Source: authors' analysis from *Servicio Público de Empleo Estatal*, SEPES (State Public Employment Service) and *Encuesta de Población Activa*, EPS (Labour Force Survey)

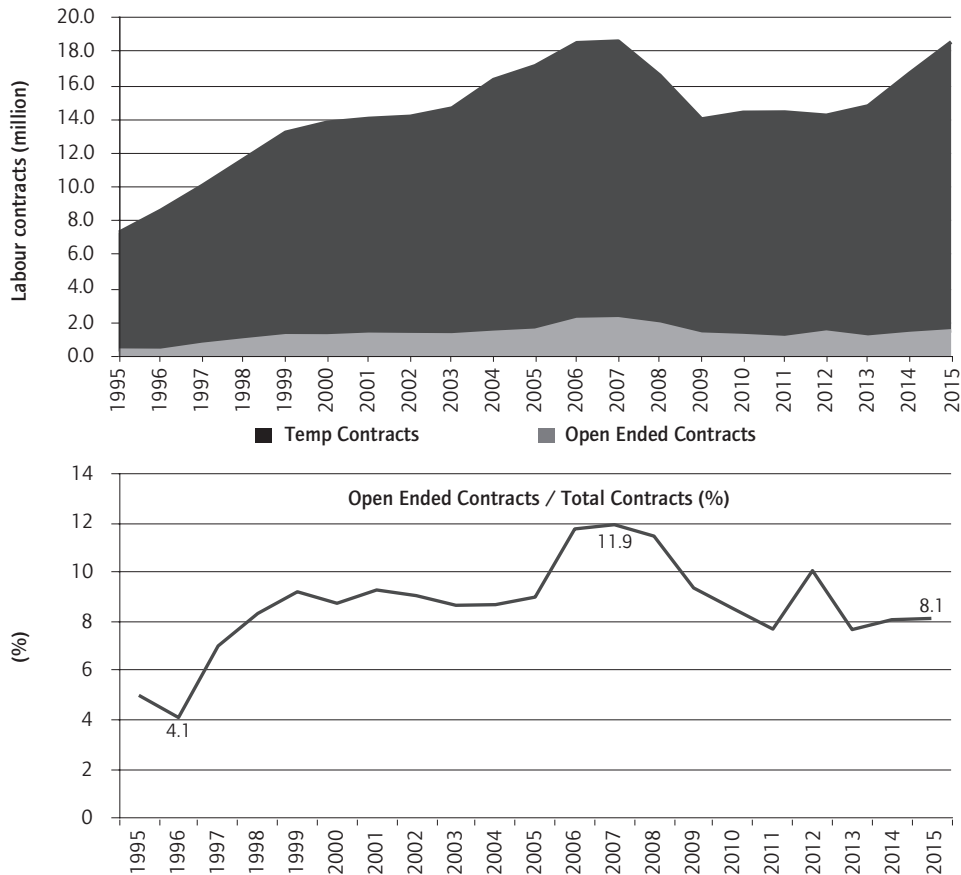
Another indirect way to gauge the risk of the dismissal of employees with open-ended contracts is by comparing the evolution of the number of total employees with open-ended contracts since the beginning of the crisis and the number of open-ended labour contracts signed in the same period. The data reproduced in Figure 9 is eloquent enough

10. Nonetheless, there are compositional effects behind such dynamics, because the contribution of construction to the destruction of employment was very large (54 per cent of all jobs lost from the first quarter of 2008 to the first quarter of 2011), while the temp rate in construction was higher than average: 51 per cent at the beginning of 2008 compared to an average of 30 per cent.

11. In services there was actually an increase in open-ended contracts.

not to require further comment: eleven million new open-ended contracts were signed, even if the total number of employees engaged on such a type of contract decreased by almost one million – from 11.9 to 11.1 million. These numbers, even allowing for the voluntary change of employment of a part of these employees and for retirements,¹² imply a high incidence of the termination of contracts among open-ended employees.

Figure 10 Total number of contracts signed according to their temporary or open-ended nature. Spain 1995-2015



Source: authors' analysis from SEPE (*Movimiento Laboral Registrado*) and EPA

Taking this information into consideration, it is fully understandable that, in 2011, according to the European Commission (2011), as many as 71 per cent of respondents (almost three times higher than the existing temp rate) declared themselves to be

12. The estimated number of open-ended employees (calculated using the employment dependent rate and the open-ended employment rate of older workers) retiring during the period is around 1.4 million. Regarding transitions from open-ended employment to open-ended employment, the estimates produced by Gómez Jiménez (2016), based on LFS quarterly flow data for 2005-14, point to very low probabilities (transitions/stock) of around 1 per cent.

concerned (15 per cent) or very concerned (56 per cent) about losing their job. This result is certainly difficult to match with the interpretation of employees with open-ended contracts as care-free people who, having a secure job, use their market power to set their working conditions without taking into consideration the economic situation. In the terms used by Toharia and Malo (2009), renowned Spanish labour economists: 'If someone thinks that having an open-ended contract is a guarantee of permanence, he is totally wrong. The data simply refutes such belief.' (p. 21).

In any case, to what extent has reform increased the use of permanent contracts? Figure 10 reproduces the evolution of the total number of labour contracts signed according to their temp/open-ended nature, as well as the ratio of open-ended to total contracts. The graph shows clearly the slump of 2009 and the recovery of the economy from 2013 but it does not show, so far, any major change in terms of the low preference of firms for open-ended contracts, one of the objectives of the reform.

3.2 Overall assessment

The combination of massive unemployment, growing long-term unemployment (from 21 per cent in 2008 to 60 per cent in 2015),¹³ lower unemployment benefits coverage¹⁴ and different aspects of labour reform which have increased the leverage of firms *vis-à-vis* employees helps to explain the undeniable process of wage deflation (as documented, for example, by Conde-Ruiz *et al.* 2015; García *et al.* 2014; Fernández and Rodríguez 2015; and Uxó *et al.* 2016). In this respect, we can say that the reform attained one of its goals. A different question is to what extent such changes have accelerated the recovery of the economy, increasing the intensity of employment growth.

One way to see whether labour reform has increased the employment generation capacity of GDP growth in Spain is by looking at year-on-year elasticity rates before and after the reform. Once again, it could be that the time elapsed since the reform is not long enough to allow for all its 'employment creation potential' to unfold but, according to the result reproduced in Figure 11, it does not seem that there has been any major change in the direction expected by those backing the reform. The elasticity of employment to changes in GDP in the two years of economic recovery is similar to the elasticity of the years before the crisis; if anything, it is slightly lower.¹⁵ Moreover, if we take into consideration that there has been a significant increase in part-time employment during the crisis and recovery, we can argue that elasticity in terms of people employed and characterised in Figure 11 would overestimate the real employment generated in terms of hours (full-time equivalent). Indeed, according to the National Accounts, the index of employment to full-time equivalent employment dropped from 89.4 in 2007 to 87.9

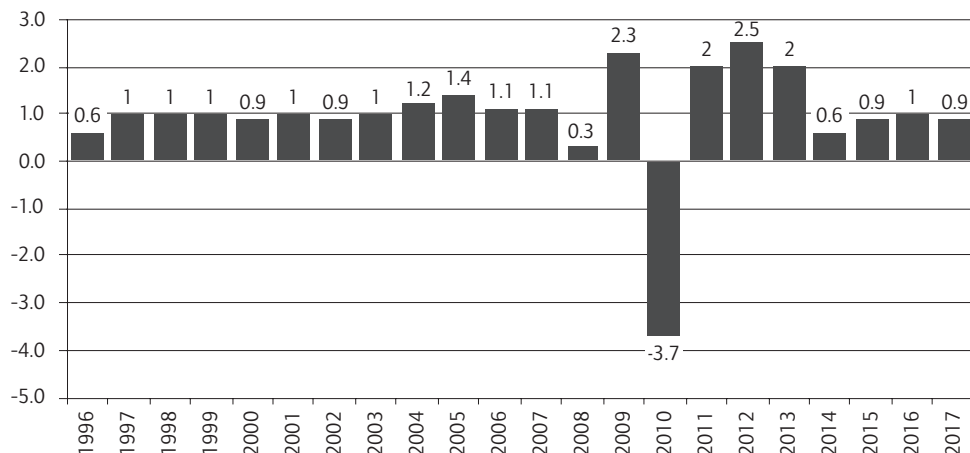
13. Measured as the percentage of unemployed workers unemployed for more than one year. Spanish Labour Force Survey data.

14. In this case as a result of the long duration of the crisis and the corresponding increase in long-term unemployment, with important implications in terms of the unemployed exhausting their entitlement to unemployment benefits (a maximum of 720 days).

15. The 'abnormal' result corresponding to 2010 is explained by the maintenance of the dynamic of employment destruction that started in 2009 in a year in which, due to the countercyclical measures being followed, GDP was roughly stagnating.

in 2014. Moreover, neither does the aggregate picture show a reduction in the intensity of the destruction of employment in the down years since the elasticity of employment of 2013 is similar to the elasticity of the year prior to the reform.

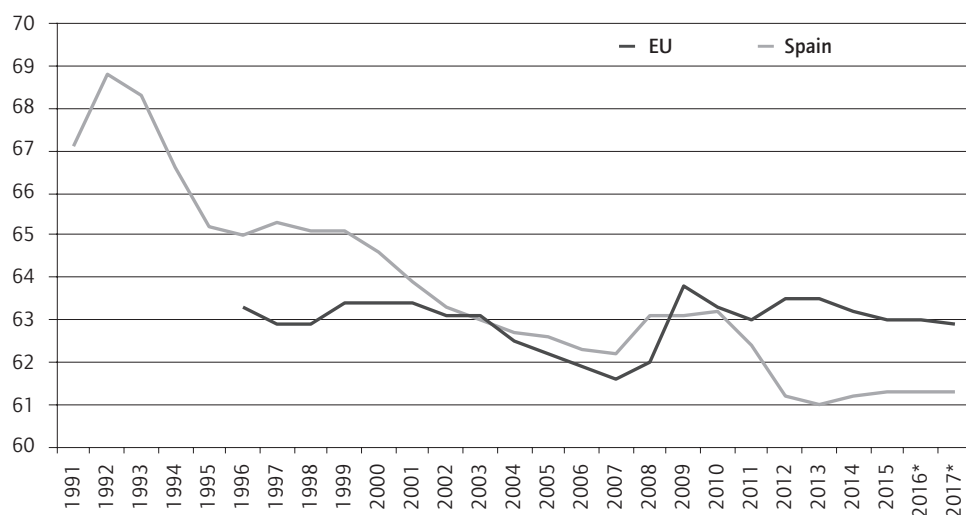
Figure 11 Elasticity of employment to GDP. Spain 1995-2015



Source: authors' analysis from AMECO (Gross national income at 2010 reference levels, deflator GDP) and INE (Encuesta de Población Activa)

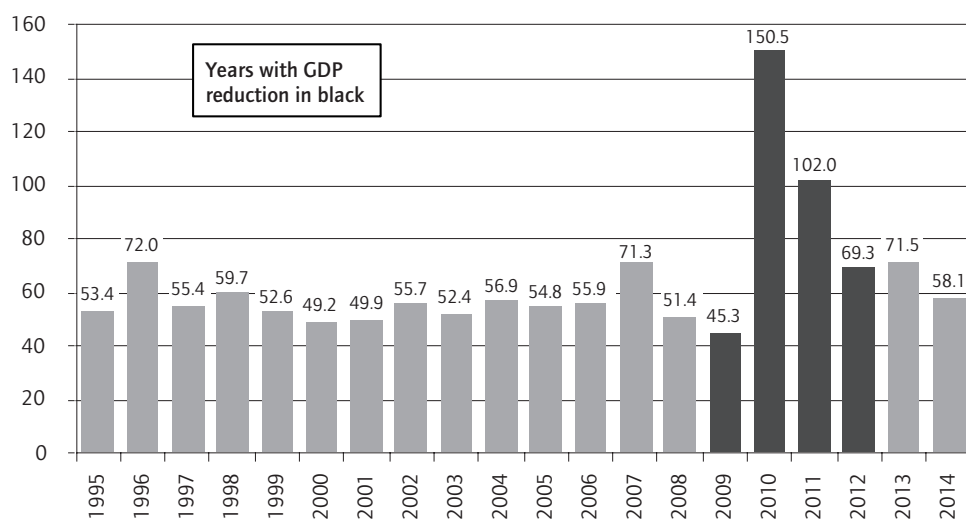
The reduction of wages and the destruction of employment (with the corresponding increase in productivity) have produced a major decrease in the wage share (Figure 12) and the development of a growing gap with the EU on this measure. From the perspective of the distribution of output between wages and profits, the decrease in wage share means that the cost of the crisis, in terms of foregone earnings, has been paid mostly by wage earners. If we calculate how the loss in revenue (GDP) from 2008 to 2015 has been allocated between profits (and mixed income) and wages, we observe that wages have borne almost 92 per cent of lost income, leaving profits (plus mixed income) largely unaffected – in relative terms – by the crisis. The overwhelming role played by wages in the adjustment is even larger when we look at changes in total wages and profits on a year-to-year basis. We can see from Figure 13 that, during the core years of the crisis in terms of employment destruction (2010-11), wages absorbed the entire drop in GDP; in fact in 2010 the decrease in wages was higher than the overall decrease in GDP.

Figure 12 Adjusted wage share (Total employee compensation as percentage of GDP at factor cost)



* Forecasted
Source: AMECO

Figure 13 Share of wages in annual variation in GDP (per cent): 1995-2015



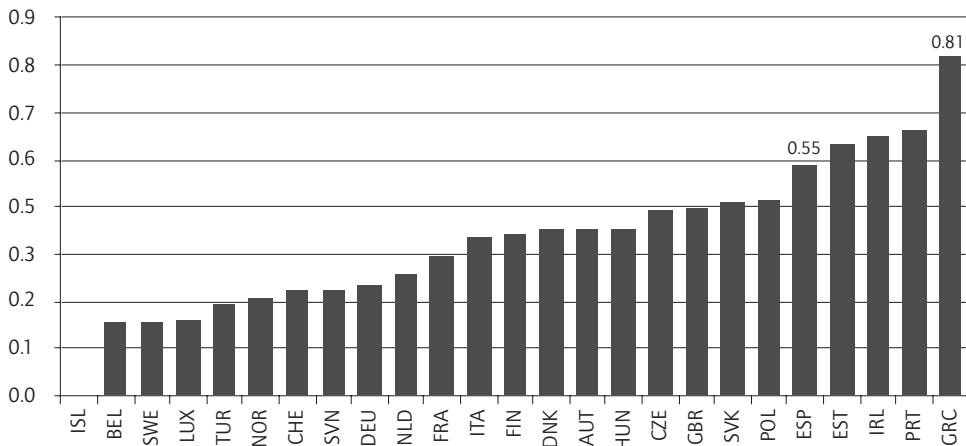
Source: authors' analysis from *Contabilidad Nacional de España Base 2010* (INE)

4. Conclusions

We have taken the liberty of borrowing the title of Michael Ende's famous fantasy novel for our paper for two different reasons. In the first place, Spanish labour reform is a never-ending story. It looks like the reform is never radical enough to accomplish its goal. In the second, just like in Ende's novel, the reform is, in our opinion, based more on a fantasy than on a factual account of the workings of the Spanish labour market.

Regarding the first item, a glimpse at Figure 14 is enough to see how Spain has been among the more advanced pupils of the European Union in terms of 'responsiveness to structural reform' as measured by the homonymous indicator developed by the OECD.¹⁶ Still, it does not seem that such a readiness to follow the EC, OECD, IMF and ECB recommendations has paid off in terms of unemployment reduction, neither for Spain nor for most of the vanguard countries of structural reform. However, that does not seem to bother the promoters of structural reform or even make them doubt their potential. The usual response is to argue that reforms carried out at the margin are not sufficiently intense to produce the desired outcomes. In the Spanish case, for example, the recent OECD *Going for Growth interim report 2016* recommends: 'narrowing the gap in job protection between regular and non-regular workers (...) and increasing the flexibility of wage formation by reducing further the administrative extension of sectorial bargaining' (p. 25).

Figure 14 Reform Responsiveness Indicator (2011-14 average)



Source: OECD (2016)

Obviously, the argument that the reform has not been drastic enough, regardless of what evaluations such as the above-mentioned index show or of the opinion of its advocates: *'Tomorrow, we approve the reform of the labour market. You will see that*

16. The reform responsiveness indicator is based on a scoring system according to which each priority set in the previous edition of the OECD's *Going for Growth* takes a value of one if 'significant' action is taken the following year, and zero if not (OECD 2012, Box 1.1).

*it's going to be extremely, extremely aggressive, you know, with large flexibility in the collective settlement of agreements and we reduce severance payments. Well, you will see, you will see,*¹⁷ makes it quite difficult to criticise such a perspective on the grounds of its ineffectiveness in improving the performance of the labour market.¹⁸ Confronted with such criticism, the standard response to argue that the reform has not been bold enough could be developed into an argument that can be used farther and farther until the whole Labour Code has been wiped out.

In relation to the second item, we have argued in this chapter that the labour reforms have neither succeeded in changing the preference of Spanish firms for temporary contracts nor in increasing the employment intensity of economic growth compared to its already high pre-crisis level. Obviously, the economic recovery has produced a significant increase in employment, but such increase has been largely based on precarious forms of employment such as temporary contracts and involuntary part-time employment. Moreover, the debilitation of employees *vis-à-vis* firms, derived both from the existence of massive unemployment and the reforms themselves, has led to a process of wage deflation that, by weakening domestic demand, might put in jeopardy the maintenance of the economic recovery. In this respect, it is worth mentioning the recent call made from institutions, such as the OECD or the ECB,¹⁹ for wage increases in order to allow a stronger recovery of the European economy.

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17. Comment by Luis de Guindos, Spanish Minister of Economics and Competitiveness, to Olli Rehn (European Commissioner for Economic and Monetary Affairs and the Euro) and caught by open microphones at a meeting of the Eurogroup, Brussels, 9 April 2012.
18. Another indirect proof of the intensity of the labour reforms of 2010 and 2012 is the reaction of the trade unions: two general strikes, the first on 29 September 2010 in response to the first reform; and the second on 29 March in reaction to the second.
19. 'The case for higher wages is unquestionable' (Mario Draghi, press conference following the meeting of the Governing Council of the European Central Bank on 20 October 2016 at its premises in Frankfurt am Main, Germany) (Smith 2016). 'We need more jobs. But we also need higher wages' (remarks by Angel Gurría, Secretary-General, OECD, 7 July 2016, Paris, at the launch of the 2016 Employment Outlook).

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Chapter 4

The crisis and labour market reform in Italy: a regional analysis of the Jobs Act

Marta Fana, Dario Guarascio and Valeria Cirillo

1. Introduction

The crisis that struck in 2008 has led to the development of a process of ‘dual polarisation’ in Europe. On the one hand, divergence has grown between the economies of the ‘centre’ – in particular, Germany and the Member States in its productive network – and the ‘periphery’ of the EU – particularly the economies of the Mediterranean area – with the former conserving and, in some cases, increasing their productive capacity and the latter, in contrast, suffering considerable setbacks both in terms of production and employment. On the other hand, divergence between regions within individual European economies has also increased. This phenomenon has affected the peripheral economies in particular, including those already characterised by strong regional differences such as Italy (on this question, see the analyses by Mazzucato *et al.* 2015; Cirillo and Guarascio 2014, 2015; Guarascio and Simonazzi 2016; Dosi and Guarascio 2016; Sedezzari 2014; Lucchese *et al.* 2016). In Italy, where there was a generalised reduction in productive capacity and a significant rise in unemployment nationally, the decline observed in the southern regions was greater than in the rest of the economy.

In this context of ‘dual polarisation’, the response to the crisis in terms of economic policy has also seen a qualitative polarisation between the centre and the periphery of the EU. The centre has protected its competitive capacity by adopting strategies based on innovation and product quality (Mazzucato *et al.* 2015). The peripheral economies, in contrast, have responded to the crisis by adopting a ‘price competitiveness’ strategy based mainly on labour flexibility and cost reduction.¹

The strategy pursued in the periphery to close the competitive gap with the economies of the centre – based, as stated, on cost reduction and, more particularly, on the reduction of labour costs – was supported by the adoption of a series of ‘structural reforms’. In the case of Italy, the most important measures focusing on the labour market have been the ‘Fornero Reform’ and the ‘Jobs Act’, implemented in 2012 and 2015 respectively. Both of these measures have made it easier for companies to dismiss workers, generally reducing their bargaining power (Fana *et al.* 2016).

Law No 183/2014, the Jobs Act, radically altered the previous rules governing dismissal. Implementation of the law was also accompanied by the introduction of fiscal incentives – in the form of exemptions from social contributions awarded to companies for newly-

1. For details of Italian companies that, unlike the majority, pursued internationalisation strategies based on innovation and the utilisation of territorial ‘capabilities’, see Barzotto *et al.* 2014.

employed workers or for conversions of existing contracts – aimed at spreading the new type of contract introduced by the Jobs Act (i.e. the ‘increasing protection contract’, as detailed in Section 4). Furthermore, the Jobs Act definitively liberalised the use of flexible forms of contract such as the *fixed-term contract* and non-contract forms such as *payment vouchers*; it also allowed for the remote monitoring of workers using electronic devices and the possibility of demotion of workers by companies.²

As stressed by Fana *et al.* (2016), the Jobs Act and other measures aimed at rendering the labour market more flexible – like the incentives for decentralised bargaining funded under the 2015 Stability Law – were adopted with two main aims: i) to bring down the level of unemployment, which had risen sharply following the crisis (short-term goal); and ii) to strengthen the country’s productive capacity, reducing the gap with the economies of the centre (medium- to long-term goal).

Building on the analysis performed by Fana *et al.* (2016), the present work aims to explore labour market trends in Italy following the introduction of the Jobs Act, paying particular attention to the regional dimension. Before examining this regional aspect, the macroeconomic and structural effects of the crisis that struck in 2008 will be presented. Regional analysis of employment is particularly important since the structural weaknesses of the Italian economy – stagnant productivity, persistent youth and female unemployment and widespread lack of job security – affect the southern regions to a greater degree.

Descriptive analysis is performed using two main sources: the labour force survey (LFS) by the National Statistics Institute (ISTAT); and administrative data on new and terminated employment contracts and their types provided by the National Social Welfare Institute (INPS).

The chapter is organised as follows. Section 2 describes the impact of the crisis on the Italian economy, distinguishing between the regions of the north and south and underlining the process of dual polarisation occurring. Section 3 summarises the main contents of the Jobs Act and analyses national employment trends in the period following the implementation of the law. Section 4 describes the same trends at regional level in the same period, while Section 5 concludes by discussing the main points emerging in the analysis.

2. The process of dual polarisation

The crisis that struck in 2008 has severely affected the Italian economy, with a significant impact on both employment and production. Between 2008 and 2015, Italian manufacturing productive capacity contracted by about 20%, highlighting the risk of long-term effects (Mazzucato *et al.* 2015; Cirillo and Guarascio 2015). Table 1 shows

2. A detailed description of the Jobs Act and a preliminary analysis of the labour market trends observed after its introduction is provided in Fana *et al.* (2016).

the trend in the production of final and intermediate goods and total manufacturing production for the years 2008, 2012 and 2015.

Table 1 Industrial production index in Italy

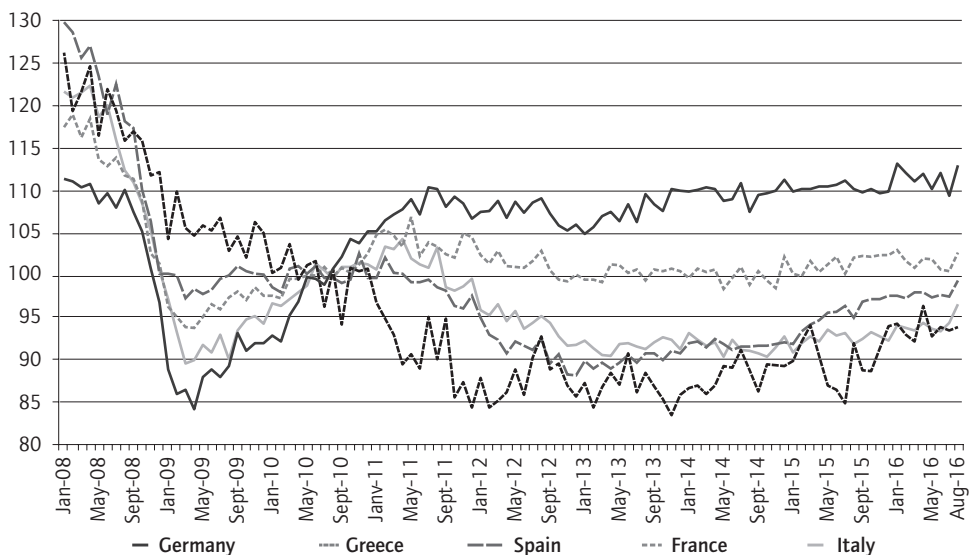
	2008	2012	2015
Final goods	105.8	94.0	91.7
Intermediate goods	122.4	92.1	89.9
Total production	115.8	94.6	92.8

(2010=100)

Source: Eurostat

These data highlight the dramatic contraction in Italian industrial production during this period. A similar trend may be observed in all the economies in the Mediterranean area of the EU – Spain, Portugal and Greece. In contrast, the ‘centre’ – Germany and the network of countries linked to it, such as the Czech Republic, Poland, Slovakia and Hungary – managed to contain the effects of the crisis and, in some cases, to increase productive capacity.³ Figure 1 shows that Italy and the other peripheral economies remained persistently below that of Germany and France in terms of industrial production.

Figure 1 Industrial Production Index 2008-2016



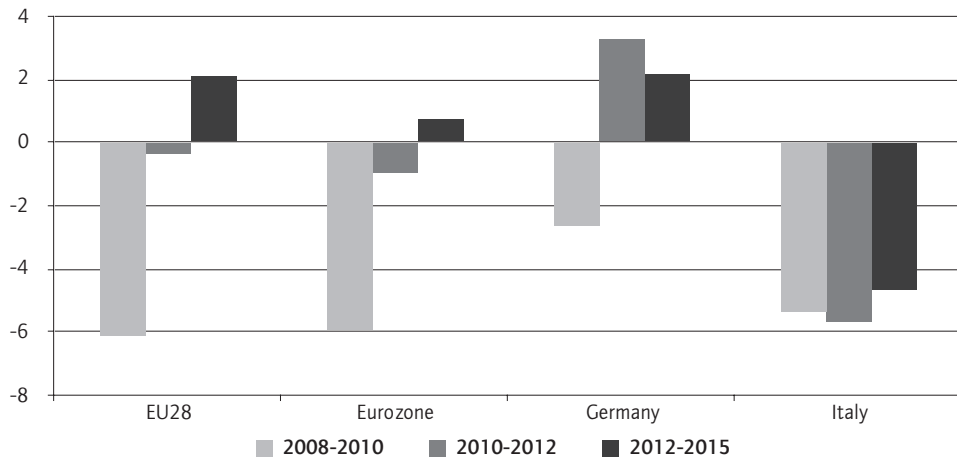
(GER, FR, IT, SP and GR, 2010=100)

Source: Eurostat

3. Divergence between the centre and the periphery of the EU was caused by a combination of factors. A detailed description of diverging trends in Europe is given in Simonazzi *et al.* 2013, Cirillo and Guarascio 2015, and Ginzburg and Simonazzi 2016.

In particular, after the collapse in industrial production that affected all of the Eurozone economies from 2008, a recovery in production in Germany – and to a lesser extent in France – may be observed from April 2009. In contrast, the downward trend continued in Italy, Spain and Greece, with a persistent contraction in industrial manufacturing production throughout the period with the exception of Spain, which shows weak signs of recovery from 2015. The latest available data (August 2016, Figure 1) shows, on the one hand, that Germany is the only Eurozone country to have regained its pre-crisis levels of industrial production; and, on the other, that divergence between Germany and the countries of the Mediterranean area persisted throughout the period under consideration.

Figure 2 Total investment. Average annual change (2008-2015)



Note: at constant prices (2010=100)
Source: Eurostat

A similar trend to that shown in Figure 1 emerges for total investment in Italy, Germany, France, the Eurozone and the EU (Figure 2). A significant contraction of aggregate investment can be seen for Italy in each of the periods analysed (2008-2010, 2010-2012 and 2012-2015). From this point of view, the Italian economy differs not only from the German economy – which contracted only in the period 2008-2010 – but also from the Eurozone and the EU. This divergence highlights a specific fragility of the Italian economy which, as has been argued, is partly due to the accentuated territorial duality between north and south (Svimez 2015).

In relation to employment trends, the Italian employment rate has fallen considerably since 2008 while unemployment has risen. Employment declined from 62.9 per cent in 2008 to 60.5 per cent in 2015 while the corresponding rate remained almost unchanged for the EU, going from 70.3 per cent to 70.1 per cent. In the same period, the Italian unemployment rate grew by five percentage points – from 6.7 per cent to 11.9 per cent – with the EU rate rising only two percentage points – from 7.0 per cent to 9.4 per cent.

Furthermore, the Italian youth unemployment rate has remained consistently above the European average since 2008. In 2008, Italian youth unemployment stood at 21.2 per cent while the EU figure was 15.6 per cent; in 2015, this rate had risen to 40.3 per cent in Italy and 20.4 per cent in the EU. In 2014, almost 100 000 graduates and highly-skilled workers left Italy.⁴

2.1 Polarisation between northern and southern regions

The most recent Svimez report (2015) highlighted that the economic crisis has further accentuated the polarisation between Italy's northern and southern regions. Between 2008 and 2014, the manufacturing value added generated in the regions of the south of Italy fell by 33.1 per cent compared to a figure of -14.2 per cent in the north.

In 2015, when average GDP growth stood at 0.8 per cent nationally, the growth figure for the south was 0.1 per cent. Brancati (2015) underlines that this negative trend was closely linked to the weakness in aggregate demand that affected the regions of the south in particular. Household consumption expenditure in the southern regions fell 13 per cent between 2008 and 2014 – almost double the rate for the rest of the country (5.5 per cent). Furthermore, during the crisis period the decline in investment experienced throughout the country was strongest in the south of Italy, reaching 38.1 per cent for the 2008-2014 period. The fall in productive investment in the southern regions was felt across all sectors and in manufacturing in particular (59.3 per cent). About 576 000 jobs have been lost since the beginning of the crisis in the south, with knock-on effects on medium- to long-term growth prospects (Svimez 2015).

The decline in industrial production was, as already stated, much more severe and widespread in the south, generating structural effects. The length of the recession, the reduction of resources for public infrastructure and the fall in internal demand were all factors contributing to a notable weakening of the economic and productive system in the area. This inevitably contributed to accentuating the gap between the Italian regions.

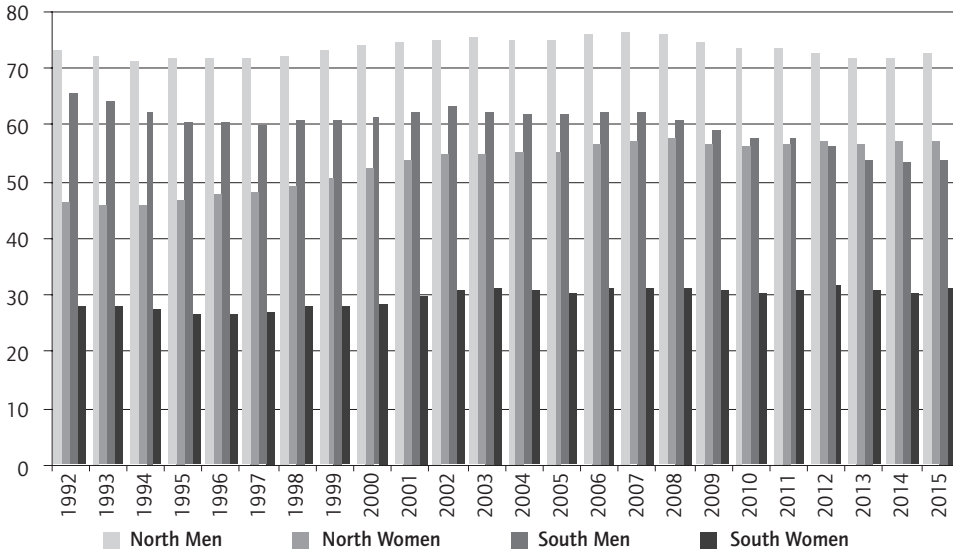
Such divergence reflects the greater dependence on the domestic market in the south and the weakness of southern companies in international value chains (Bronzini *et al.* 2013). In fact, the south is still home to a certain number of manufacturing companies operating in medium-to high-technology sectors, but there remains a chronic shortage of companies capable of providing intermediate and investment goods.

Bronzini *et al.* (2013) show how the relatively lower density of value chains renders the south strongly dependent on external markets – and in particular the northern regions – for the acquisition of intermediate goods and key productive inputs. Furthermore, the authors show how companies situated in the southern regions show persistent weakness in their contractual relations with their northern counterparts. The absence of sufficiently-structured value chains in the south also weakens the link between potential

4. Source: ISTAT Register of Italian citizens living abroad.

growth in demand and consequent positive effects on production (and employment) in the geographical area.

Figure 3 Employment rate by gender and macro region. Trends by gender and macro region (2008-2015)



Source: calculated from Eurostat data

Labour market dynamics in the south are characterised by a series of structural weaknesses, three of which may be identified as of prime importance: i) persistent unemployment; ii) low female and youth employment; iii) lack of job security. We noted above, with regard to other structural data, that the southern regions are affected more strongly by such problems than the rest of the Italian economy. These regions had shown an improvement – in particular with regard to female and youth employment – from the second half of the 1990s, but this was halted by the crisis (Pini 2015; Fana *et al.* 2016). Figure 3 shows the employment trends for men and women by macro-region, underlining the polarisation between northern and southern Italy. The data show how the south performed much worse than the north in these areas of employment over a period of more than two decades (1992-2015). This is particularly true of female employment, as shown by Fana *et al.* (2016).

3. The Jobs Act

Law No. 183/2014 – the Jobs Act – is one of the keystones of the range of economic policies launched in Italy in response to the crisis (Fana *et al.* 2016). The aim of the law is to reverse the trend of growing unemployment and to reduce the amount of insecure and temporary employment.⁵

5. On the insider-outsider trend for the Italian labour market, see Marra and Turcio (2016).

The Jobs Act also brought about a profound change in the system of industrial relations in Italy. Its introduction completed the process of the liberalisation of the Italian labour market that started around the mid-1990s. The main features of Law No. 183/2014 are as follows:

- *Introduction of the ‘increasing protection contract’.* The increasing protection contract replaces – for newly-employed workers and conversions of other types of contract – the permanent contract in existence since 1970.⁶ The increasing protection contract does not provide for reinstatement in the case of dismissal without just cause, except in cases of discriminatory or verbally communicated dismissal. The right to reinstatement is replaced by an obligation on the part of companies to compensate workers for an amount equal to two months’ salary per year worked, with minimum compensation set at four months’ pay.⁷ The Jobs Act therefore abolishes ‘real protection’ – the right to reinstatement – as introduced by Article 18 of Law No. 300/1970, the ‘Workers’ Statute’. At the same time, recourse to court proceedings by workers is disincentivised, since this would result in lower compensation than available through extra-judicial settlements.
- *Fixed-term contracts.* The Jobs Act removes the right of workers to convert from fixed-term to permanent contracts where a company exceeds its limit for fixed-term contracts, set at 20% of the overall workforce prior to the introduction of the Jobs Act. Furthermore, the Jobs Act also changes the rules for the compensation of workers on fixed contracts where such limits are breached, requiring that compensation be paid to the tax authorities rather than to the worker.⁸
- *Vouchers.* Vouchers – introduced by the Biagi Law of 2003 and extended to all sectors by the Fornero Law – are a non-contractual instrument used as a means of payment for occasional ancillary work, with net hourly pay set at EUR 7.50 and without welfare contributions (sickness, maternity, holiday, etc.). The Jobs Act increased the annual income ceiling for workers paid using vouchers from EUR 5 000 to EUR 7 000.

The introduction of the new increasing protection contract followed the adoption (under the 2015 Stability Law) of incentives in the form of exemptions from social security contributions for companies offering permanent contracts to new workers or converting existing contracts. These incentives – expressly aimed at spreading the new forms of contract introduced under the Jobs Act but introduced by an autonomous measure prior to the Jobs Act itself – are crucial for understanding contractual trends during 2015 (see on this point Sestito and Viviano 2016 and Fana *et al.* 2016). Specifically, for each permanent contract stipulated in 2015 (for both new contracts and conversions

6. A change to the basis of the permanent contract – i.e. a weakening of real protection, or the right to reinstatement of workers dismissed without just cause or a justified objective reason – was carried out by the Monti government in 2012.

7. In the case of companies with fewer than 15 employees – who did not enjoy the right to reinstatement even prior to the Jobs Act – compensation is halved.

8. Current regulations have resulted in a significant reduction in the costs of fixed-term contracts for companies: the Poletti Decree, approved in May 2014 by the same government, removes the substantive requirements for the use of this type of contract.

of existing fixed-term contracts), companies were entitled to an exemption from social contributions for three years, up to a maximum of EUR 8 060 per worker per year.

Traditionally, employment incentives were used to encourage the employment of vulnerable categories of worker – the long-term unemployed, young people, people with disabilities and women – and to stimulate employment in southern regions or in technology-intensive sectors. Unlike previous measures, however, the Jobs Act provides exemptions on contributions without any form of conditionality connected to the type of worker or company – except as regards the requirement for converting workers who have been employed on a fixed-term contract in the previous six months. From this point of view, the choice to provide incentives with no conditionality regarding the location of companies seems out of step with the situation highlighted in the previous section, given the marked polarisation between the regions. Secondly, the lack of conditionalities connected to the type of worker employed seems to conflict with the need – seen in the evidence presented above – to stimulate the inclusion of vulnerable categories of worker such as women and the young. Finally, the absence of conditionalities regarding the productive sector or the level of investment in physical capital or R&D by beneficiary companies might prove to be counterproductive given the need to reverse the process of the regression of the Italian productive system already underlined in Gallino (2003), Cirillo and Guarascio (2015) and Guarascio and Simonazzi (2016).⁹

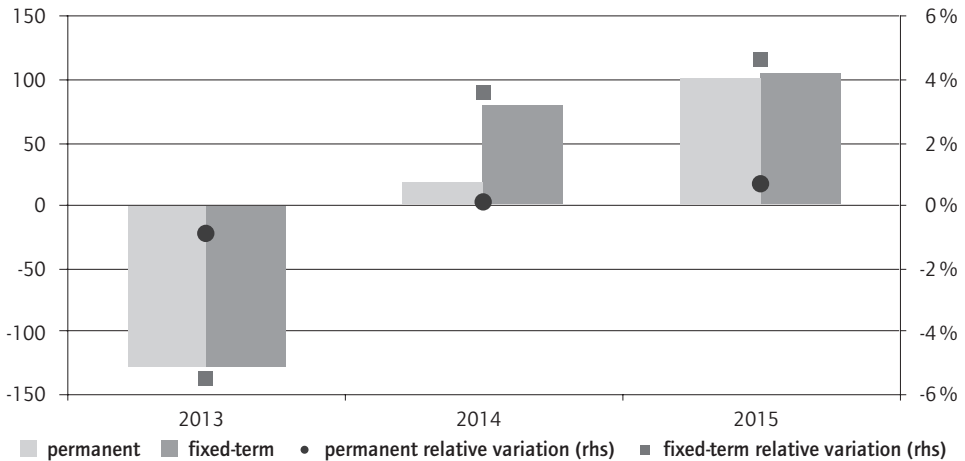
Before examining labour market trends at regional level, a brief summary will be given of the assessment by Fana *et al.* (2016) of the impact of the Jobs Act nationally, in relation to its main stated aims of increasing and consolidating overall employment while reducing temporary contracts and encouraging youth and female employment. Fana *et al.* (2016) analyse the impact of the Jobs Act and the contributions exemptions on employment and, in particular, on permanent contracts. Furthermore, the trend for fixed-term contracts as a percentage of all employment contracts since the introduction of the Jobs Act is also examined.

The analysis highlights, on the one hand, the failure of the Jobs Act to provide significant stimulus to overall employment trends, while underlining the close dependence of employment on the provision of fiscal incentives (Sestito and Viviano 2016); it also notes that the Jobs Act is incapable of encouraging a reduction in recourse to temporary work and to atypical instruments of a contractual or, in the case of vouchers, non-contractual nature. At national level, ISTAT data show that there was an increase in the overall number of people employed between 2014 and 2015 of 183 000, with increases in permanent contracts of 112 000 and in fixed-term contracts of 100 000, accompanied by a 29 000 reduction in the stock of self-employed workers. Despite the increase in absolute terms in permanent contracts being slightly higher than the increase in fixed-term contracts, a relative assessment – taking as its reference point the total number of those employed in each category in the previous year – shows a significantly greater increase in fixed-term contracts (Figure 4). It should, however, be noted that, in 2015, the annual variation in the number of those in employment was greater than in 2014

9. An analysis of the impacts of structural and technological change on Italian employment trends was recently provided in Fadda (2016).

(relative to 2013). In relative terms, however, the growth rate was small and below that for fixed-rate contracts. In 2015, furthermore, the share of fixed-term contracts reached an all-time high, at 14 per cent of all employed workers.¹⁰

Figure 4 Annual variation in absolute (in thousands) and relative terms of the stock of workers on permanent and fixed-term contracts (2013-2015)



Source: calculated from ISTAT

Employment trends, broken down by type of contract – both in absolute and in relative terms – can be further analysed using the administrative data provided by the INPS's 'Observatory of job insecurity'. The data provided by the INPS show that there were 186 376 new permanent contracts stipulated in 2015 (net of relevant terminations) – one-third of the overall total of net contracts stipulated in that year. However, if fixed-term contracts converted to permanent contracts are added to new contracts, the proportion of permanent contracts increases significantly.

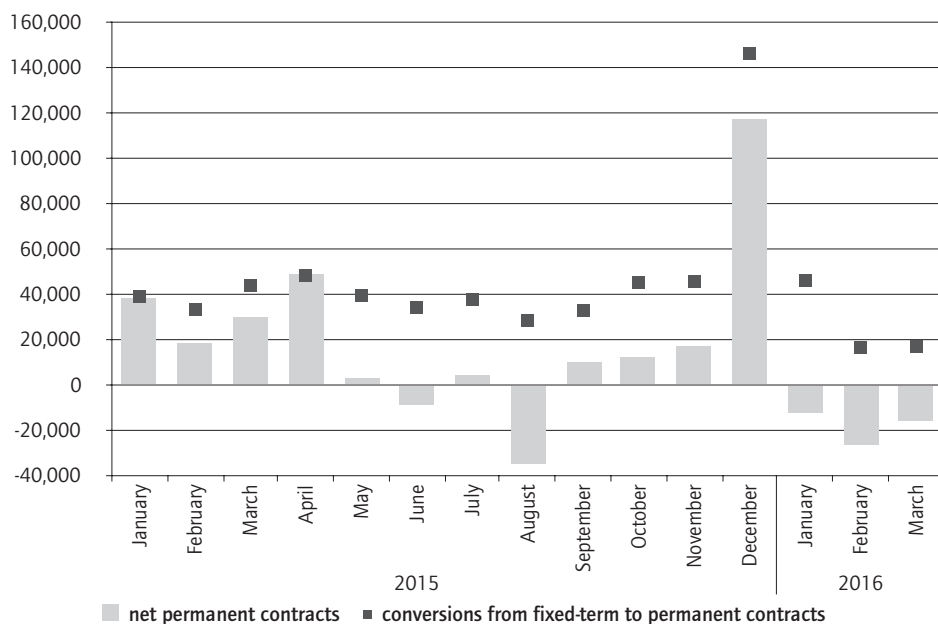
Figure 5 shows that the trends in permanent contracts are being mainly driven by conversions. Furthermore, the strong increase in permanent contracts observed in December, and the subsequent and sudden fall-off from January 2016, seem to confirm the key role played by the incentives in stimulating the trend (this hypothesis was first suggested in Fana *et al.* 2016 and confirmed, from an econometric point of view, by Sestito and Viviano 2016).

Analysis of the trend for permanent contracts between 2014 and 2016 confirms the prevalent role played by contributions exemptions in 2015, which was evaluated in the light of the anticipated effect of the changes to the rules on dismissal. Analysis of the administrative data highlights that, once company incentives for converting existing

10. It should be noted that the ISTAT data count as employed workers those paid with vouchers, who may be classified as self-employed or fixed-term depending on the type of employment involved. This is an important detail since, for administrative purposes, the number of workers paid with vouchers rose above one million in 2015.

contracts to the new increasing protection contracts were reduced by 50% in January 2016, permanent contracts dropped below both 2015 and 2014 levels.

Figure 5 **New permanent contracts and conversions of fixed-term to permanent contracts (January 2015-March 2016)**



Source: the authors based on INPS data

Finally, in terms of hours worked, it should be noted that, in 2015, part-time contracts increased more for permanent workers than for fixed-term workers, generally on an involuntary basis. Analysis of the trend by age, on the other hand, shows that the growth in permanent contracts mainly affected the oldest categories of workers (over 55). Both these sets of data – the growth of part-time work among workers on permanent contracts and the concentration of employment among older categories of worker – seem to suggest an employment trend characterised by discontinuity and low quality (Fana *et al.* 2016).

Table 2 **Distribution of new contracts by type and hours worked. Jan-Dec 2015 (per cent)**

Type of contract	Permanent	Fixed-term	% Total
Full-time	58	64	62
Part-time	42	36	38
Total	100	100	100

Source: the authors based on INPS data

Furthermore, the distribution of contracts by type and hours worked (Table 2) shows how part-time work is more prevalent among workers employed on permanent contracts. During the second half of 2015, the percentage of involuntary part-time contracts accounted for 64.6 per cent of all part-time workers (source: ISTAT).

4. Evaluation of the Jobs Act at regional level

This section will provide a descriptive evaluation of the impact of the Jobs Act at regional level. The main statistical sources used for the analysis are:

- ISTAT (National Institute for Statistics) labour force survey (LFS) of the stock of employed, unemployed and inactive workers (and the relevant rates), broken down by age and gender. The analysis will also use data on employment trends by region and sector.
- Administrative data provided by INPS (National Social Welfare Institute) on the flows for new contracts, terminations and conversions, as well as for contract types, for employed and self-employed workers excluding domestic workers and public employees. The INPS data also contain information on the geographical spread of the use of vouchers and, more importantly for the present purposes, the number of contracts stipulated using the contributions exemptions provided for under the 2015 Stability Law.

The descriptive analysis that follows aims to analyse whether the combination of the Jobs Act and the contributions exemptions resulted in an increase in the quality and quantity of employment at regional level. Employment trends are examined to verify the extent to which the effects recorded were uniform throughout the country or whether, on the contrary, the degree of divergence noted above was accentuated by the introduction of the Jobs Act. Specifically, employment trends will be analysed with particular emphasis on permanent contracts offered by companies. Secondly, trends are examined for new permanent contracts, for conversions of existing employment relationships into permanent contracts and for atypical work, the latter mainly involving the use of vouchers.

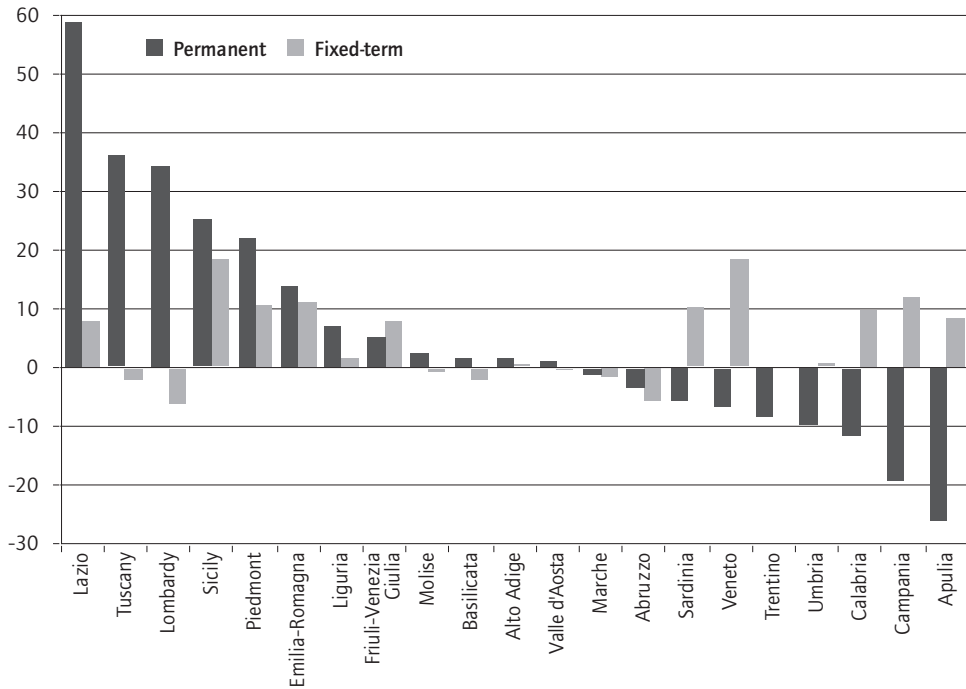
4.1 Analysis of ISTAT–LFS data

Analysis of regional employment trends during 2015 shows substantial diversity in terms of employment performance. Lazio, Tuscany and Lombardy – followed by Sicily and Piedmont – show the largest increases in employment during the period under consideration (Figure 6).¹¹ In contrast, Basilicata, Trentino, Molise and Valle d'Aosta show only modest employment growth, while Apulia, Campania, Umbria and Calabria register job contraction. Focusing on permanent contracts, in Lazio, Tuscany and Lombardy the largest job growth is observed.

In the fourth quarter of 2014, there was an increase in temporary contracts in Sicily, Piedmont and Emilia-Romagna - up by 10 000.

11. The variation is calculated as the difference between the data for the fourth quarter of 2015 and those for the same quarter of 2014.

Figure 6 Variation in employment by type of contract (Q4 2014 – Q4 2015)
– in thousands of units



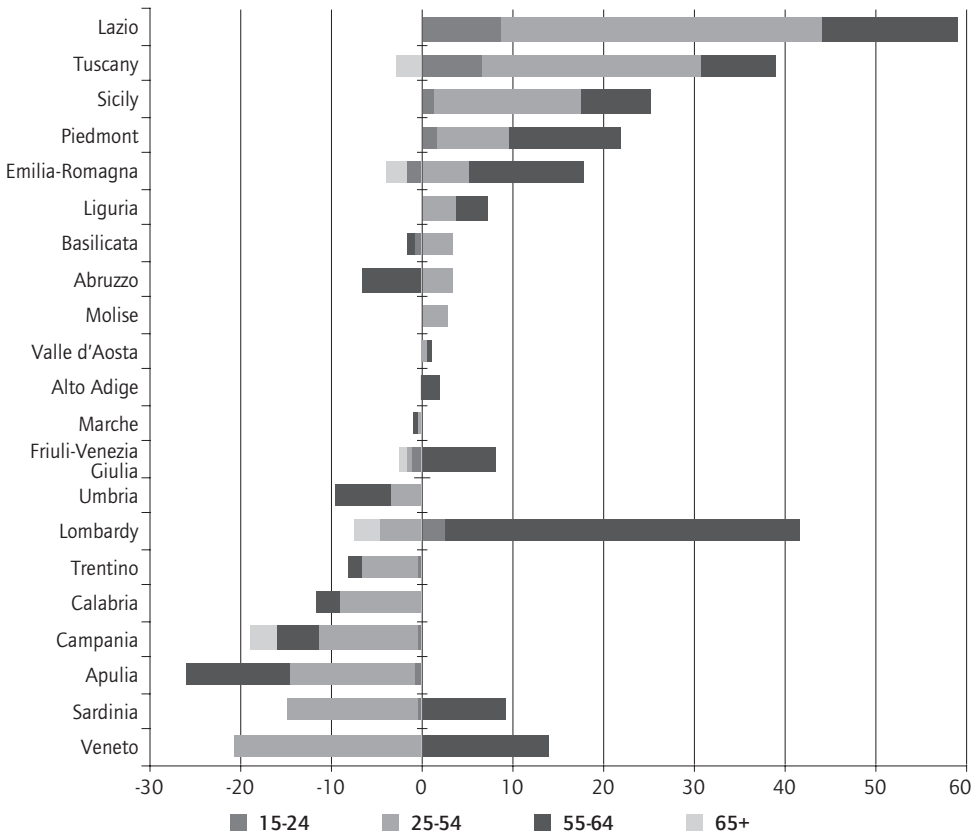
Source: the authors based on ISTAT-LFS data

In some southern regions – Apulia, Campania and Calabria – the only increase in employment was for workers on fixed-term contracts, confirming the weakness of the economic situation in the south.

The analysis of the composition by age category of the newly-employed (Figure 7) reveals that a significant proportion are aged between 55 and 64 years – especially in Lombardy, Veneto, Lazio and Emilia-Romagna. In the regions where employment fell, the age category most affected was that of workers aged 25 to 54 years – in Apulia, Abruzzo and Marche. The weak employment figures for younger categories of workers once again highlight the structural weaknesses of the Italian economy, the south in particular. The south seems unable to take advantage of its younger labour resources, reflecting a persistent weakness in the productive system. Furthermore, the analysis of trends for new employees shows that a significant proportion of new employees are aged over 55, in particular in Lombardy, Veneto, Tuscany and Lazio, in other words the regions recording positive employment trends compared to the fourth quarter of 2014 – confirming the findings of Fana *et al.* (2016).

Turning to quality of employment, the analysis of trends for professional workers at the macro-category level (Figure 8) reveals that, among new permanent workers, the share of high-skilled workers – managers, professionals and technicians – is highest in Lombardy and Veneto, while it is more modest in Sardinia, Sicily and Tuscany.

Figure 7 Variation in permanent employment by age category (Q4 2014 – Q4 2015)
– in thousands of units



Source: calculated from ISTAT-LFS data

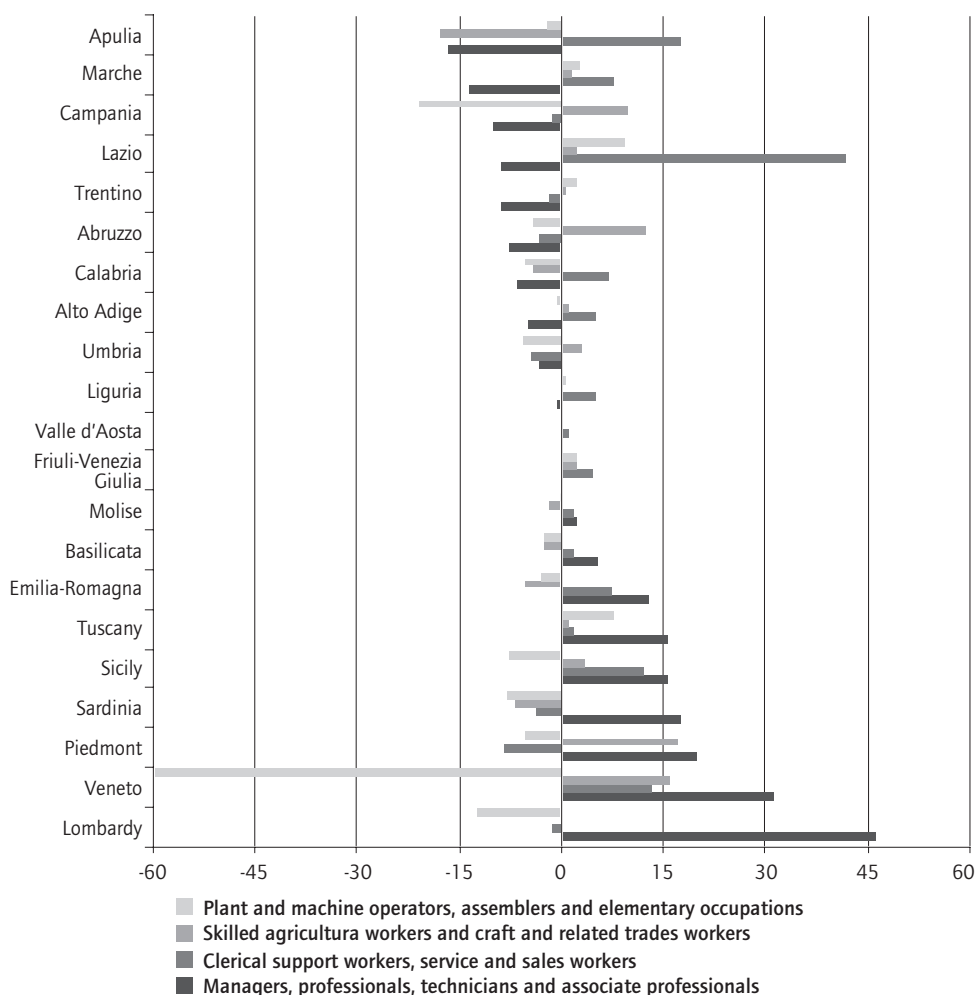
Lazio, Tuscany and Marche, on the other hand, recorded a year-on-year increase in so-called low-skilled workers –plant and machine operators, assemblers and elementary occupations. Unlike Lombardy and Veneto, therefore, where new permanent workers tend to be high-skilled, in Sicily, Piedmont and Lazio new employment mainly involved medium- or low-skilled workers.

Finally, the regional employment trend is combined with sectoral analysis, grouping industries on the basis of the taxonomy established by Pavitt (1984), as adapted by Bogliacino and Pianta (2016).

The use of the classification proposed by Bogliacino and Pianta (2015) allows the various productive sectors to be identified based on relative technological intensity measured in relation to R&D spending and the sources of innovation used at company level.¹²

12. A detailed list of Pavitt sectors according to technological grouping is presented in the Appendix.

Figure 8 Variation in permanent employment by professional category (Q4 2014 – Q4 2015) – in thousands of units



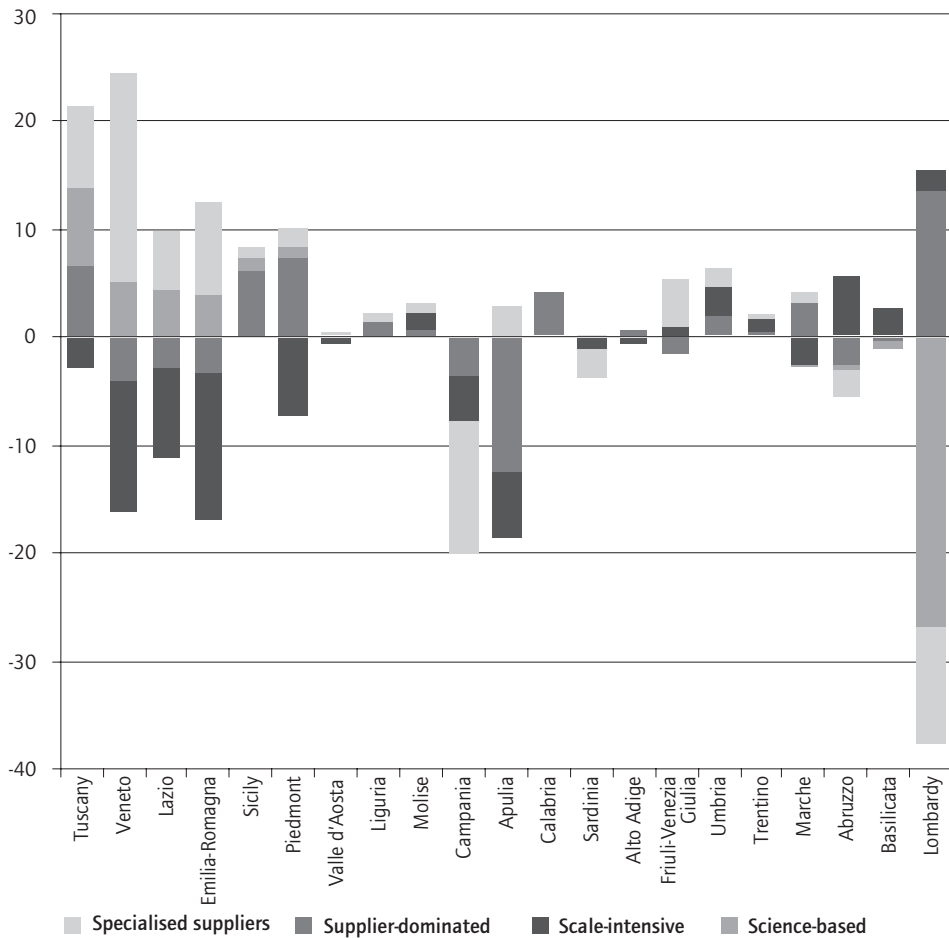
Source: calculated from ISTAT-LFS data

In this way, it is possible to assess whether employment trends in the Italian regions after the introduction of the Jobs Act resulted in a strengthening of high-technology sectors or whether, on the contrary, growth affected the lower-technology sectors (in relative terms). Figures 9 and 10 show the evolution of employment by Pavitt category, broken down into manufacturing and services. The employment trend observed in the manufacturing sector (Figure 9) shows a reduction in employment in the 'science-based' sectors, with the sole exceptions of Tuscany, Veneto, Lazio and Emilia-Romagna.

A significant reduction in the number of those in work in the 'science-based' class is observed in Lombardy. This is of particular importance since Lombardy, as indicated above, was one of the regions showing the largest increase in the number of permanent

workers in 2015. This would seem to suggest, once again, that the increase in employment recorded in 2015 was concentrated in low-technology sectors. In general terms, growth tended to affect the ‘supplier-dominated’ sectors in 2015 – especially in Lombardy, Piedmont, Sicily and Tuscany – followed by the ‘specialised suppliers’ sectors. Veneto, Emilia-Romagna, Lazio and Tuscany registered the largest increases.

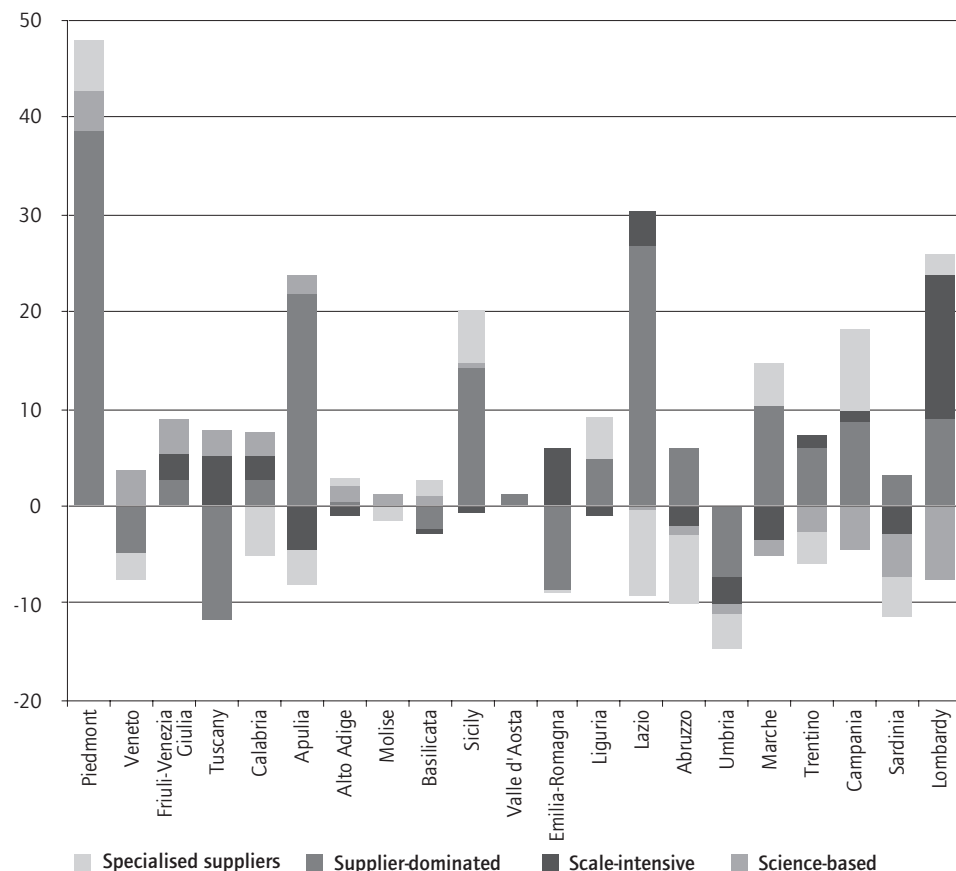
Figure 9 Variation in the number of workers by Pavitt categories (Q4 2014 – Q4 2015) – in thousands of units. Manufacturing



Source: calculated from ISTAT-LFS data

A similar scenario emerges in the area of services (Figure 10). Despite a decade-long expansion of service sector employment to the detriment of manufacturing, there were large variations in high-technology service sector employment in 2015 in just a few regions – Piedmont, Veneto, Friuli-Venezia Giulia and Tuscany. In contrast, the ‘supplier-dominated’ services once again recorded the highest growth in employment, especially in Piedmont, Apulia, Sicily and Lazio.

Figure 10 Variation in employment per technological group (Q4 2014 – Q4 2015)
– in thousands of units. Services



Source: calculated from ISTAT-LFS data

Summarising, what emerges from this first analysis of regional employment data from the ISTAT Labour Force Survey is the strong diversity among the Italian regions in terms of employment trends in the last year. Taking into account all workers – on both temporary and permanent contracts – the greatest increases in employment were recorded in Lazio (+66 830), Sicily (+43 440), Tuscany (+34 000) and Lombardy (+28 430). The worst performances were in Puglia (-17 000), Umbria (-8 700), Abruzzo (-8 700) and Campania (-7 120). However, if the increase in employment recorded in the last year is broken down by age category and contract type, it emerges that in the best-performing regions – Lazio, Sicily, Tuscany and Lombardy – a large proportion of new permanent workers fall into the over-55 category (over 25% in Lazio and Sicily). In Sicily, furthermore, of the 43 000 new workers, 18 000 were employed on fixed-term contracts.

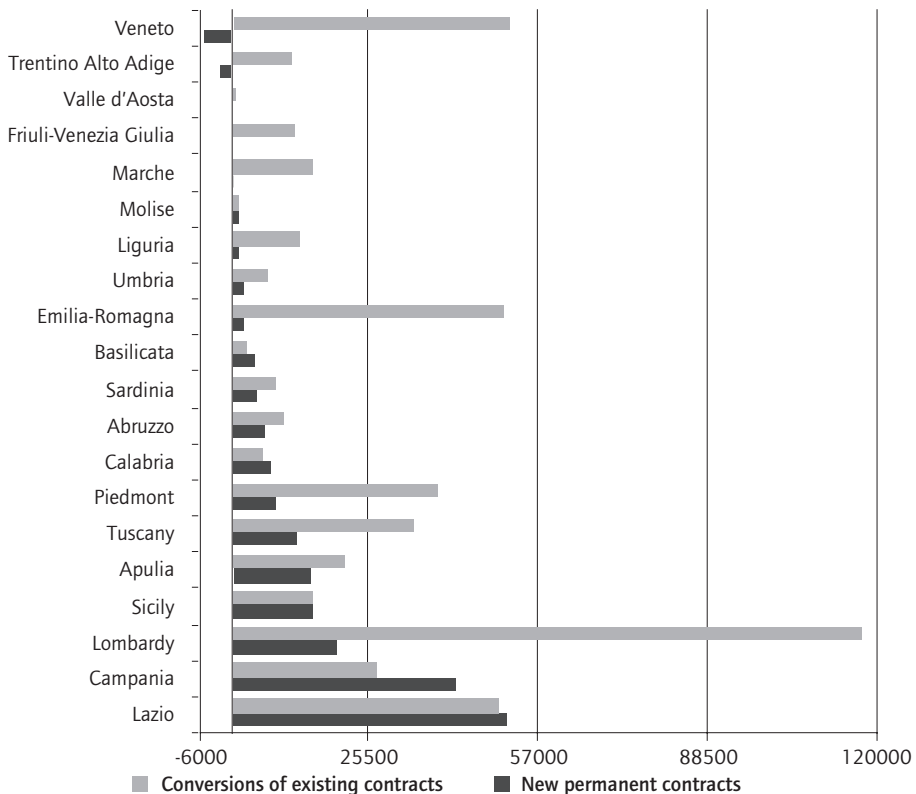
The analysis of employment by professional category also shows that new jobs tend to involve, above all, low-skilled workers, except in the cases of Lombardy, Veneto and

Piedmont. Finally, at sectoral level, ISTAT data indicate that most of the increase in employment registered in 2015 was in the low-technology area and, for the most part, in the service sector. The so-called ‘science-based’ sectors grew modestly, especially in the manufacturing area – the largest increase being recorded in Tuscany (+7 290). Furthermore, it was the ‘supplier-dominated’ sectors – with the lowest technological intensity – that mainly drove the increase in employment in the Italian regions, in both manufacturing and services.

4.2 Analysis of INPS data

Trends for new and converted contracts observed at regional level show a certain degree of diversity, as noted in the previous sections.

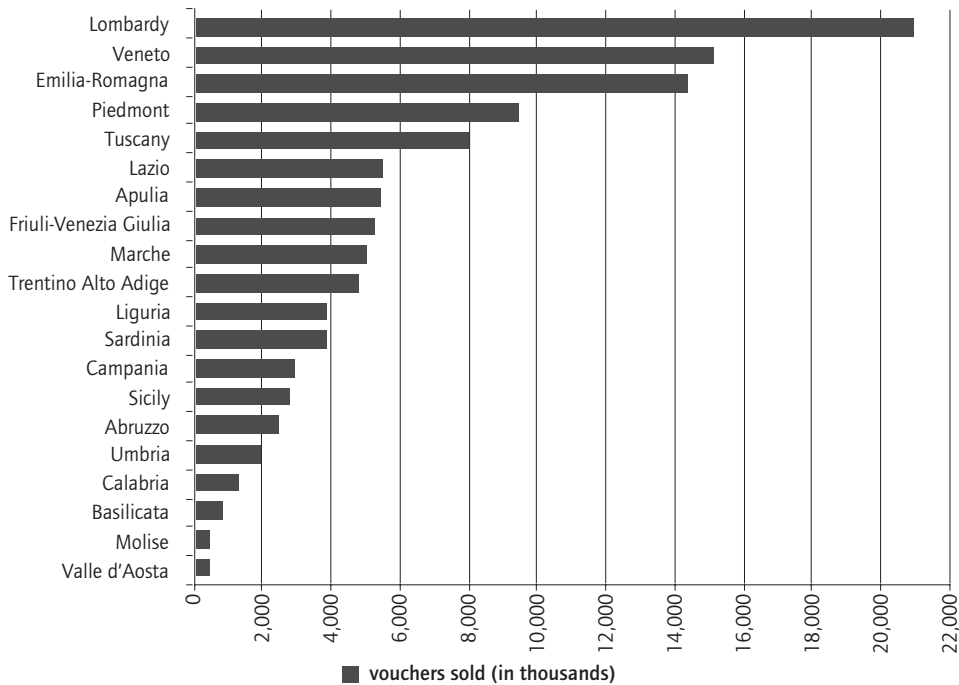
Figure 11 New permanent jobs and conversions of fixed-term contracts by region (2015)



Source: calculated from INPS data

In most Italian regions – except for Lazio, Abruzzo, Campania and Calabria – conversions of existing contracts outnumbered new contracts (Figure 11). In the northern regions, however, the difference between the two cases was considerably larger than in the rest of the country.

Figure 12 Vouchers sold per region (2015 – in thousands)



Source: calculated from INPS data

The evidence in Figure 11 seems to support the interpretation put forth in Fana *et al.* (2016) regarding the dynamics of contracts in southern regions. In this area, firm-level incentives seem to have partly favoured the formalisation of jobs previously performed on an informal basis.

The Jobs Act does not seem to have managed either to halt or reduce the progressive increase in atypical work, as can be seen from the data related to the number of vouchers sold. According to INPS data, in 2015 more than 115 million vouchers were sold, involving 1.5 million workers. The regional breakdown (Figure 12) shows that it was, above all, the regions of northern Italy (Lombardy, Veneto, Emilia Romagna, Piedmont and Tuscany) that made most use of instruments of payment while the southern regions used them least. The variation in the use of vouchers compared to 2014, however, does not follow any evident north-south pattern: the biggest change is in Sicily, with an increase of 94%, followed by 83% in Liguria and 80% in Apulia and Abruzzo.

The analysis of INPS data, therefore, indicates a certain degree of diversity between the regions from the point of view of trends on contracts. The main finding, however, is in relation to the greater prevalence in the south of new contacts over conversions, which might well reflect the emergence of undeclared work due to the incentives.

5. Conclusions

The analysis conducted in the present work builds on the contribution made by Fana *et al.* (2016) to the study of Italian employment trends following the introduction of the Jobs Act. In particular, an attempt has been made to add to the existing assessments of labour force trends in Italy by providing further detail at regional level. This additional focus seems particularly important given the strong territorial polarisation typical of the Italian economy and the very different historical performance of the northern from the southern regions in terms of employment.

Fana *et al.* (2016) show that 2015 was the year with the highest proportion of fixed-term contracts in total contracts since the relevant INPS records began. In this regard, it is important to note that the growth in the share of fixed-term contracts was not affected by the two initiatives – contributions exemptions and the Jobs Act – expressly aimed at spreading the new ‘increasing protection contract’, since this peak resulted from structural and cumulative trends that predated the recent reforms. Furthermore, the analysis shows that the slight increase in permanent workers was, to a significant degree, linked to conversions – i.e. stabilisations – of existing contracts rather than the creation of new employment. Confirming the arguments put forward in Sestito and Viviano (2016), it should also be noted that new permanent contracts were mainly the result of monetary incentives provided to companies. In terms of hours worked, there was a growth in part-time positions, especially in the area of permanent contracts. Finally, in line with a trend already established prior to the introduction of the Jobs Act, employment seems to be growing only for older categories of workers (over 55 years), contrasting with a persistent worsening of the situation of younger workers.

The results of the regional analysis largely confirm the national trend. However, there also seem to be some significant elements of diversity. In the first place, the increase in employment observed in 2015 tended to be distributed mainly in the larger regions (Lombardy, Piedmont, Campania and Sicily). In the two southern regions (Campania and Sicily), the increase in employment contracts seems to relate to the emergence from undeclared work following the introduction of incentives. In terms of trends by age category, in the two northern regions recording the largest increases – Piedmont and Lombardy – new permanent jobs were mainly filled by workers aged over 55. This finding must be seen in the context of the observation made when analysing the quality of employment – distinguishing workers by professional category – and the distribution of employment among the different productive sectors identified in relation to their technological intensity: new employment was concentrated mainly among low-skilled workers and in low-technology sectors. The only region where a positive trend was observed for medium- to high-skilled workers was Lombardy. In sectoral terms, new employment seems mainly concentrated in low-technology services (the only region seeing an increase, albeit very modest, in high-technology manufacturing sector jobs was Emilia Romagna).

These findings are particularly important because, given the modest increase in employment essentially driven by incentives being awarded to companies, they seem to point to a weakening of the employment structure itself. In the first place, the link

between new employment and the available incentives casts doubt on any potential consolidation of employment. Secondly, the increase in the preponderance of older and less-skilled workers – who are typically less productive than younger and more skilled workers – suggests a regression in the employment structure in terms of quality. The same conclusion may be reached with regard to the reduction in the relative importance of employment in high-technology sectors with high growth prospects. Finally, the analysis on a regional basis of the administrative data provided by the INPS shows how the phenomenon of temporary and insecure work – in particular work involving the use of vouchers – is increasingly widespread and in all regions. The use of vouchers, however, seems to be prevalent in northern regions, specifically in Lombardy, Veneto, Emilia Romagna, Piedmont and Tuscany. This would appear to confirm the findings by Anastasia *et al.* (2016) arguing that the use of vouchers does not, at least for now, seem to be making any contribution to tackling undeclared work, traditionally concentrated mainly in the southern regions.

Acknowledgments

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Appendix

Table A1 Pavitt's taxonomy of manufacturing and service industries

Science-based	NACE codes (Rev. 1)
Chemicals	24
Office machinery	30
Manufacture of radio, television and communication equipment and apparatus	32
Manufacture of medical, precision and optical instruments, watches and clocks	33
Communications	64
Computer and related activities	72
Research and development	73
Specialised suppliers	
Mechanical engineering	29
Manufacture of electrical machinery and apparatus n.e.c.	31
Manufacture of other transport equipment	35
Real estate activities	70
Renting of machinery and equipment	71
Other business activities	74
Scale-intensive	
Pulp, paper & paper products	21
Printing & publishing	22
Mineral oil refining, coke & nuclear fuel	23
Rubber & plastics	25
Non-metallic mineral products	26
Basic metals	27
Motor vehicles	34
Financial intermediation, except insurance and pension funding	65
Insurance and pension funding, except compulsory social security	66
Activities auxiliary to financial intermediation	67
Supplier-dominated	
Food, drink & tobacco	15-16
Textiles	17
Clothing	18
Leather and footwear	19
Wood & products of wood and cork	20
Fabricated metal products	28
Furniture, miscellaneous manufacturing; recycling	36-37
Sale, maintenance and repair of motor vehicles and motorcycles; retail sale of automotive fuel	50
Wholesale trade and commission trade, except of motor vehicles and motorcycles	51
Retail trade, except of motor vehicles and motorcycles; repair of personal and household goods	52
Hotels & catering	55
Inland transport	60
Water transport	61
Air transport	62
Supporting and auxiliary transport activities; activities of travel agencies	63

Chapter 5

Estonian labour legislation and labour market developments during the Great Recession

Raul Eamets, Jaan Masso and Mari-Liis Altosaar

1. Introduction

This chapter aims to shed light on the labour market reforms in Estonia during the Great Recession. Estonia has been treated in the labour market literature as a post-communist country with a fairly flexible labour market arrangement. We show that the labour market reform that was implemented in the middle of recession has had little effect on the overall level of flexibilisation of the labour market. Empirical findings let us argue that, in spite of labour market flexibilisation, drastic changes in employment and unemployment had already occurred before the reform, which proves that the labour market in Estonia was sufficiently flexible within the framework of the old legislation.

After Estonia regained its independence at the beginning of the 1990s, its economy went through several changes. Estonia shifted from a centrally-planned economy to a market economy, characterised by decentralisation and privatisation. This resulted in a need to modernise labour relations since the strict regulation of employment relationships from 1972 (Eamets and Masso 2004) did not meet the needs of the new economic situation. Throughout 2004-2007, Estonia had one of the highest growth rates in the world. However, this was not sustainable and, at the beginning of 2008, the first signs of recession appeared. Estonia experienced a sharp drop in its GDP and this resulted in high unemployment. The currency exchange rate was fixed, so most of the adjustment in response to the crisis took place through the labour market. However, it was soon realised by the government that, in order better to adjust to the macroeconomic circumstances, more flexible labour market institutions were needed. Therefore the concept of 'flexicurity' entered into labour law.

Reform was negotiated between social partners over several years. Finally, it was agreed that, together with more flexible arrangements on the employer side, there will also be a package of tools to increase social security for unemployed people. Unfortunately, the government later jettisoned all the promises made during the negotiations on social security, and only the flexibilisation of the Labour Code was achieved.

This chapter is organised as follows. Section two discusses the Great Recession of 2008 and its main impacts on Estonia's labour market. Section three gives an overview of Estonia's previous labour law and proposals for reform. Then it discusses the labour law reform that was carried out in 2009 and, finally, section four concludes with the impact the reform had on Estonia's labour market.

2. The Great Recession and its main impacts on the Estonian labour market

In 2009, GDP declined in Estonia by almost 15 per cent and the unemployment rate rose from 4 per cent to 20 per cent in the second quarter of 2010. Eamets (2011) argued that Estonia's structural economic crisis had begun before the global downturn and that the economy, overinflated with borrowed money, would have experienced a recession sooner or later in any case. The quick inflow of foreign money increased wages and public sector spending.¹ The overall structure of the economy had relied on low value-added production. Estonia has the most open economy among the Baltics (exports and imports consist of 80-90 per cent of GDP) and a relatively small domestic market. The export capability of the country diminished, the public sector grew and the government's pro-cyclical fiscal policy contributed to the acceleration of economic growth. The large inflow of credit financed, through consumption, higher imports and hence current account deficits. Additionally, during the boom years (2004-2007), Estonia was among the countries to experience the highest growth in the EU (8.5 per cent). However, this growth was unsustainable. Wage growth exceeded productivity growth, causing a loss of private sector competitiveness (the ability to sell products in foreign markets) (Estonian Development Fund 2008).² The large current account deficit was largely financed by credit inflows and it was no longer possible to maintain external imbalances when the crisis broke out. In 2008 and 2009, bank lending contracted significantly due to fear of loan defaults (Masso and Krillo 2011b). This all led to the economy experiencing a sharp downturn.

Estonia has been characterised by having a strong commitment to balancing the state budget. It has followed a tight fiscal policy to satisfy the Maastricht criteria for joining the Eurozone (Staehr 2010). Three supplementary state budget cuts passed in 2009 accounted for 9.3 per cent of GDP. The government relied largely on non-tax measures like additional dividends from state-owned enterprises. Operational measures like wage cuts constituted 0.73 per cent of GDP. Adjustments to pensions, such as reducing pensions increases and suspending contributions to the second pension pillar³ constituted 1.2 per cent of GDP. Thus in Estonia about 50 per cent of budget cuts were achieved by the two-year suspension of contributions to the funded pension scheme, which will have to be made up by higher pension contributions later (Masso and Espenberg 2013). Estonia mainly implemented cost-saving austerity measures. Adjustment took place without exchange rate devaluation but instead through 'internal devaluation' due to wage cuts. A devaluation of the exchange rate would have resulted in

1. Public expenditure increased in some years by almost 20% thanks to increasing tax revenues due to fast economic growth. At the same time, sovereign debt remained at a rather low level and the government was even able to build up some reserves that helped to sustain public finances during the Great Recession.
2. Exports from Estonia grew quite rapidly from 2000-2008, while the same applies also to imports which grew at an even faster rate (both around 1.9 times). The real exchange rate increased in that period by 22 per cent due to rising prices in Estonia indicating a loss of competitiveness (Eurostat data).
3. Estonia has a three-pillar pension system. The First Pillar is the renewed state pension scheme; the Second Pillar is a mandatory funded pension scheme; while the Third Pillar is a voluntary supplementary pension scheme that is supported by the government through tax deductions. The Second Pillar offers a retirement savings plan in which a working person saves for his or her own pension, contributing 2 per cent of gross salary to the pension fund. The state contributes to the individual's personal account an additional 4 per cent out of the 20 per cent social tax used to support pensions, retaining the remaining 16% for members of the First Pillar.

the insolvency of many households and firms due to their large euro-denominated debt burden⁴ (Masso and Espenberg 2013).

All these austerity measures were, as we have said, targeted towards preparations for Estonia to join the Eurozone. Retrospectively, we can say that all the austerity measures were generally perceived by the public as necessary ones. Reflected also in Eurobarometer, the approval ratings for the government increased from 38 per cent in the summer of 2009 to 53 per cent by the spring of 2010 (OECD 2010); while the ruling coalition who implemented the austerity measures in 2009 won more parliamentary seats in the 2010 election than they had in previous ones.

However, not all researchers have treated the austerity measures as positive ones. Kattel and Raudla (2012) argued that the Baltics ‘outsourced’ their recovery. There were three phenomena behind the recovery: i) the use of European Union (EU) fiscal funds; ii) a flexible labour market; and iii) the integration of export sectors into the key European production networks.

The main developments in social benefits during the crisis were as follows: sickness and healthcare costs were reduced while average pensions payments were increased; collective mandatory pension contributions were reduced in 2009. Women’s retirement age was raised in 2012 to 63 years (from 55 in the early 90s). Public expenditure on unemployment benefits per unemployed person receiving benefit dropped significantly (Masso *et al.* 2014).

Next we will have a brief look at changes in major labour market outcomes. We start with employment. As in many other European countries, the construction sector suffered the most during the crisis. During the boom, the number of people employed in construction reached 82 000 while, during the crisis, it dropped to 48 000. Manufacturing also experienced a large decline, losing 37 000 jobs. Primary industry and the mining sector also suffered. During 2007-2010, the employment rate increased in the professional sector, scientific activities, real estate, administrative services and public administration (Masso and Krillo 2011b).

Next we analyse changes in wages. Estonia has high downwards flexibility of nominal wages due to performance-related pay being quite common among workers. Compared with the second quarter of 2008, monthly wages dropped by 20 per cent during the recession. In the trade sector, the decline was 15 per cent and national average wages declined by 10 per cent. While in most sectors wage recovery took place by the end of 2011, in the public sector a final recovery only happened in 2013 (see Figure 1 below).

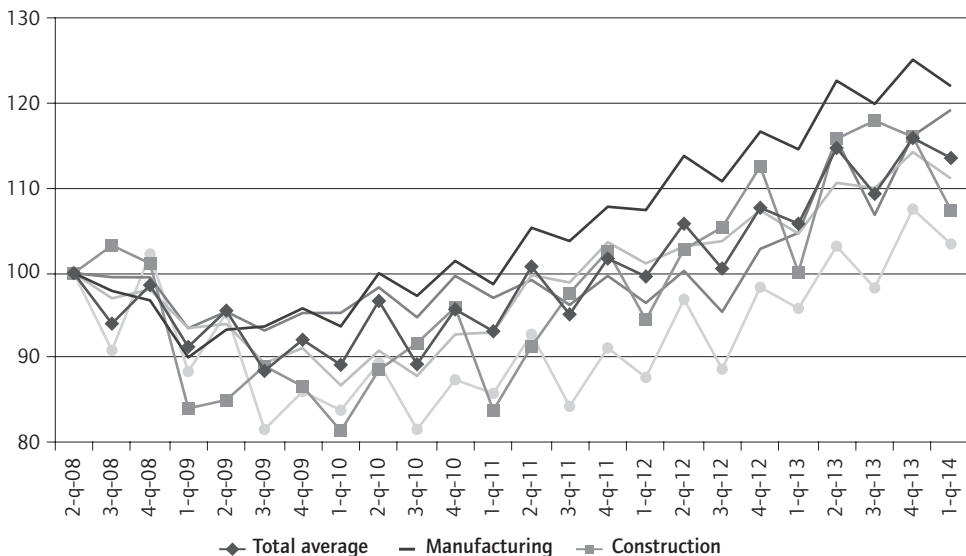
Estonian Labour Force Survey data allows us to analyse wage cuts in a more detailed manner at an individual level. Calculations by Masso and Espenberg (2011b) showed that, by 2009, 42 per cent of all employees had their wages reduced compared to the situation one year earlier (for more detailed dynamics, see also Figure 2 below). In

4. In some other Central and Eastern European Countries, the bulk of the loans were instead denominated in Swiss francs.

many sectors, performance-related pay formed as much as 30 per cent of wages, which enabled firms to keep basic wages lower. During the crisis, performance-related pay was often reduced and, in some cases, the basic wage was also cut back (Masso and Krillo 2011b). Masso and Krillo (2013) calculated that, in 2009, and relative to the previous year, wages were reduced for 61 per cent of employees in the public sector and for 40 per cent of employees in the private sector. Two sectors – public administration and construction – suffered the most from wage cuts. The middle class, defined as individuals that held ISCO 1-digit occupations 1-4,⁵ fared better during the crisis as their average wage decreased less: in 2009, -0.6 per cent for the middle class, but -7.9 per cent for the working class, the latter being defined as individuals that held ISCO 1-digit occupations 5-9. Members of middle-class occupations also experienced lower probability of losing their job. The average wages of the middle class had already exceeded their 2008 level by 2011 (Masso and Espenberg 2013). Wage cuts were somewhat more frequent among males compared to females; while, among those with higher education, wage cuts were significantly less common. Wage cuts were also more often found among small firms.

Even so, the calculations by Masso and Espenberg (2011b) indicated that, whereas wage cuts were widespread, most of the adjustment in payroll costs nevertheless still occurred via a reduction in the number of employees: in 2009 relative to 2008, the total payroll decreased by 15.8 per cent in the context of which the reduction due to the number of employees was 9.2 per cent.

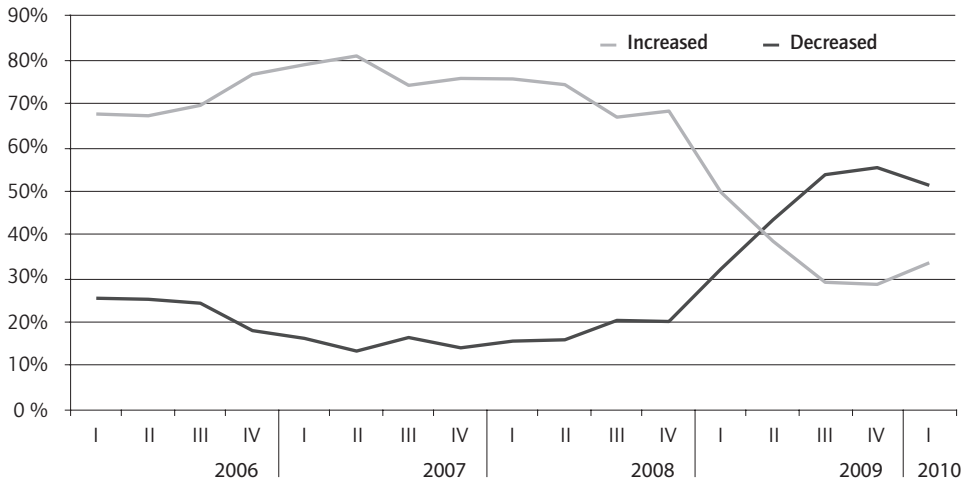
Figure 1 Changes in monthly wages (quarterly data, Q2 2008=100)



Source: Statistics Estonia

5. ISCO 1-digit occupations are as follows: 1 – managers; 2 – professionals; 3 – technicians and associate professionals; 4 – clerical support workers; 5 – service and sales workers; 6 – skilled agricultural, forestry and fishery workers; 7 – craft and related trade workers; 8 – plant and machine operators and assemblers; 9 – elementary occupations; 0 – armed forces.

Figure 2 Proportion of workers whose nominal hourly wages were decreased or increased over the year



Source: Masso and Espenberg (2011b), based on Estonian Labour Force Survey data

Additionally, union members coped better in terms of employment and wages as their wage premium increased from -3 per cent in 2008 to +4 per cent in 2009 (Masso and Espenberg 2013).

According to the same study during the crisis, union membership remained quite stable (higher in the public sector at about 20 per cent and lower in the private sector at about 4 per cent). The Estonian Trade Union Confederation had expected a decline in membership due to increasing unemployment and collective redundancies in sectors where trade union membership had been higher (Nurmela 2009). Data from the Labour Force Survey indicated that membership as a percentage of salaried workers did indeed decline from 7.6 per cent in 2007 to 6.2 per cent in 2008, but then increased in 2009 back to 7.6 per cent and, in 2010, to 9.5 per cent. Membership even increased in north-east Estonia, where the unionisation rate is highest as a result of the presence of large industrial enterprises (Masso and Krillo 2011b).

However, we should acknowledge that trade union and employer representatives in Estonia are relatively weak. For example, in February 2009, the Estonian Parliament approved a state budget cut of 11 million euros that included cuts to public sector wages and sickness benefits. Even though there was opposition by the social partners, both changes were implemented (Masso and Krillo 2011b).

In addition to changes in employment and wages, we can see labour market flexibility also in terms of working time. On average, the number of actual working hours at an individual's main job declined by 3.8 per cent in 2009. Working time dropped in all sectors except public administration, with the biggest declines taking place in construction and in the hotel sector. Many companies responded to falling demand due to the crisis by shifting to greater use of part-time work. Before the crisis, the incidence

of part-time work was rather low: on average, in 2008 only 4.1 per cent of males and 10.4 per cent of females worked part-time. In 2008-2009, however, the share of part-time work increased from 7.2 per cent to 10.5 per cent, with the greatest increase among young people (Masso and Krillo 2011a). During the crisis, the incidence of part-time work increased proportionally for both men and women. In the recovery phase, however, male part-time work decreased while female part-time work continued to increase mainly due to increasing under-employment among women (Eamets 2013).

The percentage of part-time workers being low in Estonia (e.g. the EU average share of part-time workers is 20 per cent; in Scandinavia, it is 25 per cent; and, in the Netherlands, it is up to 50 per cent) is probably due to the average income level not being high enough for people to secure their livelihood through part-time work (Eamets 2012). In Estonia, the level of temporary contracts shows a contra-cyclical trend; it decreased in 2005-2008 from 2.7 per cent to 2.4 per cent, but increased during the crisis to reach 3.6 per cent in the first half of 2010. The new labour law has liberalised the use of fixed-term contracts (Masso and Krillo 2011b).⁶

Another adjustment mechanism for reducing labour costs was the use of involuntary leave arrangements (periods when the employment contract is suspended).⁷ According to Labour Force Survey data, the incidence of involuntary leave increased from 1 per cent in 2007 to 7.6 per cent in 2009. Construction workers, those with basic education, those employed in the primary sector, employees of domestically-owned firms and men were most often sent on involuntary leave (Masso and Krillo 2011a).

The most important active labour market policy measure has been training, which absorbed 75 per cent of expenditure on active measures in 2014 (Eurostat data). There has been a shift from passive labour market policies to more active ones. In 2009, the number of people benefiting from labour market policy measures tripled. Spending on labour market policies increased by up to five times during 2008-2009; in 2009, some 76.5 per cent of labour market policy costs were spent on passive measures but, in 2010, the importance of passive measures decreased. Spending on active measures increased substantially during the crisis, mainly thanks to the help of the European Social Fund (ESF). The average annual number of people involved in active measures more than doubled in 2009 and then doubled again in 2010 (Masso *et al.* 2014). Re-training measures for the unemployed targeted especially at-risk groups in the labour market – young people and the long-term unemployed, and the creation of special measures for people with disabilities. Public works programmes were implemented that would enable the poor and vulnerable to earn at least the minimum wage (Masso *et al.* 2014).

6. Earlier, fixed-term contracts were used in the particular cases explicitly mentioned in the Labour Code but, under the new legislation, the particular provisions mention more generally that a labour contract may be concluded for up to five years if that is justified by good reasons originating from the temporary nature of the work (Töölepingu seadus 2009).

7. This term is used in cases when, during economic recession, a person has been sent on involuntary leave with lower payment, or no payment at all. This is known in the labour economics literature also as labour hoarding. Formally, an employee can, temporarily, even accept such a situation as the alternative option is dismissal.

In 2010, labour policy measures were overshadowed by employment subsidies.⁸ The amount of training allowance was cut in half and the same amount was added to employment subsidies. It was argued that it was no use spending money on training while there were not enough job vacancies; instead, people should be kept in work so that they could pay their everyday bills. Additionally, Tallinn organised and financed a public job creation scheme by creating a few thousand minimum wage jobs (e.g. workers that helped people get on and off a bus) (Eamets 2013). A new plan with a budget of around EUR 45 million was introduced in Estonia in the second half of 2009. Its purpose was to create 5 000 jobs through a range of measures: the development of business start-up support; widening the conditions for wage subsidies; and hiring more consultants to advise the unemployed. Training vouchers, introduced in 2010, were a completely new policy measure. Micro and small firms could buy training from a list of organisations with a maximum subsidy of about 960 euros (Masso and Krillo 2011b).

On 1 August 2009, unemployment insurance contributions increased to 2.8 per cent of wages for employees and to 1.4 per cent for employers. This was explained by the Unemployment Insurance Fund needing the funds to cover the growing costs of the recession and to cope with the rising number of unemployment and other benefit recipients. After the recovery, starting from January 2013, contributions were lowered to 2 per cent for the employee and 1 per cent for the employer (Eamets 2013).

Emigration from Estonia rose annually by 6 per cent during 2007-2009 (Philips and Pavlov 2010). However, this number may be substantially under-estimated since many people do not change their place of residence in registers. Evidence from the Labour Force Survey indicates that the number of people working abroad rose in 2009 from around 15-20 000 to 20-30 000 (Eamets 2011). Trade unions in the health care sector have been concerned that cuts in wages, redundancies, uncertainties, cuts in training benefits and increased workload have led nurses and health care workers to migrate to other countries (Osila and Nurmela 2011).

Concerning the shadow economy, the proportion of employees receiving undeclared wages decreased during the crisis from 12 per cent to 9 per cent in 2009 (the estimate of the Estonian Institute of Economic Research). According to Masso and Krillo (2011b), the indicator 'working under an oral employment contract' also decreased, from 1.5 per cent to 0.9 per cent on the basis of Labour Force Survey data. The authors pointed out that a likely explanation for the decreasing incidence of unreported wages was that employment decreased among construction workers, private sector employees and workers with secondary jobs; these are areas where people are more likely to be paid unreported wages.

The authors thus conclude that the crisis may have improved working conditions such as health and safety, and the reconciliation of work and family life due to the lower number of working hours. However, wage cuts have also led to worker demotivation.

8. Wage subsidies are calculated as 50 per cent of the wage or salary of the new staff member; however, there is a ceiling: the amount of the subsidy (per month) cannot exceed the official minimum monthly wage. The maximum duration of wage subsidy is six months. They are intended for labour market at-risk groups.

Additionally, from the third quarter of 2008 the number of claims submitted by employees to the Estonian Labour Inspectorate started to increase, peaking at about 1 850 in the second quarter of 2009. This was probably due to the new Labour Contracts Act as well as to the recession (Masso and Krillo 2011b).

3. The labour law reform of 2009

Amendments to labour laws and other regulations governing employment relationships had already begun in the late 1980s before Estonia regained its independence in 1991. The Labour Code was based on the labour legislation of the Soviet Union and it strictly regulated employment relationships. The parties to an employment contract had basically no flexibility in shaping the contractual conditions by negotiation since the employer had to follow the rules and was not free to make decisions (Orgo 1996).

After Estonia regained its independence, thorough reforms regarding labour relations were conducted. The Employment Contracts Act (ECA) entered into force on 1 July 1992; however, it was immediately apparent that this would be a ‘transitional law’ (Seletuskiri 2008) on the grounds that most market and institutional reforms started after 1992.

There were several independent Acts regulating labour relations after regaining independence. Some of them are listed here (Orgo 1996):

- Employment Contracts Act (ECA). Passed by the Estonian Supreme Council on 15 April 1992, this was the most important Act concerning labour law;
- Working Hours and Rest Time Act, passed by the Estonian Parliament on 29 December 1993 and entered into force on 1 March 1994;
- The Holidays Act, passed on 7 July 1992 and entered into force on 1 January 1993;
- The Salary Act, passed on 26 January 1994 and entered into force on 1 March 1994.

Most of the above Acts were adopted in a rushed atmosphere; no proper analysis of the prevailing situation nor any prognosis of future needs were carried out. This is why the legislation contained contradictions, overlooked certain aspects, was incognisant of existing social relations, and was declaratory and imprecise in its formulation (Orgo 1996). In the 2000s, the nature of economic relations had changed due to radical reforms and this resulted in the need also to modernise labour legislation (Masso *et al.* 2014). The economic environment, rapid changes and intensive competitive pressure have led countries, including Estonia, to find ways of adjusting labour legislation to the changing situation in the labour market (Malk 2013). During 1995–2005, eight draft acts regulating labour contracts were developed, but only one of them was sent for approval to the Estonian parliament; this was withdrawn for political reasons in 2005 (Muda 2008). It was still increasingly felt that conceptual change was needed (Siigur 2007). One reason behind those understandings was that Estonia had joined the EU. In the mid-2000s, the social partners as well as the government admitted that labour relations regulations needed to be renewed (Tavits 2008).

The idea of a new ECA was to increase ‘flexicurity’ in employment relations; a combination of ‘flexibility’ and ‘security’. On the one hand, this was meant to increase labour market flexibility and improve labour reallocation, both of which are needed for economic growth (Eamets 2001). On the other hand, ‘flexicurity’ compensated for the decreased strictness of employment protection legislation (EPL) by increasing the social protection of the unemployed, at least according to the government’s initial plan (Malk 2013). The new ECA was adopted on 17 December 2008 and entered into force on 1 July 2009, integrating into one law the earlier ECA, Wages Act, Holidays Act and the Working and Rest Time Act. This reduced the administrative burden and several formal provisions, like the Labour Record Book, were abolished (Eamets 2013).

The new ECA, still in force in 2015, relaxed the regulations on regular contracts in many ways. First, redundancy notice periods were cut, depending on the length of the previous employment, from 2-4 months to 1 month. Second, severance payments were reduced from 2-4 months to 1-3 months and, additionally, the payment is now shared between the employer and the Estonian Unemployment Insurance Fund. Third, fixed-term contracts were permitted in all cases (Masso and Krillo 2011b). The probation period was also increased in all cases to 1-4 months. Employers now have the right to cut employees’ wages in exceptional circumstances and collective redundancy procedures were facilitated (Purfield and Rosenberg 2010, Masso *et al.* 2014). Furthermore, pregnant women, employees with children under the age of three and union representatives no longer systematically enjoy protection against dismissal without the prior authorisation of the labour inspectorate (Clauwaert and Schömann 2012). These changes were intended to make the labour market more flexible.

It was mentioned above that the compensation paid by the employer also changed. The payment of redundancy benefits is now shared by the employer and the Estonian Unemployment Insurance Fund to ease the financial burden for employers. In all redundancy cases, the employer has to pay a proportion of the benefit, amounting to one month’s average wage, while the Unemployment Insurance Fund finances the rest of the benefit (Clauwaert and Schömann 2012). If the employment relationship had lasted 5-10 years, then the Unemployment Insurance Fund would pay compensation amounting to one month’s wage whereas, if the employment relationship had lasted for over ten years, the Fund would pay compensation of two months’ wages. Additionally, the advance notice period in the case of redundancies was shortened from 2-4 months to 15-90 days.

The new law allows the employer to reduce an employee’s wages temporarily;⁹ this is in the case of the employer not being able to provide the employee with the agreed amount of work due to unforeseen circumstances beyond the employer’s control.¹⁰ The wage may be reduced for up to three months over a twelve-month period and to a limited extent; it cannot be lower than the minimum wage set by the government. This would be the case where the contractually-agreed wage was unreasonably burdensome¹¹ for an

9. A decrease in wages must be accompanied by a proportional reduction in the employee’s workload.

10. For example, if the number of customers suddenly declines, or a contractual partner has an insolvency problem.

11. Where unforeseen (economic) circumstances lead to the employer not having sufficient resources to pay wages in their full scale.

employer in difficult economic circumstances (Eamets 2013). This is the exclusive right of the employer and, if the employee rejects the lower pay, he/she can quit the job with a notice period of five days. In case of dispute, it is the court that will decide whether all those circumstances are valid.

As for flexible employment forms, if a fixed-term contract is terminated prematurely due to economic difficulties, the employer must make an additional payment to the employee to compensate for the whole of the income they would have received up to the end of the period of the contract (Clauwaert and Schömann 2012).

Simultaneously with these labour law changes, some administrative changes were also implemented. The Labour Market Board and the Unemployment Insurance Fund were merged in order to increase the administrative capacity of the labour market institutions. This allowed for the better integration and control of labour market services and benefits. The services provided by the Unemployment Insurance Fund as follows (Eamets 2013):

- The provision of information about the labour market situation, and services and benefits;
- Job mediation (free of charge for everyone);
- Career counselling to help people make the right decisions in their career development;
- Labour market training, which can last for up to one year. If the training lasts for more than 40 hours, then the participant receives a grant as well as transport and accommodation allowances;
- Work experience to help people gain practical experience in the workplace (the maximum length is four months);
- On-the-job experience, which involves simple tasks that do not require special knowledge or for which the necessary skills can be learnt while working under the guidance of a supervisor (maximum length three months at any one time);
- Wage subsidy, which is paid to employers who hire an unemployed person. This is designed for high-risk groups (e.g. people released from prison, the long-term unemployed and young unemployed people);
- Public work, which is organised by local government departments, non-profit organisations and foundations who pay the employee at least the minimum wage;
- Business start-up subsidies. Unemployed people at least 18 years of age who have completed business training or have higher or vocational education in economics or business experience are eligible to apply for these. The one-off amount to be received is EUR 4 474;
- Adaptation of work premises and equipment. This service is designed for unemployed people with disabilities;
- Special measures for people with disabilities.

The drafting of the new ECA posed great challenges within the state-level social dialogue. The Estonian Trade Union Confederation opposed the proposed law as it worsened the position of employees in several ways: it decreased severance; shortened notice periods; etc. (Estonian Trade Union Confederation 2008). Intensive consultations were held

to find a compromise between the parties. On 23 April 2008, trade unions, employer representatives and the government signed a tripartite agreement approving the text of the new ECA and the reform of labour market institutions (Masso *et al.* 2014). This was a mark of satisfaction and cooperation between all the social partners; labour relations experts also welcomed the new law since it made labour relations more flexible and potentially secure for employees as well as employers (Muda 2008, Tavits 2008).

Three main agreements were proposed in order to provide financial assistance for the unemployed while they were finding a new job. The intention was that, in the first place, unemployment insurance benefit would be raised from 50 per cent to 70 per cent of wages during the initial stage of unemployment; and from 40 per cent to 50 per cent of wages from the 101st up to the 360th day of unemployment. Second, according to the old law, only those whose employment was terminated at the employer's initiative were able to receive unemployment insurance benefits. The new law planned to introduce a 40 per cent unemployment insurance benefit to those quitting a job under a voluntary agreement between the employer and employee, or at the latter's own initiative. However, in order to be eligible for the benefit, the person had to have paid unemployment insurance premiums within the past five years for a minimum of 48 months. Finally, the unemployment insurance was planned to be increased to 50 per cent of the national minimum wage (Masso *et al.* 2014).

A few months after the adoption of the new ECA on 17 December 2008, and before coming into force in 2009, the government withdrew from the agreement and decided not to increase unemployment insurance benefit, arguing that this was a necessary step in order to prevent the Estonian Unemployment Insurance Fund from running out of funds. The Estonian parliament also amended the second agreement: the payment of benefit to those quitting their jobs at their own initiative or upon agreement. This was postponed to 2013 due to the economic crisis and since the Estonian Unemployment Insurance Fund did not have sufficient resources in the longer term to cover the benefit (Masso *et al.* 2014). In August 2009, unemployment insurance premiums were increased to the maximum allowed tax rate (Masso and Krillo 2011a). On 8 May 2012, the Estonian parliament repealed the amendment unilaterally without consultation with their social partners. This action resulted in widespread disappointment for trade union representatives as well as labour market experts (Kund 2012). Additionally, in March 2009 the increase in unemployment benefit was postponed in order to avoid the Estonian Unemployment Insurance Fund running out of funds due to the rapid increase in the number of the unemployed. Agreement on the 50% minimum wage rule was also cancelled in the spring of 2009.

Trade union representatives demanded the postponement of the new ECA until a more stable economic environment could be established. However, the demands of the unions were ignored, despite the strike organised in June 2009, as their proposal met much resistance from employers who claimed that it would result in high company insolvency.

It was, however, decided to postpone the increase in unemployment benefit until 2013. In November 2012, the state withdrew from the third agreement on the amount of

unemployment benefit. It was decided to increase the benefit from EUR 65 to EUR 101, not to 50% of the minimum wage (EUR 185) (Masso *et al.* 2014). This was explained by the government needing to find extra money to increase wages in the health sector as a result of the promises made after the physicians' strike in October 2012. Additionally, the situation in the labour market had improved and this was expected to motivate the unemployed to find jobs (Koorits 2012).

The development and implementation of the new ECA illustrates the position of the state in the light of the need to balance the state budget during the crisis and to satisfy the promises made to the social partners. Masso *et al.* (2014) argued that Estonia had managed to overcome the deepest point of the crisis rather well; the active labour market policy measures, when used in combination with other austerity measures, worked effectively as poverty did not significantly increase during the crisis. However, during the recovery the state did increase social guarantees in line with increased state revenues.¹² The unilateral style of the state's actions disturbed the social partners as they were not included in decision-making. This is likely to have a dampening effect on the social dialogue in Estonia and it will take time to rebuild social partner confidence. We can conclude that the final balance of these reforms was less security and more flexibility in the labour market.

4. The impact of labour legislation reform on the Estonian labour market

One of the aims of the new labour law was to increase flexibility. According to the Labour Force Survey, the proportion of employees working under a fixed-term contract has increased from 2009. The proportion of such workers was 2.5-3.4 per cent in 2009; this had risen by 2011 to 4.4-5.6 per cent. Thus, the proportion has increased by two percentage points (Masso *et al.* 2013).

The new law was also meant to increase legal awareness; that is, that both parties in an employment relationship are aware of the norms regulating such relationships and of their rights and obligations. However, according to a survey into ECA, 8-14 per cent of firms and offices estimated their knowledge on labour law as 'low' while 73-79 per cent estimated that they needed to know more. Among the employed and unemployed, 28-34 per cent estimated their knowledge on labour law as 'low', while 79-83 per cent of them estimated that they needed to know more (Masso *et al.* 2013).

Malk (2013) analysed labour market flows based on Estonian Labour Force Survey data, using Lithuania as a control group. She found that the lower strictness of EPL has increased the probability of exits from employment. At the same time, the author did not find any significant impact of EPL reform on entering into employment. The new law increases the probability of moving from employment to unemployment by 2.6 percentage points and from employment to non-employment by 3.5 percentage

12. The share of people at risk of poverty or social exclusion in Estonia increased from 21.9 per cent in 2008 to 23.4 per cent in 2009 before decreasing again to 21.8 per cent in 2010 (Eurostat).

points. Additionally, the probability of moving from one job to another (job-to-job flow) decreased by 2.1 percentage points; on the basis of the raw data, job-to-job flows were around 9 per cent in 2007 but 6 per cent in 2011.

Lower EPL strictness should potentially increase labour reallocation and the probability of moving out of employment. The reform has increased Estonian labour market flexibility, making adjustments in the workforce more flexible for employers. However, no significant impact could be identified of EPL reform as regards moving into employment. This, on top of decreased job-to-job mobility, indicates that lower EPL strictness has not been sufficient to achieve the goals and that flexible EPL, by itself, does not improve labour reallocation. A decrease in job-to-job mobility is inherent in any economic crisis period. Labour taxation may have been another reason why EPL reform did not have any effect on the movement of labour into employment; however, the impact of taxation may not be relevant in the longer period as labour supply is rather inelastic (Malk 2013).

Eamets (2013) concluded that the empirical results do not show clear evidence of the effectiveness of the legislative reforms. According to the Centre for Policy Studies (Masso *et al.* 2013), the reduction in lay-off payments did not seem to have any significant impact on employers' lay-off behaviour. Only a small proportion of employers said that they would have laid off fewer workers had the previous act remained in force. Similar results were found by the Tax and Customs Board, which could not identify that the reform had had a significant impact on lay-off behaviour. Therefore, the reform has left employers with more money for the other costs incurred in lay-off situations, but this has not led to any more lay-offs than in the case of the old act. The new ECA entered into force at a time when most lay-offs had already taken place (Masso *et al.* 2013, Eamets 2013).

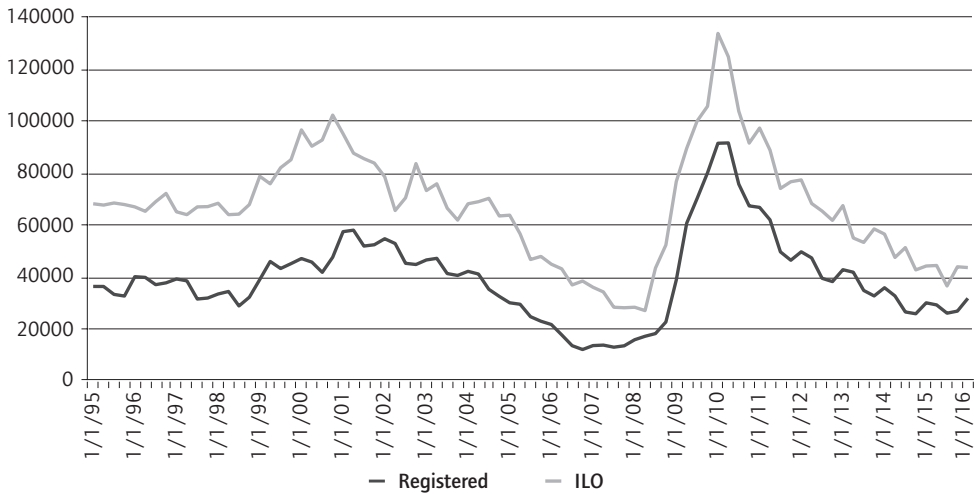
If we look at unemployment dynamics in 2009, we can see that the lowest level of unemployment was in the second quarter of 2008, when Estonia had 27 000 unemployed persons according to the Labour Force Survey. Then, unemployment started to increase rapidly and, in the second quarter of 2009, we had 86 900 unemployed. The new legislation came into force in June 2009; this means that most dismissals had already taken place before this point was reached. In the second half of 2009, only 19 000 unemployed persons were added to the total, which reached 105 800. So we cannot see a rapid increase in unemployment immediately after the introduction of the new legislation.

From Figure 4, we can see that changes in unemployment is correlated with changes in employment, particularly during the crisis. During the boom, the increase in employment was higher compared with the decline in unemployment, but this was due to changes in inactivity.

From Labour Force Survey data, we can calculate the flows of people who changed their jobs. Unfortunately, we cannot provide annual statistics as the sample size is too small. If we look at intervals and calculate annual flows, then we can see that, during the 2008-2010 period, flows did increase compared to the previous period. Legislative reform

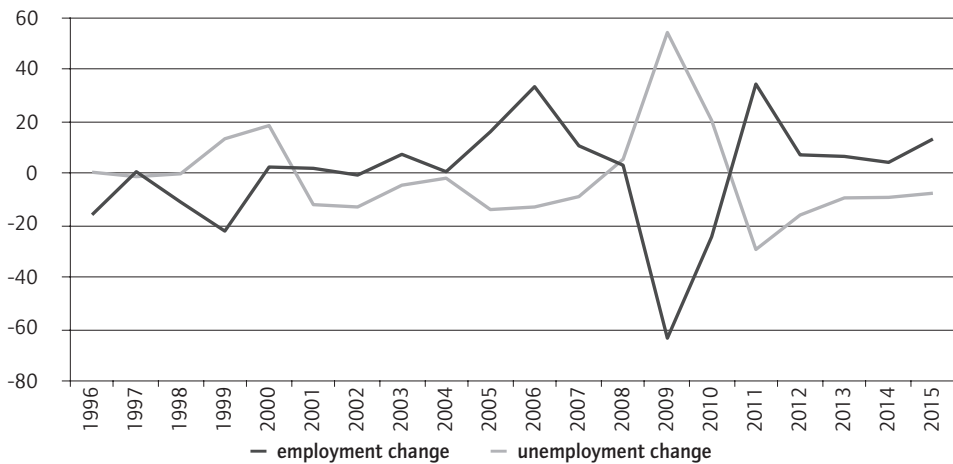
took place in exactly the middle of this period, so we cannot separate the effect of the crisis from the effect of the legislative changes.

Figure 3 Survey-based ILO unemployment and registered unemployment in Estonia



Source: Statistics Estonia

Figure 4 Changes in employment and unemployment (year-on-year change, thousands)

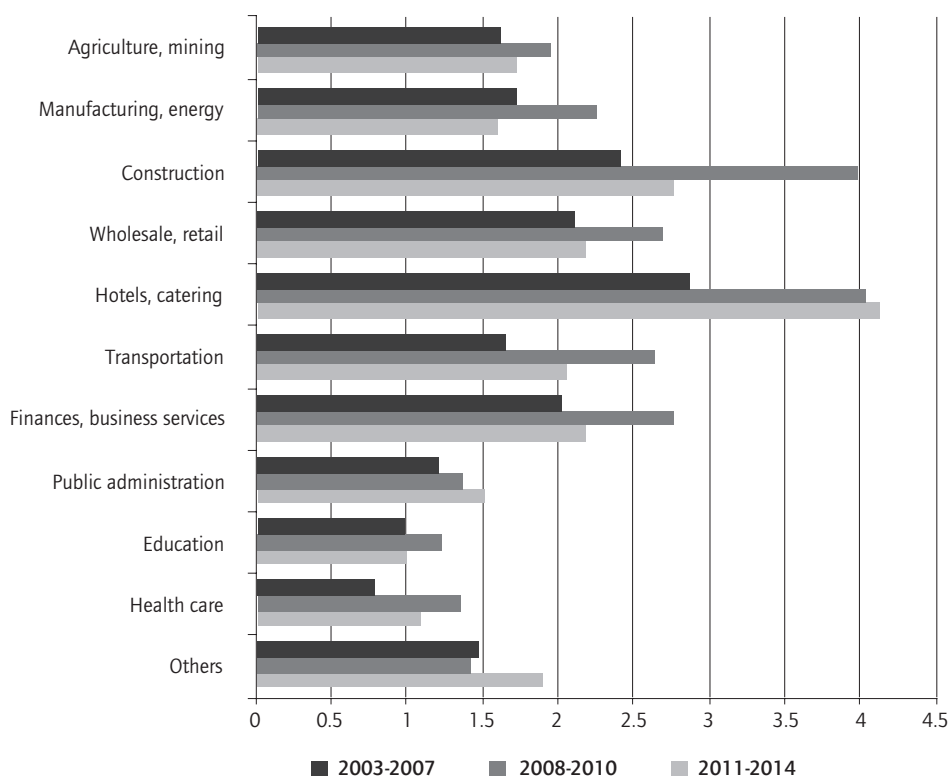


Source: Estonian Labour Force Survey data, Statistics Estonia

Running descriptive statistics on the unemployment data shows that the majority of dismissals took place before June 2009, but it is also true that many job changes took place during the boom, especially in the construction sector, and these were not related to changes in the legislation. If we look at the post-crisis period from 2011 to 2014, then we can see that, in most sectors, job flows slowed down except, perhaps, in the hotel sector and public administration where the number of workers changing their job during the year remained high, higher even than during the crisis period. So we can

conclude that, perhaps in the trade sector, the flexibilisation of labour regulations might have had some effect on worker mobility.

Figure 5 Number of people changing their job during the year (job-to-job flows, thousands)



Source: Estonian Labour Force Survey, authors' calculations

In order to understand the changes in employment and unemployment, an analysis of flows across employment, unemployment and inactivity might be useful. These have been calculated by Masso and Krillo (2011b). Their analysis showed that, during the crisis in 2009, what increased was the separation rate – from 17 per cent in 2008 to 27 per cent in 2009 – while the hiring rate decreased only slightly; in comparison, in Hungary during the crisis the adjustment occurred rather through reduced hiring. The separation rate increased more for groups affected more heavily by the crisis, such as males and non-Estonians. There was little increase in flows to inactivity, while job-to-job flows decreased, especially for some groups of employees such as females and non-Estonians. When looking at labour market flows from the aspect of job creation and destruction rates, the job destruction rate increased above the average for 2005-2007 (9.2 per cent), in 2009 reaching 19.8%, while the job creation rate decreased from 14.8 per cent to 6.9 per cent. The numbers across various labour market segments show similarly that increased destruction was almost always accompanied by decreased creation.

Labour market adjustment during the crisis was very broad-based, but there were still clear differences across the various labour market segments (Masso and Krillo 2011b). Due to the major decline in construction, but also in manufacturing, the unemployment rate increased especially among males, from 5.9 per cent in 2008 to 17.4 per cent in 2009, while among females the change was from 5.4 per cent to 10.8 per cent (although such a situation was not unique in Europe). Also, national minorities (mostly Russian-speaking) were more heavily affected by the crisis – in Estonia, their unemployment rate increased from 8.2 per cent to 19 per cent (among Estonians from 4.2 per cent to 11 per cent), thereby exacerbating the labour market inequalities that were already there before the crisis. Young people (in the 15-24 age group) were also very heavily affected by the crisis as their unemployment rate increased from 13.4 per cent to 29.2 per cent. All these developments are relatively logical, given that these have been among the more vulnerable groups in the labour market and given the parts of the economy that were more heavily affected by the crisis; thus, the linkages with EPL reform are, if they exist at all, probably relatively weak.

Estonia's new ECA has been severely criticised by the trade unions as well as political parties on the grounds that it emphasises labour market flexibility too strongly but not the security and protection of workers. Additionally, the Act was based on a tripartite agreement, but the government unilaterally postponed and later cancelled several provisions which would have increased the security and protection of workers but which would also have increased the spending of the Unemployment Insurance Fund during the Great Recession (Clauwaert and Schömann 2012).

5. Conclusions

To sum up, it can be said that the labour market reacted to the economic crisis quickly and very flexibly. The measures taken included reductions in working time and wages, and redundancies among employees. This indicates that the traditional institutional factors that protect workers but, to a certain extent, also decrease the volatility of the labour market, such as labour market regulation or trade unions, are not very strong in Estonia and do not have a significant effect on the flexibility of the labour market. The situation may also be affected by regulations being ignored, even when they are in force (Eamets and Masso 2004), or some policy measures being taken but introduced too late as changes in the labour market had already taken place.

Labour market reform was launched in 2009 in Estonia. There were two sides to this reform. First, the new Employment Contracts Act was amended. The new Act enabled greater flexibility in labour relations and severance payments, while notice periods were reduced. In general, it could be said that termination of employment relations became less expensive for employers. Secondly, institutional reform merged the National Labour Market Board and the Unemployment Insurance Fund.

In order to avoid a relatively sharp decline in employment protection, income protection for the unemployed was to be enhanced through raising the unemployment benefit replacement rate and easing the eligibility for unemployment insurance. Those leaving

their jobs voluntarily were also to receive unemployment insurance benefits. The adoption and implementation of these measures were, initially, postponed. The major argument was the economic crisis that hit Estonia in 2009. In May 2012, however, Parliament adopted new amendments to the Employment Contracts Law which basically abolished all the above-mentioned agreements to increase social protection for unemployed people. Moreover, this agreement had been achieved at a national level in tripartite negotiations in 2008 between the social partners and the government. Today, we can say that the government is unilaterally refusing to fulfil the agreement. The main argument is the changing economic environment and a shortage of sufficient resources. Social security issues were part of the deal under which unions agreed to the flexibilisation of the labour market in the first place. However, left-wing parties and unions have a small role to play in the Estonian political landscape, so there has been no public unrest at such behaviour of the government.

Few surveys have tried to find empirical evidence for labour market flexibilisation in Estonia. In spite of concerns, the new ECA did not lead to any major changes in labour market trends. Major dismissals had already been made before 1 July 2009 and this by itself actually proves that the Estonian labour market was sufficiently flexible under the old Employment Contracts Act.

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Chapter 6

Impacts of the liberalisation and re-regulation of the labour market in Slovakia

Brian Fabo and Mária Sedláková

1. Introduction

Slovakia is a country which has been struggling with the poor performance of its labour market since the difficult transition to a market economy in the 1990s, which left the country with high structural unemployment as socialist-era heavy industry collapsed. Consequently, tackling unemployment has been a priority for all Slovak governments. Due to this need, Slovakia's nascent labour market institutions, initially shaped in line with Western social market economies, have always been under pressure to avoid burdening employers with too much regulation of employment relations.

The pressure was reinforced by the discourse of global 'competitiveness' through pro-market policies (Stark and Bruszt 1998: 104, 105). The outbreak of the Great Recession made this policy direction appear even more appealing to policy-makers (Clauwaert and Schömann 2013). That is because, as unemployment kept edging higher, governments came under increasingly intense pressure to come up with solutions. The cost of maintaining the status quo kept growing.

At this point, it is necessary to point out that this liberal orthodoxy espoused by policy actors does not necessarily represent academic debates on the subject. The relationship between labour market regulation and employment is quite a salient and well-explored subject in economics; nonetheless it remains controversial. Stricter worker protection laws, such as the most costly dismissals, tend to decrease the tendency of companies to lay-off workers at times of low demand. They might, however, also make them more reluctant to hire when demand is high.

In Slovakia, neither of these two narratives managed to establish itself as clearly dominant. The pressure for liberalisation in the country was countered by the general, although not uninterrupted, dominance of the political left-wing from the mid-2000s. One important reason behind this hegemony was the general tiredness of Slovaks with the precariousness and powerlessness caused by the pro-market policies of the radical reformist government of the early 2000s (Fabo 2015).

A result of the tensions between the external pressure for liberalisation and the popular desire for security was that the country saw rapid back-and-forth changes in the legal environment. These shifts happened chiefly through rapid contradictory amendments to the Labour Act passed by parliament according to the ideological preferences of successive governments. In this chapter, we are exploring these changes in the context of the logic behind their introduction. In a sense, our aim is to bring a degree of clarity

to a heavily ideological debate, often driven to a much higher degree by the ideological inclinations of the policy actors than by the facts.

We start the chapter with a short description of labour market policies from when Slovakia became independent. We focus in detail on the changes made during the period of economic crisis. We then analyse the impact of legislative changes on the labour market. We aim to show the effects of employment protection reforms on the level and structure of employment in Slovakia. Subsequently, the chapter presents the view of the social partners and their role in the frequent policy changes. We particularly scrutinise employers' arguments which have been (mostly) in favour of de-regulation against the empirical evidence of the labour market. The last part draws some conclusions.

2. Labour market policy development since independence

2.1 Historical context

The concept of work flexibility is a relatively recent one in the Slovak environment due to the legacy of state socialism, where state-run organisations had a monopoly on employment which was, in turn, defined by law as a duty. Consequently, employment regulation was much more rigid than in the market system and the labour code (Law 65/1965) regulated every aspect of employment with great detail with the aim 'to ensure progress and prosperity for all.' In the late 1980s, however, the regime started to experiment with liberalisation of the rigid economic structure in the country under the influence of the Soviet-inspired perestroika movement. Labour code reform No. 188/1988 was the first that envisioned a more economically-driven approach to the hiring and firing of employees and which legislated a notice period of two months to lessen the impact of changes on workers.

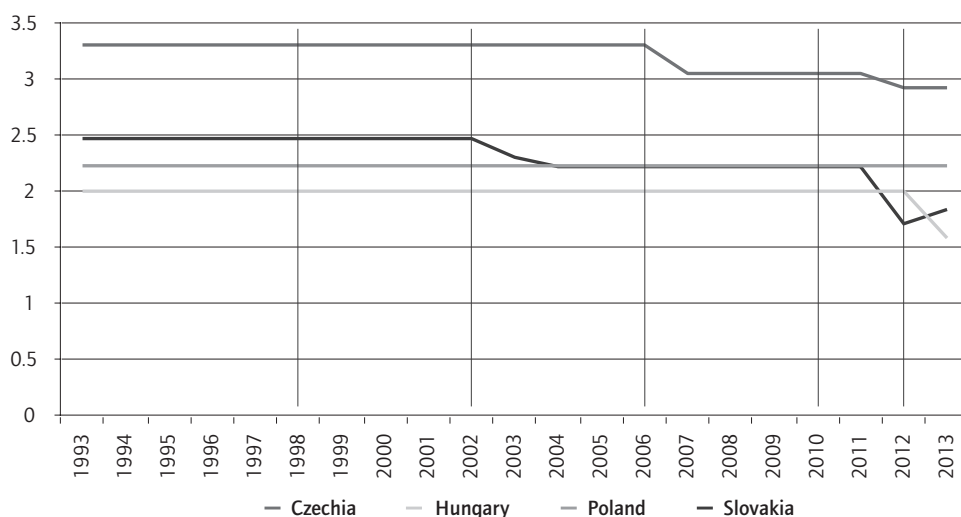
The regime's reform effort came to an abrupt end in 1989, when the regime collapsed to the Velvet Revolution, to a large degree thanks to a general strike of workers organised to support the demands of the Revolution. Afterwards, there was a high level of goodwill towards workers, leading to the establishment of Western-style tripartism and employment legislative protection (Fabo 2015). Government direction 312/1990 established, for example, a minimum severance payment of five months for laid-off workers. At the same time, the Revolution also unleashed the transformation of the economy, in which unemployment quickly spiralled to heights unprecedented since the end of World War II. The government reacted to poor labour market performance by decreasing the generosity of worker protection and reduced severance pay to two monthly wages through Law 195/1991.

From the outbreak of the 21st century, the labour law debate became heavily politicised. In 2001, the government, at the time including left-wing parties, strengthened the protection of workers through a new Labour Code 311/2001, which increased the notice period for organisational discharges from two to three months. In 2003, the tide turned as a right-wing government proceeded with liberalisation of the Labour Code through Amendment 210/2003 as part of its ambitious 'reformist' agenda in spite of

opposition from trade unions united in the Confederation of Trade Unions in Slovakia (Konfederácia odborových zväzov, KOZ SR). This Amendment made a notice period obligatory only for employers unwilling to make severance payments. More importantly, this legislative act followed the recommendations of the OECD to liberalise the labour market and address the rigidities in hiring and firing that were portrayed as a threat to employment creation in the country (OECD 2002: 102).

Nevertheless, when it comes to workers on standard contracts, the situation for them after the changes was still largely comparable to that of their peers in most surrounding countries (Figure 1). At the same time, it created a particularly precarious market for workers on temporary contracts and especially for workers with contracts of agreement for work performed outside an employment relationship, i.e. so-called ‘work agreements’ (dohody o prácach vykonávaných mimo pracovného pomeru; see Figure 7). Employees with work agreements (which are incorporated in the Labour Code in Slovakia as a more flexible alternative to a standard employment contract) did not enjoy the same level of protection as regular employees. Employers were not obliged to pay social security contributions, which left employees disentitled to sick leave, pension contributions, unemployment benefits, paid leave and meals allowances from the employer. The result was that work agreements were often abused as a replacement for standard employment contracts (Eurofund 2015). In the 2004-2007 period, Slovakia had the most lenient temporary employment laws in the region when it comes to temporary contracts (Figure 2).

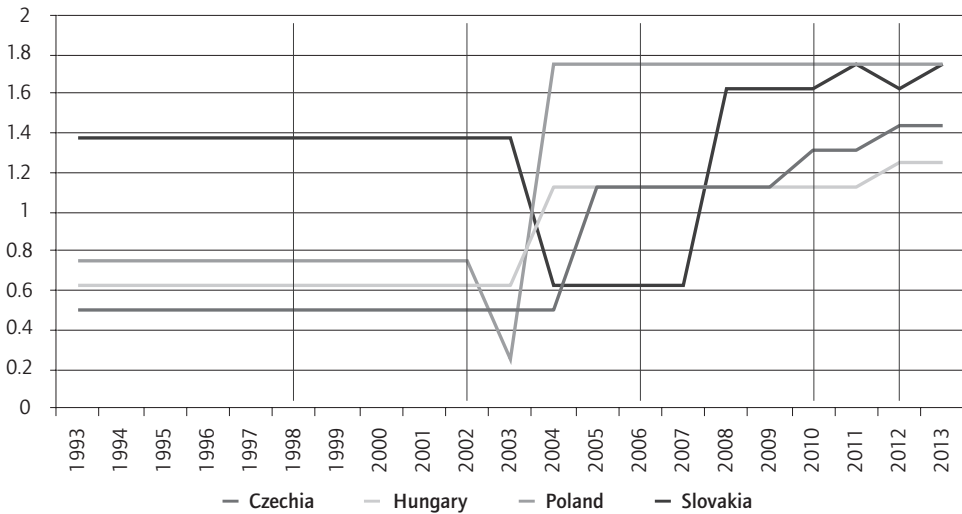
Figure 1 Strictness of employment protection index for permanent contracts 1993-2013



Note: Vertical lines represent changes in Slovak governments: the two nationalist authoritarian governments led by Mr. Mečiar in 1994-1998; the wide right-left coalition of Mr. Dzurinda from 1998-2002; the centre-right government of Mr. Dzurinda in 2002-2006; the left-leaning government of the social democratic party SMER led by Mr. Fico in 2006-2010; the short period of centre-right government of Mrs. Radičová in 2010-2012; followed by Mr. Fico's social democrats, in power during 2012-2016.

Source: OECD, own visualisation

Figure 2 Strictness of employment protection index for temporary contracts 1993-2013



Note: Vertical lines represent the terms of mandate of individual governments, as explained in Figure 1

Source: OECD, own visualisation

Following labour market liberalisation, as well as other liberalising reforms particularly in the area of taxation and the welfare state, a period of sustained very fast growth commenced in Slovakia, driven by foreign direct investment (FDI). Indeed, at the onset of the Great Recession, Slovakia was among the fastest growing countries in the world, with year-on-year GDP growth of 10.7 per cent. Slovak policy-makers in particular were very quick to dub the emergence of the ‘Tiger of the Tatra Mountains’ as clear proof of the success of liberal policies (Bohle and Greskovits 2012: 170). Sceptics, meanwhile, argued that much of the growth was simply a delayed recovery from the economic shock that struck the country hard as a result of the fall of communism and 1990s authoritarian governments which had scared away FDI at a time when neighbouring countries were a major destination for global capital. After the country’s 2004 European Union (EU) accession and the removal of barriers to FDI, the argument goes, capital flows were extended also to Slovakia (Pogátsa 2009).

Figure 1 and Figure 2 also illustrate just how much the liberal reforms undertaken by Slovakia – and, to a lesser degree, other countries in the region – politicised labour market regulation. We do not consider the OECD’s strictness of employment protection index to be necessarily telling the full story (see Myant and Brandhuber in Chapter 1), but the figures broadly illustrate how much political cycles matter to the protection of workers in Slovakia. Typically we see a rapid increase in flexibility not long after the ascent to power of right-wing governments, countered by increased regulation during periods of left-wing governments (c.f. Kahancová and Sedláková 2016). Table 1 contains an overview of labour market policies and the aims declared by individual governments in their official programme manifestos presented to parliament for approval.

Table 1 Overview of attitudes of successive governments towards labour market policies

Government	Period	Ideology		
DZURINDA II	2002–2006	Centre-right	Aim	'Reduction of unemployment' (Government of Slovakia, 2002: 21)
			Tools	Increase motivation of long-term unemployed to look for work by limiting welfare transfers; support for labour mobility and flexible labour legislation
FICO I	2006–2010	Centre-left	Aim	Achieve 'as high as possible employment' (Government of Slovakia, 2006: 23)
			Tools	Integration of disadvantaged groups in labour market; active labour market policies but also greater protection of workers in precarious job arrangements, mainly through pressuring employers to take on workers on permanent contracts
RADIČOVÁ	2010–2012	Centre-right	Aim	Combat 'extremely high social security contribution burden and inflexible labour market' (Government of Slovakia, 2010: 26)
			Tools	Motivate the unemployed to look for work through more generous welfare transfers for the working poor and for employers to hire them by promoting flexible work arrangements; decrease in non-wage labour costs
FICO II	2012–2016	Left	Aim	'Reduce the high level of unemployment, particularly long-term unemployment' (Government of Slovakia, 2012: 1)
			Tools	Focus on school to work transition; active labour market policies; lifelong learning; decrease in administrative burden associated with employing workers

Sources: Official programme manifestos of the governments

2.2 Changes over the crisis period

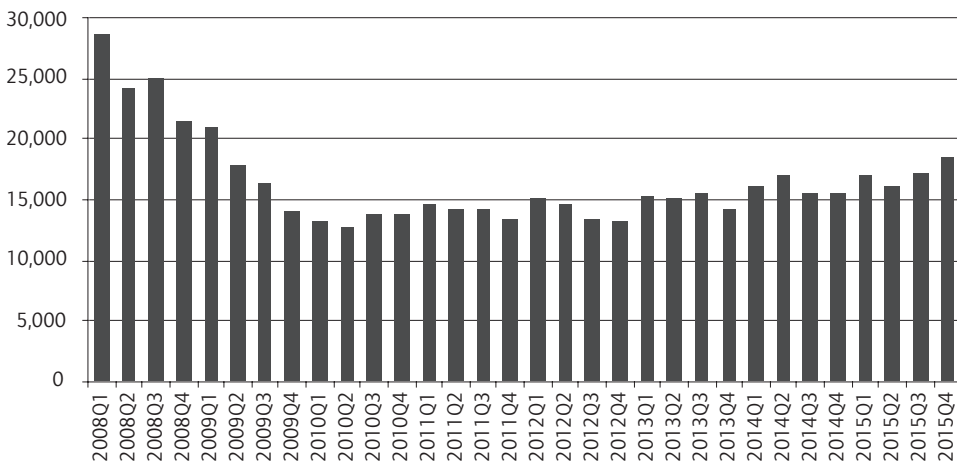
The radical liberal direction espoused by the previous right-wing government in various economic policy areas, including labour legislation, was put to a test soon after the ascent of the centre-left government in 2006. The new administration moved quickly to restore the coexistence of notice periods and severance payments through Labour Code Amendment 348/2007 that came into effect in September 2007. The same law also put limits on subsequent temporary contracts to promote the prevalence of permanent contracts. Additionally, the Amendment represented an attempt to fight the rapidly-growing share of self-employed workers who, in many cases, could be qualified as cases of bogus self-employment. The aim of the changes was, according to the justification submitted by the sponsors of the act along with the proposal,¹ effectively to restore the balance between the interests of employees and employers.

1. Source: <http://www.epi.sk/dovodova-sprava/Dovodova-sprava-k-zakonu-c-348-2007-Z-z.htm> (in Slovak). Accessed 15 June 2016.

This change of laws was met with staunch resistance from several employer associations. The Business Alliance of Slovakia² (Podnikateľská aliancia Slovenska, PAS), which annually publishes a Business Environment Index (IPP), argued that such a correction to the business model introduced by the previous government would lead to a slowdown in economic growth and high unemployment (PAS 2009). Likewise, the Entrepreneurs Association of Slovakia (Združenie podnikateľov Slovenska, ZPS), a founding member of an umbrella organisation of employers, the National Union of Employers (Republiková únia zamestnávateľov, RUZ), published a statement in which it strongly disagreed with the Labour Code Amendment since it increased labour costs and limited flexibility for employers.³

However, in reality the change in the labour law had no clear effects in terms of increased unemployment. Up until the end of 2008, unemployment kept declining, on average by 0.5 percentage points per quarter, in spite of gross domestic product (GDP) growth grinding to a halt as a result of the collapse in foreign demand due to the outbreak of the Great Recession. Indeed, not only was there no immediate growth in unemployment but employers did not even put a stop on hiring plans (Figure 3).

Figure 3 New job vacancies created



Source: Central Office of Labour, Social Affairs and Family

When, however, companies caught wind of a long and deep crisis, unemployment started growing quickly, increasing by five percentage points over the course of 2009, following an 8.5 per cent quarter-on-quarter fall in Q1 2009. This shows that, even after the 2007 reform, the Slovak labour market remained capable of flexibly adapting to changing circumstances (Fidrmuc *et al.* 2013: 6). Nonetheless, the calls for a return to more

2. PAS is a business lobbying organisation representing influential private sector actors, including Slovak branches of Phillips and Orange Telecommunications Company. It is connected with politicians representing the liberal reformist part of the political spectrum.

3. Source: [http://www.zps.sk/userfiles/file/Stanoviska%20ZPS/Stanovisko%20ZPS%20k%20n%C3%A1vrhu%20novely%20Z%C3%A1konn%C3%ADka%20opr%C3%A1ce%20\(26_%202_%202007\).doc](http://www.zps.sk/userfiles/file/Stanoviska%20ZPS/Stanovisko%20ZPS%20k%20n%C3%A1vrhu%20novely%20Z%C3%A1konn%C3%ADka%20opr%C3%A1ce%20(26_%202_%202007).doc), in Slovak. Accessed 29 August 2016.

flexible labour market regulation definitely grew louder. This argument is supported by the speed of the growth in unemployment, far outpacing the speed of job creation in the good years, in spite of the recession being rather short and shallow (Figure 4). For instance, PAS promoted a rollback of the Labour Code as an anti-crisis measure arguing – quite in contrast with the reality – that employers might hold back on hiring due to fears about the cost of letting workers go in the case of another downturn (PAS 2009).

Up to the June 2010 elections, such calls did not have any effect on policy. Even the right-wing government, in spite of its ideological inclinations, did not move fast to tackle the flexibility of the Labour Code, most likely because the need for change became less clear as the country appeared to have returned to quick growth, both in terms of the decline of unemployment and GDP growth (Figure 4). Instead, its efforts became focused on implementing a major austerity programme.

Figure 4 Quarter-on-quarter change in GDP and unemployment rate, 1998-2015



Source: OECD, own visualisation

The liberalising reform only came in 2011, paradoxically when unemployment was already edging lower due to a quick and robust recovery from recession. The employers, nonetheless, argued that labour market recovery would be much faster with a more flexible labour market regulation (PAS 2011). The so-called 'big Labour Code reform' passed by Act 257/2011 limited eligibility for severance payments only to situations in which a notice period was not feasible because the position had been discontinued or the worker could not continue working for health reasons. This change caused Slovakia briefly to become the country with the most flexible labour market regulation in the region for workers on permanent contracts (Figure 1). At the same time, the regulation of temporary contracts also progressed towards liberalisation, in terms of allowing the chaining of temporary contracts for three years, as opposed to the previously allowed two, but also towards de-liberalisation in the form of regulating agency employment (Figure 2).

To increase labour market flexibility, the 2011 Amendment to the Labour Code also introduced several new forms of employment, such as job sharing, working hours accounts and so-called ‘flexikonto’, allowing for flexible working hours. Flexikonto was commonly used during the crisis period in sectors such as metalworking (especially in the automotive industry), but there are no instances of job sharing in Slovakia despite it being aimed at increasing employment among vulnerable groups, especially employees with young children and students. One of the reasons is the existence and popularity of work agreement contracts that, to a large extent, overshadow other flexible forms (Eurofund 2015). The amendment also allowed for derogations from the Labour Code through collective agreements, for instance to allow the extension of probationary periods (Kahancová *et al.* 2014).

The liberalisation of labour legislation failed to foster job creation. Indeed, as the economy slowed down towards the end of 2012, threatening another recessionary dip, unemployment started growing once again (Figure 4). Politically, the situation also shifted. The left regained power and quickly proceeded to roll back the changes introduced in 2011 with the aim of enhancing employment protection. SMER, led by Robert Fico, aimed at a better balance in employer-employee relations and emphasised consultation with the social partners, all manifested in a memorandum of cooperation with the largest trade union confederation, KOZ SR (Kahancová *et al.* 2014; Kahancová and Sedláková, 2016). LC Amendment No. 361/2012 reintroduced the coexistence of notice periods and severance payments, although only for workers who had been laid-off after at least two years with the same employer. In addition, the amount of severance pay progressively increased up to four months’ pay for workers laid-off after 20 years of tenure.

In addition, Act No. 361/2012 introduced several other important provisions. Regarding temporary agency work, and to prevent hiring on the basis of work agreement contracts, the Amendment stipulated that agencies could hire workers only on the basis of a standard employment contract. Moreover, the government stepped up the fight against precarious work arrangements by specifying a definition of ‘dependent work’ to counter bogus self-employment, which had become a popular way in which employers managed to dodge the responsibilities associated with employing people. According to the Slovak Statistical Office, bogus self-employment accounts for up to one-third of all self-employed people in Slovakia (Kahancová 2016). Changes to fixed-term contracts were also introduced, in fact to revoke previous LC changes (Kahancová *et al.* 2014). The maximum duration for successive flexible contracts was again decreased to two instead of three years – which is significant in Slovakia, as temporary contracts are very rarely used for very short commitments⁴ – and so was the number of renewals of such contracts.

An important further step was the introduction of mandatory social contributions for employees with work agreement contracts, which were considered to be among the most precarious contracts in Slovakia until 2013 (Kahancová and Martišková 2013: 15). Here, the employer was obliged to make a social security contribution of slightly more than

4. Only about one in four temporary contracts in Slovakia lasts for less than six months, according to LFS.

1 per cent of the wage; this was later changed and, with the 2013 Amendment to Act No. 461/2003 on social insurance, work agreement contracts with regular income are subject to the same level of social protection as regular full-time employees (Eurofound 2015).

In spite of the tightening of regulation, economic growth picked up and unemployment started to decrease, although still lagging behind pre-crisis levels.

Table 2 contains an overview of the important legislative changes discussed above. It is evident that, starting with the 2002 centre-right second Dzurinda government, each Slovak administration rushed to unmake the labour regulation changes introduced by its predecessor.

Table 2 The most important Labour Code amendments between 2001 and 2013

Legal act number	Effective from	Subject
		The new Labour Code
ACT NO. 311/2001 COLL.	April 2002	- increased the notice period from two to three months for organisational discharges
ACT NO. 210/2003 COLL.	July 2003	- notice period obligatory only for employers unwilling to pay severance payment - duration of fixed-term contract limited to three years
ACT NO. 348/2007 COLL.	September 2007	- coexistence of notice period and severance payment reintroduced - annual working time for work agreements increased from 300 to 350 hours - definition of 'dependent work'
ACT NO. 257/2011 COLL.	1 September 2011 and 1 January 2012	- increased maximum period for successive fixed-term contracts from two to three years - increased renewals of fixed-term contracts from two to three - new flexible forms of employment introduced (e.g. job sharing) - limited severance payment eligibility to situations when the notice period was not feasible because the position was discontinued or the worker cannot continue working for health reasons
ACT NO. 252/2012 COLL.	1 January 2013	- mandatory social contributions for work agreement contracts - shorter basic statutory notice period from two months to one

The continuing dominance of SMER and the stabilisation of the economy led to a stabilisation of labour law, even though occasional adjustments continued. Of particular note is the government's efforts to lower the taxation of low-income work while simultaneously increasing the minimum wage. Analysis of this policy goes, however, beyond the focus of this chapter.

3. Impact of policy changes on the labour market

Earlier in the chapter, we discussed the centrality of unemployment in the Slovak policy discourse. A quick look at the numbers shows why this was been the case. Slovakia, from the early 1990s, experienced a persistently high unemployment rate. Particularly after the collapse of the authoritarian regime in 1998, the adjustment of the economy was accompanied by unemployment rising from about 13 per cent to almost 20 per cent in 2001. The liberal reform period in the early 2000s coincided with a decline in the unemployment rate to about nine per cent. However, this trend was reversed after the outbreak of the Great Recession and, in 2012, the unemployment rate reached 14 per cent. The current (2016) unemployment rate is declining, but still amounts to 11.5 per cent, a very high level in the European context for a non-southern country. Furthermore, long-term unemployment in Slovakia is particularly high. Currently, 68.4 per cent of unemployed Slovaks have been without work for at least 12 months (Figure 5). Besides structural unemployment, joblessness in Slovakia appears strongly driven by the condition of the global economy; while cyclical unemployment is determined by the high level of dependence of the Slovak economy on foreign direct investment and exports (D'Apice 2014).

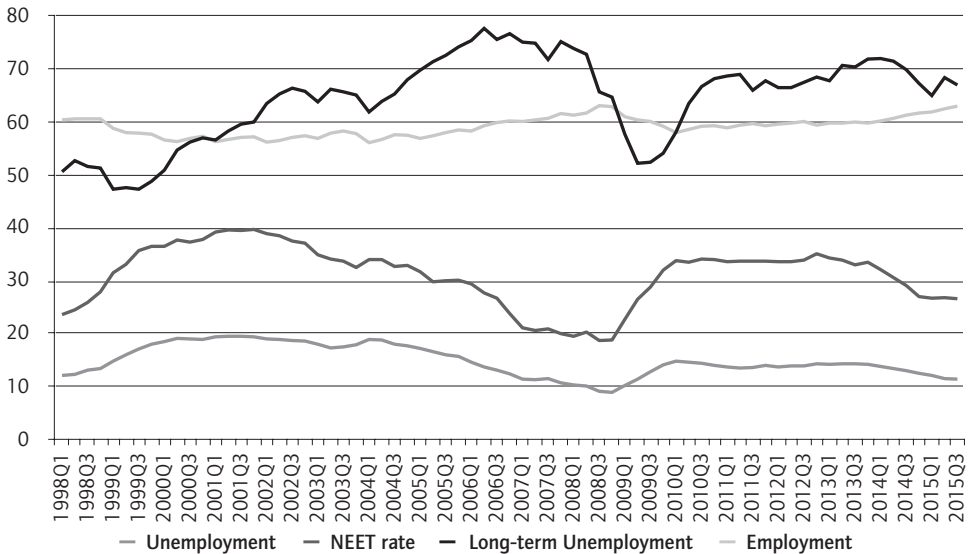
Paradoxically, the only period in which the Slovak labour market showed resilience was at the outbreak of the crisis, right after the government passed a major re-regulation of the Labour Code (Figure 4, see the 2008-2009 period). Nonetheless, it is evident from the previous discussion that all Slovak governments that administered the country during the Great Recession were very keen on passing labour market reforms. According to Kahancová and Martišková (2015), there were ten amendments to the Labour Code in the 2011-2014 period and this figure does not include the six amendments made in 2007-2010. Since 2002, legislative changes to the Labour Code amount altogether to 29 amendments, which demonstrates the importance of the Labour Code in the eyes of the government. Not all the amendments were substantial, but their high frequency over a relatively short period of time further complicates the analysis of any impact that a change in the direction of labour policy might have. Thus, it is no surprise that, as is evident from Figure 4, the unemployment rate tends to be driven by growth while the legislative changes do not seem to have a major impact.

Likewise, the frequent changes in the labour law do not seem to have been able to resolve the problem of the structure of unemployment in Slovakia. In the period of robust growth just before the crisis, the share of long-term unemployed increased to up to 70 per cent. This decreased sharply during the crisis as unemployment spiked, bringing many new 'short-term' unemployed into the statistics, and then went back to 60 per cent and remained at that high level through the recovery. That suggests that, even in the good times, employers shy away from offering jobs to the long-term unemployed.

Youth unemployment (as well as the NEET rate) is another issue in spite of the high levels of enrolment in tertiary education and also, particularly since the country's 2004 EU accession, relatively substantial emigration (Kahanec and Fabo 2013; Fabo and Mudroň 2014). The youth unemployment rate reached its historic low in 2008, of about 18.6 per cent; however, only two years later, it sharply increased to 33.8 per cent. Since

2013 we have seen a positive development and, currently, youth unemployment stands at 23.5 per cent (January 2016). Nevertheless, just like long-term unemployment, the increase in this measure came with the outbreak of the crisis and it had not yet recovered its pre-crisis level (Figure 5).

Figure 5 Unemployment rate for the whole population and for youth (< 25); share of long-term unemployed in the unemployment rate

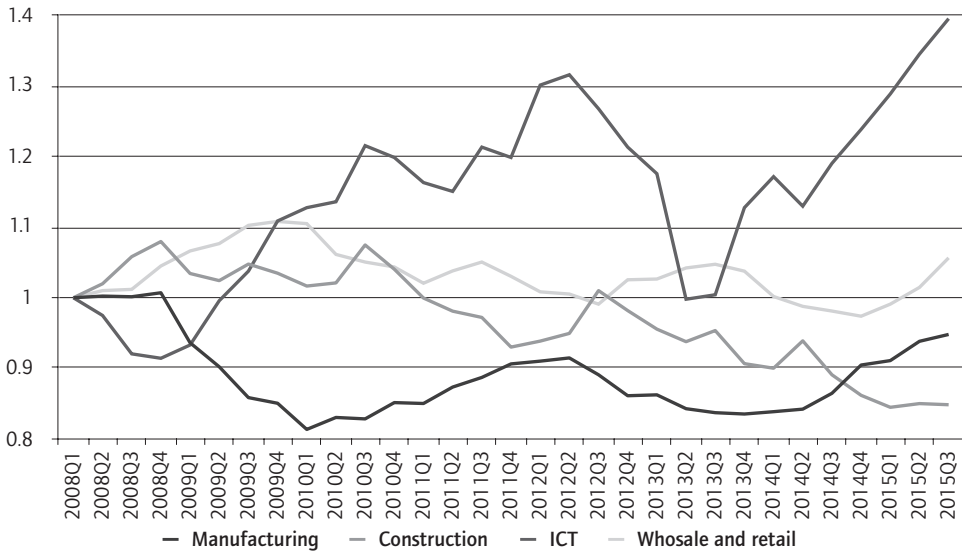


Source: Eurostat, own visualisation

We do not see the legislative changes having any effect on the aggregate level of unemployment. One study makes the theoretical argument that the 2008 reform made it harder for the unemployed to exit unemployment, but it also fails to discover statistically significant empirical support for such a claim (Baboš and Lubyová 2016). Thus, we may conclude that there is very little such evidence. Instead, it appears to be fruitful to consider the structure of the labour market, in particular with regards to the changes caused by the Great Recession. Service sectors were not severely hit by the crisis, while sectors such as manufacturing or construction had not returned to pre-crisis employment levels (Figure 6).

Additionally, it has been pointed out by Toth and Valkova (2015: 17) that Slovak's economy exhibits very little potential for reducing workers' salaries in times of crisis which, the argument suggests, forces companies to decrease costs through lay-offs. This is, curiously, not due to the power of trade unions but to fears of a negative effect on employee morale with a detrimental impact on employee retention. Likewise, this structural shortcoming receives very little attention.

Figure 6 Indexed changes in employment by sector since Q1 2008



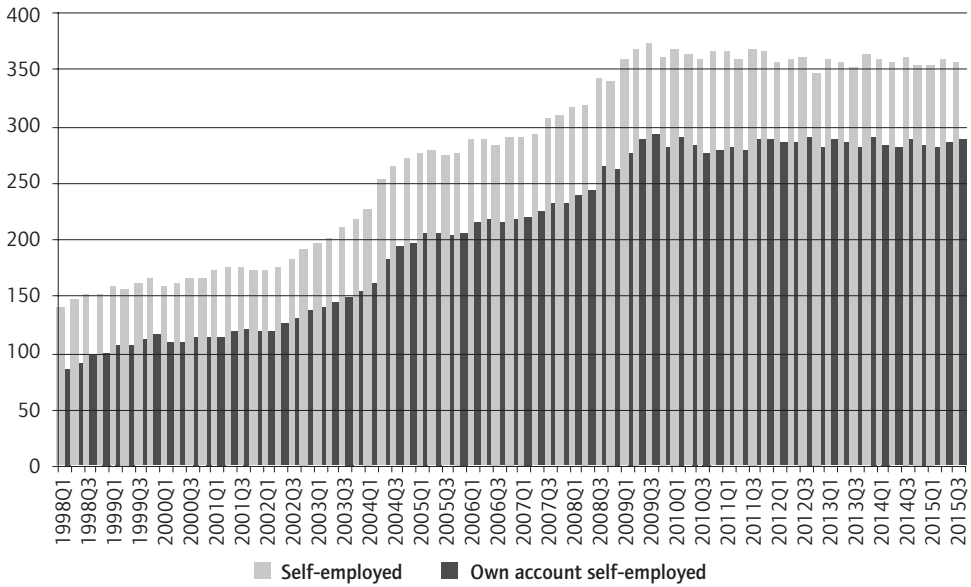
Source: Eurostat

3.1 The rise of atypical forms of employment

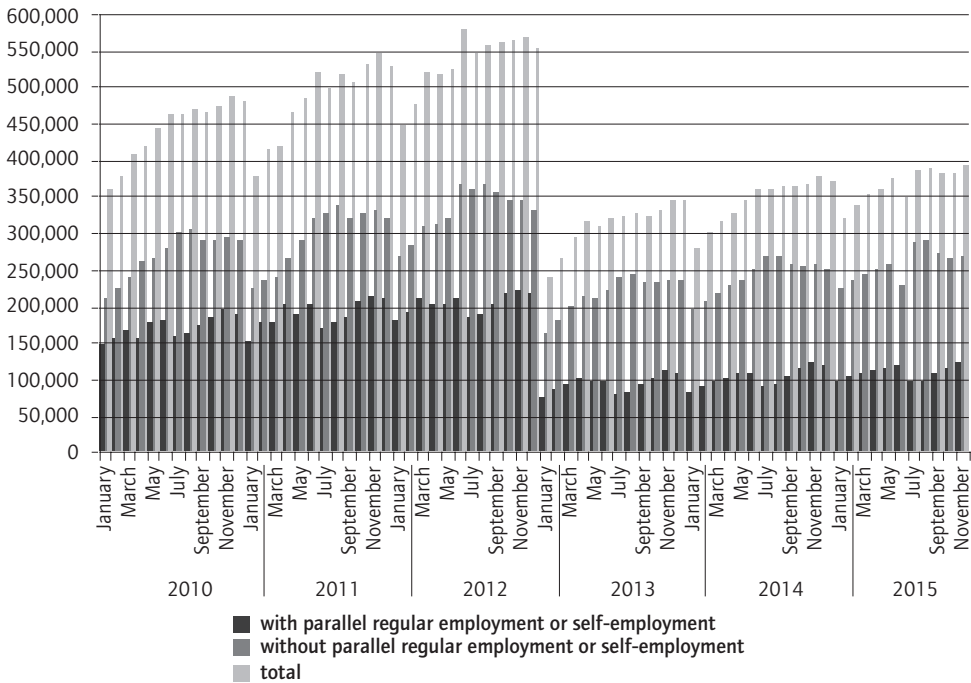
The permissibility of precarious forms of employment became quite a salient topic, both as a way of addressing the structural problems of the labour market and the apparent difficulties of vulnerable groups, such as young people and the long-term unemployed, in accessing the labour market and also as a threat to workers' well-being. Consequentially, the numerous labour market reforms focused on the regulation of non-permanent workers nearly as much as on the rules of dismissal. Here, the rate of success was a mixed bag.

First, the number of all self-employed workers stabilised since the outbreak of the crisis, at about 350 000 people, the majority of them having no staff of their own (Figure 7). However, this is likely to be due to the job destruction caused by the crisis. There is very little evidence that the efforts of the early 2010s to combat bogus self-employment led to a decrease in this practice and, in 2014, a figure of around 100 000 bogus self-employed people was reported by the Slovak Statistical Office (Kahancová 2016). Incomes data show that self-employment is still a common way of avoiding the reporting of income and thus lowering tax and social security obligations – the share of taxes and social contributions paid by the self-employed compared to that paid by employees decreased from 130 per cent to 30 per cent between 1996 and 2014 (Institute for Financial Policy 2014).

Second, the fight against work agreement contracts was more successful. The number visibly decreased after the 2012 reform introducing mandatory social contributions, although it does seem to be picking up again (Figure 8).

Figure 7 Number of all self-employed and self-employed workers without staff

Source: Eurostat

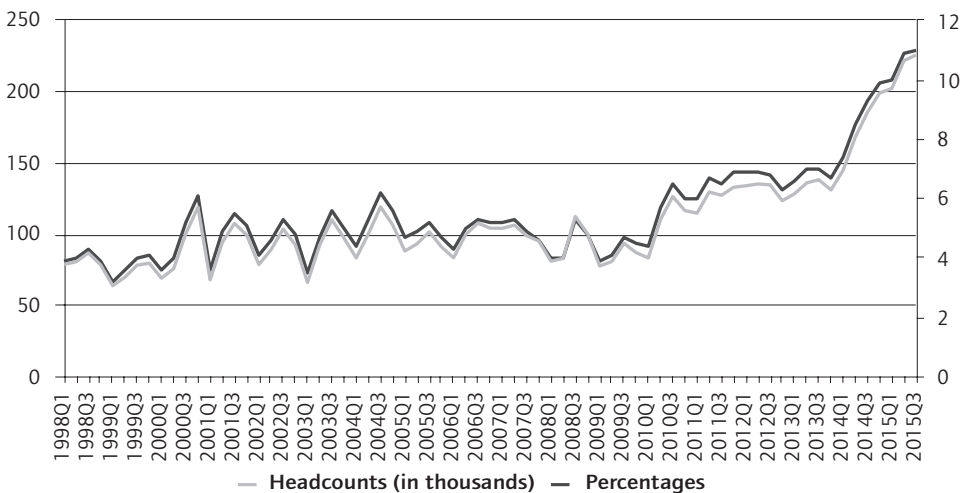
Figure 8 Number of people with work agreements

Source: Slovak Social Security Authority

At the same time, the stagnation in self-employment rates and the decline of work agreement contracts coincided with no immediate growth in total employment but a rather sharp growth in the share of workers on temporary contracts which, in the Eurostat methodology – unfortunately – also extends to work agreements, making it impossible to separate the two types of atypical work arrangements (Figure 9). Rather than signifying a strengthening of the position of permanent work contracts, however, the decline in the number of work agreements is likely simply to reflect their conversion into other legal forms of temporary contract and the combining of regular work contracts with additional work agreements (Dinga 2013). We see these other irregular forms of employment growing with a time lag, which is likely to represent new contracts being signed in place of expired work agreements.

In addition, the growth of temporary work is accompanied by a growth in the number of people whose reason for temporary employment is that they were not able to find a permanent job, rising from 74 per cent in 2008 to 87.3 per cent in 2014 and 86.5 per cent in 2015.⁵

Figure 9 Share of temporary work contracts (including work agreements) in employment



Source: Eurostat

Third, part-time work is not particularly popular among Slovaks and amounts to only about five per cent compared to an EU average of about 20 per cent, but the rise of involuntary part-time employment was continuously observed after 2002. The rise is particularly visible after 2008, when the share of involuntary part-time employment, expressed as a percentage of all part-time employment, increased from 44.6 per cent in 2008 to 61.8 per cent in 2016.⁶ This increase is accompanied by a stable development

5. Source: Eurostat [lfsa_etgar]. Accessed 26 July 2016.

6. Source: OECD, Involuntary part time workers, available at: https://stats.oecd.org/Index.aspx?DataSetCode=INVPT_I#. Accessed 29 August 2016.

in instances of part-time work which, according to Bulla *et al.* (2014), shows that part-time work was not affected by the legislative changes in 2011 that aimed at its increase.

Finally, the regulation of temporary work and TAW agencies was tightened up, although no data are available in regards to the number of people working through agencies. Nevertheless, unofficial data from employers suggest that the TAW sector is growing both in terms of people and in terms of revenues (Bulla *et al.* 2014). Indirect evidence points out that, in spite of the tightening of the legislation, there was no visible decrease in the number of temporary work agencies (Kahancová and Martišková 2015).

To summarise, the rapid changes in labour legislation in Slovakia seem to have had little to no effect on unemployment while the effect in tackling precarious work seems to have been limited and, possibly, temporary. From the presented evidence, we argue that there is no clear effect of legislative changes on GDP growth, employment and unemployment. Instead, employment in Slovakia is more responsive to the business environment and company practice rather than dependent on changes in employment legislation (Kahancová *et al.* 2014). In addition, de-regulation is followed by the rise of non-standard, often precarious forms of employment. The effects on job creation and labour market segmentation are not clear.

The reasons why we cannot establish a clear effect of regulation vs. deregulation efforts are twofold. First, as reflected by the OECD's index, Slovakia is an illustrative example of a country without a continuous labour market policy. Rather, changes are influenced by the political preferences of the prevailing government. In result, aggregate data fail to reflect quick changes to labour market policy. Second, political cycles are also crucial for alliances with the social partners, as outlined below.

4. Flexibility of labour law – political or economic agenda?

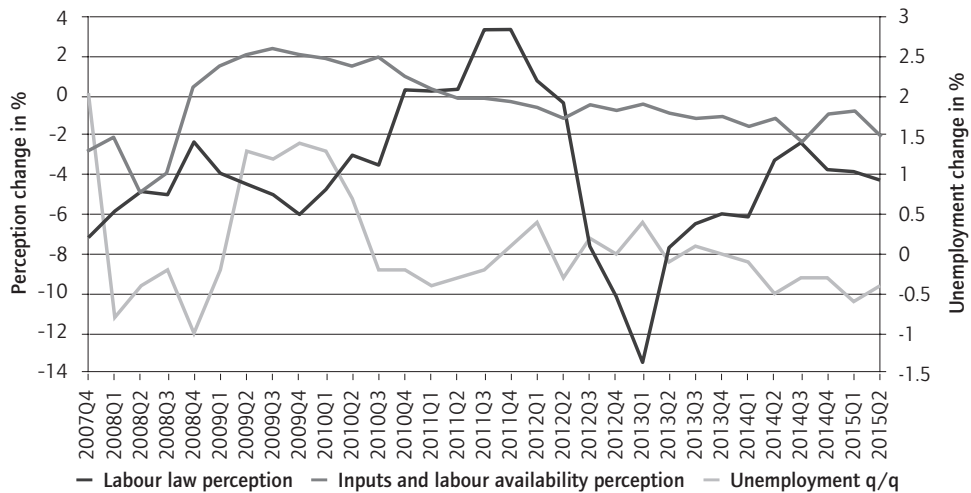
On the margins of the previous discussion was the role of the social partners. At national level, the social partners meet with government representatives at tripartite meetings and, although they do not conclude any legally-binding agreements, such events serve as an important space for discussions about labour legislation. In addition, rather exceptionally for the CEE region, sectoral collective bargaining exists in crucial sectors of the Slovak economy.

Trade unions try actively to influence labour legislation in Slovakia and are, in this sense, political actors. Kahancová and Martišková (2013) illustrate, using the example of precarious work, that the first instinct of Slovak trade unions is always to use their leverage on the government to pass legal changes in line with their policies. The success of their lobbying activities (Drahokoupil and Kahancová, 2017) depends to a large extent on the political cycle and the political agenda of the current government. This focus on shaping legislation, where law and politics play a crucial role, is characteristic of a static model of industrial relations (c.f. Kohl and Platzer 2003; Kohl and Platzer 2007; Kahancová and Sedláková 2016). Collective actions typical of trade unions in other

countries, such as strikes, are very rare and limited to the public sector.⁷ Trade union coverage was historically at a very high level, due to the specificities of the socialist regime, but collapsed to just 32 per cent in 2011 (Voss *et al.* 2015). The sharp decline in membership further closes the trade union window of opportunity for collective action, making a strategy of lobbying the government increasingly necessary.

Meanwhile, as illustrated in the previous debate, employers engage in similar tactics, attempting to lobby for labour law liberalisation by making arguments to policy-makers that labour market flexibility is good for economic growth and job creation.

Figure 10 Quarter-on-quarter changes in perceptions of labour law favourability, inputs and labour availability and unemployment



Note: 'Labour law perception': the share of respondents that are satisfied with the influence of labour law on the business environment, expressed as a percentage.

'Inputs and labour availability perception': the share of respondents that are satisfied with the influence of the quality and the accessibility of primary inputs (the labour force) on the business environment, expressed as a percentage. Data are extracted from the Business Environment Index (IPP), calculated by PAS, which monitors changes in the business environment in Slovakia. Entrepreneurs evaluate the improvement or deterioration during the reporting period in three main areas: 1) the influence of the main components of the legislative and regulatory framework on business 2) the influence of other significant external macroeconomic factors on business and 3) the influence of the company on the quality of the business environment. Base period for calculating IPP is 1 July 2001 with the benchmark index of 100 points.

Source: PAS and Eurostat

Interestingly enough, this political stance is not necessarily reflected in employers' actions. The results of the regular quarterly survey of members of PAS (Figure 10) shows that employers' perceptions of the availability of inputs, including labour, is quite highly correlated with unemployment. In other words, employers seem to be very realistic when it comes to evaluating the situation on the market. At the same time, however, their perceptions of labour law go through much more radical upwards and downwards swings which do not seem to be in any way related to the pace of job creation, which was

7. Based on ILOSTAT data on number of strikes and lockouts by economic activity, available at: www.ilo.org/ilostat

generally quite stable after the outbreak of the crisis. Rather, their perceptions correlate with the changes introduced to the Labour Code, and their pessimism is especially visible when re-regulation occurred, most notably after the 2012 changes introduced by the social democratic government. Therefore, we would argue that perceived labour market flexibility is not reflected in employers' practices (more hiring and more permanent contracts), at least as far as standard employment arrangements are concerned.

5. Conclusion

We argue that the story of Slovakia shows that legislative changes and policies are not necessarily the main driver of job creation and destruction in the environment of a very open economy, whose well-being largely depends on the fortunes of global capital. Attempt after attempt by politicians from the right to inject a new dynamism into job creation by making it easier to fire people and introducing new forms of employment failed to have an immediate, measurable impact on the aggregate level. The unemployment rate tends, meanwhile, to follow the economic fundamentals closely.

Similarly, the left likewise struggled meaningfully and durably to tackle precariousness in the labour market, which increased since the outbreak of the crisis and which remains at a heightened level in spite of the rapid change of policy on temporary contracts, from the most liberal in the region to one that is, along with the Polish, the most restrictive. The effects of these changes appear to be limited over time and mostly shift precarious work from one form to another rather than expand the creation of permanent jobs.

Table 3 summarises the most important developments and their apparent effects.

Table 3 Overview of changes in Slovak labour market regulation and the apparent effect of these changes

Direction	Legislative changes	Main aim	Apparent effect
Liberalisation	Liberalisation of LC introduced by Law 210/2003 and the 257/2011 reform	To increase appetite for hiring by making it easier to dismiss workers	The reforms in early 2000s, including LC reform, were credited with launching a period of very fast growth of the economy and of employment. Nonetheless, this happened in the time of a great economic boom; therefore, it remains unknown if such a trajectory could be sustained in crisis times. Besides, the subsequent re-regulation of the LC did not seem to decrease the appetite for hiring until the effects of the crisis manifested themselves. The 2011 Amendment was abandoned shortly after coming into effect.
Re-regulation	Re-regulation of LC under 348/2007 and 361/2012	To counter the changes introduced by liberal reforms of the LC and to fight against precarious employment	The increase in protection for workers did not seem to have any negative effects on aggregate employment. Nonetheless, the efforts to fight precarious employment seem to have led merely into changes in the forms of such practices rather than their elimination.

In light of this, it is surprising how much both trade unions and employers focus on influencing legislation as a key to influencing the functioning of the labour market. This is particularly puzzling in the case of employers, whose perception of labour law does not appear to be related at all to job creation, although their association continues to

lobby the government heavily for liberalisation. Meanwhile, important issues such as an unsatisfactory education structure and skill mismatch remain ignored by all the industrial relations actors in the country.

Therefore, our conclusion to the Slovak story is that, in spite of the high ideological politicisation of the labour market discourse, policy changes are not what primarily drives employment. Labour legislation does indeed play a crucial role in shaping the individual working conditions of employees, but the Slovak story shows that policy itself does not prevent the rise of precarious types of contracts or employees feeling that working under non-standard contracts is, to a large extent, not their choice. The frequent changes to the Labour Code that Slovakia regularly experiences thus amount more to a political demonstration of different governments of their alliances with the social partners than to evidence-based policy-making.

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Chapter 7

Temporary employment, unemployment and employment protection legislation in Poland

Piotr Lewandowski and Iga Magda

1. Introduction

Temporary employment has risen substantially in Poland since the early 2000s, while the share of workers with open-ended contracts has declined. Between 2002 and 2014, net employment in Poland increased by 2.07 million workers. This growth was spurred by the country's strong macroeconomic performance and the rising educational attainment of the Polish workforce. However, almost the entire employment increase can be attributed to gains in temporary employment, which grew by 1.97 million workers. Employment under permanent contracts fluctuated at around 12.1 million during that period. The growth in temporary employment in Poland – both in absolute terms and as a share of total employment – started during the recession of the early 2000s, which was characterised by unemployment rates of over 20 per cent,¹ and continued after macroeconomic conditions improved around 2004. The incidence of temporary contracts continued to rise up to 2007 and then stabilised at around 20–22 per cent of total employment (27–28 per cent of dependent employment) in 2008–2013. In 2014, Poland was the country with the highest share of temporary workers in the EU (22.0 per cent of total employment, 28.3 per cent of dependent employment). In parallel, the unemployment rate in Poland declined substantially in the 2000s, from 20.2 per cent in 2002 to 7.2 per cent in 2008. It rose again during the Great Recession, but it peaked at about half the level it had reached a decade earlier.

However, in Poland – unlike in, for example, Spain in the 1980s – the rise in the incidence of temporary employment was not triggered by any substantial regulatory changes. Importantly, temporary contracts in Poland are heterogeneous themselves and include arrangements with various degrees of regulation. Moreover, some forms – civil law contracts – imply lower total tax wedge which translates into a lower total cost for employers and / or higher net earnings for workers. To understand the interplay between the incidence of temporary employment, unemployment and regulation in Poland, it is crucial to account for the heterogeneity of temporary contracts and look at regulations beyond employment protection legislation.

In this chapter, we discuss regulation and the incentives to use particular types of temporary employment in Poland. We present the evolution of their incidence between the early 2000s and middle 2010s and we identify the groups of workers who are the

1. The question on temporary employment status was first introduced in the Polish LFS in 2002. Previously, the distinction was between regular work and casual work. Therefore, the data in these two periods are not comparable, and we analyse the incidence of temporary employment only from 2002 onwards.

most affected by this process. Using Polish LFS data, we also conduct a flow analysis which allows us to measure worker transitions between unemployment, temporary and permanent employment. Additionally, we discuss the role of state and the public sector in undermining employment standards and contributing to the high incidence of temporary employment becoming a new normal in Poland. We conclude with a summary of findings and an assessment of the policy initiatives taken in Poland, so far unsuccessfully, to reduce the incidence of temporary employment.

2. Non-standard employment in Poland

2.1 Types of non-standard employment in Poland

There are three main types of non-standard employment forms in Poland: fixed-term employment contracts based on the Labour Code (henceforth FTC); civil law contracts (not based on the Labour Code); and employment through temporary work agencies (henceforth TWAs). TWAs are regulated by a separate act but, in principle, they should provide workers with the social security and minimum wage guarantees mandated under the Labour Code. In this chapter, when using the term “temporary contracts” we refer to the sum of these three types of contract. Table 1 summarises the most important features of the various types of employment and civil law contract. Below we discuss them in more detail. Changes in the structure of employment under the various types of contract are analysed in section 3, which discusses the doubling of the incidence of temporary contracts (FTC, TWA and civil law contracts) between 2002 and 2014.

2.1.1 Fixed-term employment contracts

Of the non-standard employment forms in Poland, fixed-term employment contracts (FTC) are the most regulated. However, a fixed-term employment contract can be terminated by an employer without justification. Permanent employees’ contracts can be terminated only if a just cause (as defined in the Labour Code) is given. For years, notice periods were also shorter for FTCs than for permanent contracts but, since 22 February 2016, the notice periods for both types of contract are identical. The shorter notice period and the ability to terminate a contract without justification have resulted in employers abusing FTCs: in 2012, 25 per cent of workers employed under an FTC had a tenure in the current workplace of over four years (Structure of Earnings Survey data). The rules pertaining to social security contributions and the minimum wage coverage of FTCs are identical to those for open-ended contracts.

2.1.2 Civil law contracts

Civil law contracts are work arrangements that are not regulated in the Labour Code and thus do not provide employees with any protections or rights guaranteed by the Labour Code. This is the first reason why employers find them attractive. The other reason is related to the lower tax wedge associated with these contracts that stem from various regulations on social security contributions.

The two types of civil law contracts that are used most frequently in Poland are the contract to perform specified work (*umowa o dzieło*) and the contract of mandate

(*umowa zlecenie*). A contract to perform specified work must specify a particular outcome (tangible or intangible) that a contractor is expected to deliver. A contract of mandate can be used when the contractor provides a service but there is no requirement to specify an outcome.²

Table 1 Features of various employment contracts in Poland

Benefits and rights of workers	Labour Code contracts		Civil-law contracts	
	Permanent	Fixed-term (FTC)	Contract of mandate (<i>umowa zlecenie</i>)	Contract to perform specified work (<i>umowa o dzieło</i>)
Social security benefits	Yes	Yes	Yes, but can be relatively low	No
Health insurance	Yes	Yes	Yes	No
Paid leave	Yes	Yes	No (upon agreement)	No (upon agreement)
Minimum wage requirement	Yes	Yes	No	No
Period of notice	Yes*	Yes, but was shorter than in PLC until 2016	Upon agreement	Upon agreement
Justification for terminating contract	Yes	No	No	No
Severance pay	Yes**	Yes**	Upon agreement	No
Employment (millions of workers)				
2002	12.26	0.94	0.58***	
2012	12.37	2.45	1.04***	

* The length of the notice period depends on length of service in the enterprise. There are three statutory notice periods in Poland: two weeks if the worker has been employed for less than six months; one month if the worker has been employed between six months and three years; and three months if the worker has been employed for three years or more.

** The amount of severance pay depends on length of service in the enterprise. Workers employed for less than two years are entitled to severance pay equal to one month's salary; workers employed between two and eight years are entitled to severance pay of two months' salary; and workers employed for more than eight years are entitled to severance pay equal to three months' salary. Regulations regarding severance pay apply irrespective of the type of contract.

*** In the available data, both types of civil law contracts are presented jointly.

Source: own elaboration based on Gatti *et al.* (2014), LFS and Polish Ministry of Finance data

An employer who hires a worker under a contract to perform specified work is not required to make any social security contributions (SSC) or health insurance contributions on behalf of the worker. The worker is only required to pay personal income tax. The size of the tax depends on whether the contract involves a transfer of copyright related to the outcome.³ In 2015, the income tax effectively ranged from 6.3 per cent to 14.1 per cent of the total labour cost for gross pay between PLN 1 750 and PLN 15 000 per month. In contrast, for an employment contract (both open-ended and fixed-term), the total tax wedge, including social security contributions, was much higher, ranging from 39.3 per cent to 42.7 per cent in the same wage bracket. An employer who hires a worker under a contract of mandate may also be required to make social security contributions

2. However, the interpretation and the enforcement of this rule can be lax. For instance, the Polish Supreme Court ruling from 18 September 2013 stated that painting a company office can be contracted as specific work (outcome), even though this task intuitively seems to represent a service.
3. Taxation is lower if the author (contractor) transfers copyright to the contractee. Copyright may apply to a spectrum of creative, intellectual and artistic works.

on behalf of the worker. Until 2015, if the contract of mandate was the worker's only source of social insurance, all the worker's SSC had to be paid. The resulting tax wedge equalled 33.3 per cent to 37.6 per cent of total labour costs (in the same wage bracket). However, the parties have often tried to reduce the total tax wedge by using a clause that stipulates that, if the worker has another source of social insurance — e.g. from an employment contract, from another contract of mandate, or from being a student aged up to 26 years — then the employer is not obliged to make any SSC in conjunction with the contract in question.⁴ Thus, a worker earning the minimum wage from an employment contract and additional income from a contract of mandate faced a tax wedge of between 27.6 per cent and 35.7 per cent of gross pay between PLN 1 750 and PLN 15 000 per month. In sum, the tax wedge is lowest for the contract to perform specified work, followed by contracts of mandate and by employment contracts.

Until 2017 the minimum wage was not binding on either type of civil law contract. Not surprisingly, the wages of civil law contract workers are relatively low.⁵ Furthermore, an individual who is working under a civil contract is not entitled to paid leave, sick leave, severance pay or maternity leave (unless the worker voluntarily made the sickness contributions that are obligatory for workers under Labour Code contracts). Likewise, the notice period is not guaranteed (though it can be stated in the agreement). The Civil Code does not restrict the number of civil contracts a worker can enter into with a given employer, so individuals may be trapped into signing a series of civil contracts over a long period of time. Finally, individuals who work under civil contracts could not become members of trade unions — this rule was declared unconstitutional by the Constitutional Tribunal in 2015 but, at the time of writing, the right of civil law contractors to join unions has not been legally implemented by the government.⁶

2.1.3 Temporary work agencies

The law that regulates the activities of TWAs in Poland was enacted in 2003. TWAs operate on the basis of a standard tripartite relationship: between a TWA, an employee and a user-employer. TWAs provide user-employers with workforce flexibility, lower labour costs and lower risks related to job mismatch. From the perspective of the worker, however, employment through a TWA is inherently precarious. The regulations that apply to TWA employment in Poland appear to be strict (and stricter than in many other EU countries) but they are, in practice, fairly loose. The law states that temporary agency work must be (i) seasonal/ transitory; or (ii) involve the performance of tasks that cannot be completed on time by the user's permanent employees; or (iii) involve the performance of tasks otherwise performed by a permanent employee who is temporarily absent. The law also requires that workers are employed under fixed-term

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4. In January 2016, more strict regulations regarding the SSC contributions required under contracts of mandate were introduced.
 5. This in turn translates into lower future pensions in the Polish defined contribution pension scheme. Lewandowski *et al.* (2015) estimate that workers born in the early 1980s who entered the labour market under a civil law contract are expected to receive a pension that is on average 17 per cent lower than that of their peers who entered the labour market under a permanent employment contract.
 6. The constitution guarantees the freedom to start and to operate a trade union (art. 12). However, this right was long interpreted as applying to employees only. The Constitutional Tribunal ruled in 2015 that a worker who is employed under a civil law contract also has the right to join a trade union. However, at the time of writing in October 2016, the law on trade unions has not yet been changed in line with that ruling.

employment contracts or employment contracts for the duration of a particular job (but still fall under the Labour Code). However, in comparison to a standard employment contract, this TWA-specific contract has a shorter notice period and less generous provisions regarding holidays, parental leave, etc. Poland also imposes limits on the length of time an individual can perform temporary work for a particular end-user firm (a maximum of 18 months over a period of 36 months, or of 36 months consecutively if the temporary agency worker is replacing an absent employee). However, this rule can be circumvented by moving the worker to another agency that serves the same end-user firm. Thus, many TWA workers may, in fact, work in a single position for a prolonged period of time. According to estimates by PFHR (2015), a Polish TWA association, only around 15 per cent of TWA workers are hired as permanent employees.

There are TWA-specific employment contracts, but the agencies can also circumvent some restrictions – in particular, the 18 month limit – by hiring workers under civil law contracts. The use of civil law contracts has become even more widespread among TWAs than in the overall economy. In 2004, according to the annual reports of the Ministry of Labour and Social Affairs, civil law workers accounted for 36 per cent of all individuals employed by TWAs but, by 2014, this figure had risen by 20 percentage points (MPiPS 2015). The majority of workers on civil law contracts accumulate no social security contributions and do not benefit from the legal protections that apply to permanent workers, such as rules regarding notice periods, paid leave, working hours or wage discrimination.

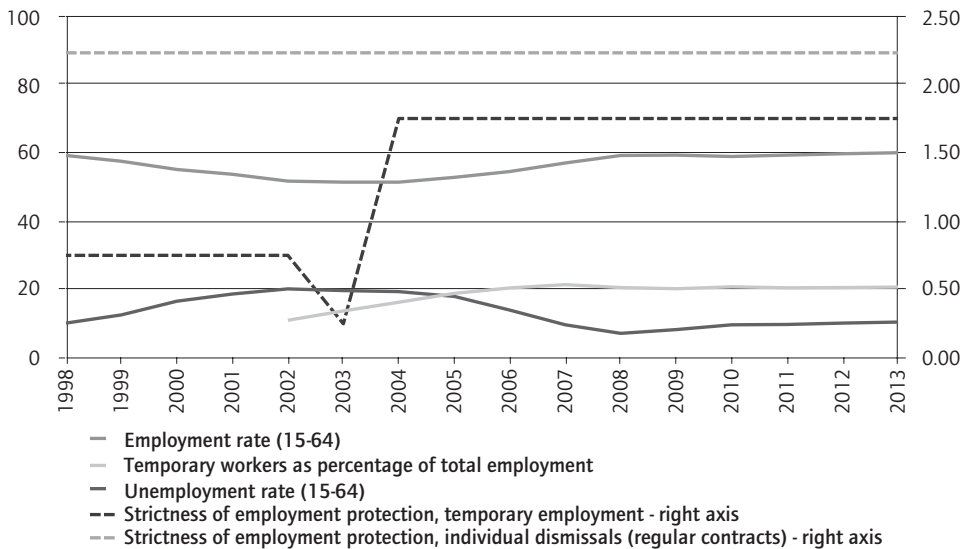
The potential to hire temporary workers may be abused by firms seeking to lower their labour costs, in part by reducing their social security contributions. For some firms, using TWAs may constitute a backdoor form of outsourcing. The weakness of the TWA market is reflected in its structure: there is a large number of small agencies (in 2013, 40 per cent of the 5 100 employment agencies operated as self-employed or micro businesses); and their turnover is high (which increases the risk that social security contributions will not be paid and adds to the already-high degree of employment volatility associated with temporary work). The proliferation of small TWAs is enabled by the very low barriers of entry to this market.

2.2 The evolution of the regulatory environment

The changes in Polish labour law introduced between the late 1990s and the early 2010s were minor modifications rather than substantial reforms. This is confirmed by quantitative measures of employment protection. Figure 1 shows that the strictness of the regulation of permanent contracts, as reflected by the OECD indicators of employment protection legislation (EPL), has not changed since the late 1990s. The regulation of temporary contracts was temporarily loosened in 2002 and was then tightened again from 2004 onwards. This short-lived loosening of the rules resulted from the brief removal of limitations on the number of renewals of fixed-term contracts. Before 2002, employers were permitted to renew a FTC with a given individual only twice, after which the employment contract had to be converted into an open-ended contract if it was renewed immediately. The change introduced in 2003 allowed the

unlimited renewal of fixed-term contracts, but this was valid only until EU accession in 2004. After Poland joined the EU, new regulations were introduced that stated that employers are permitted to enter into only two fixed-term contracts with a single worker and that the third FTC automatically converts to an open-ended contract if signed within one month of the expiry of a previous contract. This development led to an increase in EPL regarding temporary contracts in 2005. Between 2004 and 2013, no more important changes were made to the hiring and firing rules that apply to temporary contracts. None of the law changes in Poland increased the gap between the regulation of permanent and the regulation of temporary contracts, which has been shown to be a crucial determinant of labour market segmentation in countries such as Spain (Dolado *et al.* 2002).

Figure 1 Labour market indicators (left axis) and index of strictness of employment protection on temporary employment (right axis) for Poland in 1998–2013



Source: own elaboration based on EU-LFS, Eurostat and OECD EPL data

Table 2 summarises the regulatory changes between 2002 and 2015. There was no clear-cut tendency towards increasing or decreasing the strictness of labour regulation over this period. Generally, there was a trend towards loosening labour regulation in the early 2000s and towards tightening it from 2003 onwards. Besides the changes already discussed, regulations regarding the procedural aspects of severance payments and notice periods were tightened in 2003, while the regulation of collective dismissals was loosened. Important changes were introduced in 2014 and 2015. Employers are now obliged to make social security contributions on behalf of all workers contracted under a contract of mandate. The rules regarding FTC renewals were also tightened. Furthermore, on 22 July 2016 the parliament passed a bill aimed at expanding minimum wage coverage to civil law contracts.

Table 2 Main changes in the Labour Code in Poland between 2002 and 2015

Year	Implementation year	Policy field	Direction
2002	2003	Collective dismissals	Decreasing
2002	2002	Maximum duration of fixed-term contracts	Decreasing
2002	2003	Procedural requirements	Decreasing
2003	2004	Collective dismissals	Increasing
2003	2003	Maximum number of renewals of fixed-term contracts	Decreasing
2003	2003	Notice and severance payments	Increasing
2003	2004	Temporary agency work	Increasing
2004	2004	Maximum number of renewals of fixed-term contracts	Increasing
2013	2013	Large-scale deregulation (250 professions)	Decreasing
2014	2016	Social contributions for all contracts of mandate	Increasing
2015	2016	Maximum total duration and renewals of FTCs	Increasing

Source: own elaboration based on LABREF

The employment protection indices do not account for some facets of Poland's labour laws and broader regulatory framework that are central to the use of non-standard work in Poland. Among the concerns that have been raised about the OECD EPL index, discussed in the chapter by Myant and Brandhuber, this volume, the most important for Poland are related to the construction of the temporary employment regulation sub-index; the non-coverage of some workers; interactions between employment protection and other institutions; and imperfect enforcement.

The main caveat regarding the construction of the EPL indicator on temporary employment as it applies to the Polish regulation is that the EPL indicator does not take into account rules regarding the premature termination of an FTC. In Poland, a fixed-term employment contract, unlike an open-ended contract, can be terminated by an employer without justification. Until 2016, the notice period for terminating a fixed-term contract was shorter than for terminating an open-ended contract. It is much easier for Polish employers to terminate a fixed-term contract than an open-ended contract, so employers have incentives to use FTCs that are not reflected in the EPL indicator.

Non-coverage is also an issue. All of the key components of the Labour Code (i.e. those defining employment protection) apply to all firms regardless of size or sector, but workers employed under a civil law contract are not covered at all by the Labour Code provisions. In 2014, approximately one million workers (out of a total of approximately 16 million) in Poland were working under a civil law contract and thus were not covered by key components of the employment protection legislation. The lenient regulations pertaining to this category of contract workers are not reflected in the EPL index at all.

Interactions between employment protection and other labour market institutions also matter. Workers who work under a civil law contract pay lower social security contributions than permanent employees who earn the same wage. Thus, both employers (because their total employment costs are lower) and workers (because they earn a higher net income) have financial incentives to use these contracts. The use of civil law contracts is especially common in low-wage segments of the labour market

because social security contributions constitute most of the total tax wedge on low wages (Arak *et al.* 2014). Civil law contracts are not covered by the minimum wage, which was increased substantially between 2007 and 2014. It is therefore possible that civil law contracts are used by firms as a way to pay workers less than the minimum wage. The available data do not allow verification of how many workers on civil law contracts have been paid less than the minimum wage (or its full-time equivalent). However, Goraus and Lewandowski (2016) have found that Poland is the only Central and Eastern European country where minimum wage violations among temporary workers (a category that includes workers on civil law contracts) noticeably affect the overall incidence of minimum wage violations.

Table 3 Labour inspection indicators in Poland, average for 2009-2015

Inspectors per 10,000 employed persons		Labour inspection visits per inspector	
Poland	1.3	Poland	50
EU median	0.8	EU median	107
EU average	1.0	EU average	129

Source: own elaboration based on LABREF

Finally, enforcement is an issue. Another example of the misuse of civil law contracts is relevant in this context. The Labour Code specifies that, if a civil law contract is used to employ an individual who is doing a job that meets the criteria of an employment relationship, the civil law contract should be converted into an employment contract. According to the Chief Labour Inspectorate's annual reports, labour inspectors investigated the validity of 13 040 civil law contracts in 2015, 3 482 (27 per cent) of which were converted into employment contracts. In 2014, there were 14 028 such cases and 3 525 (25 per cent) conversions; while in 2013, there were 8 751 such cases and 3 313 (38 per cent) conversions. Data from the Ministry of Finance show that the number of individuals whose incomes were derived solely from civil law contracts amounted to 0.97 million in 2013 and 1.04 million in 2014 and 2015. The number of controls thus seems to be far from sufficient. Table 3 indicates that the number of labour inspectors per 10 000 workers in Poland is above the European median and average. However, the number of inspection visits per inspector is far below the European median and average. This suggests that there are inefficiencies in the organisation of the labour inspection process. In 2015, several media outlets conducted interviews with labour inspectors (Ćwieluch 2015, Rozwadowska 2015). These interviews revealed that the organisation of the system incentivises inspectors to focus on small infringements, punishes them for not meeting targets for the number of fines imposed per month and encourages them to avoid serious cases that would need to be resolved by the labour courts.

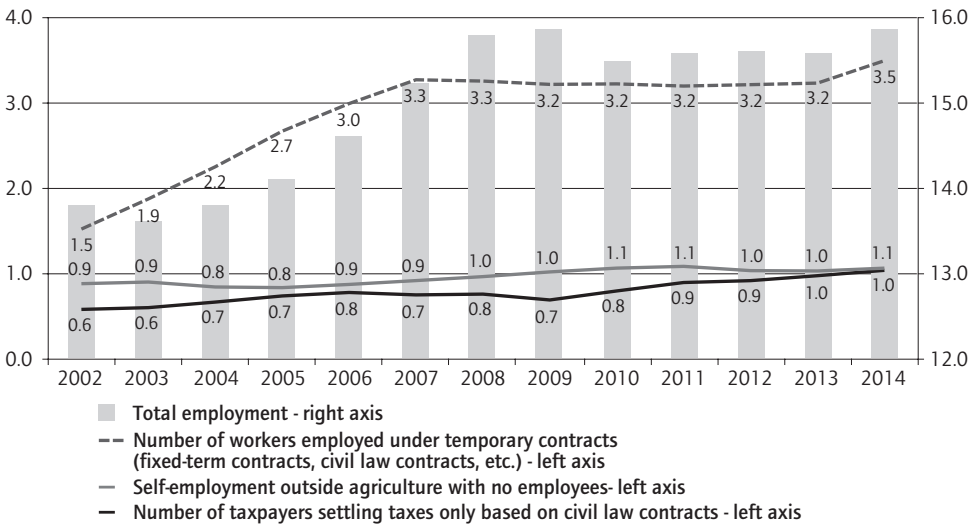
3. The growth in temporary employment in Poland

3.1 Who are the temporary workers in Poland?

Between 2002 and 2014, the total number of temporary workers in Poland more than doubled, from 1.5 million in 2002 to 3.5 million in 2014 (Figure 2). This was partly fuelled by the increase in the incidence of civil law contracts. According to data from the Ministry of Finance, 1.04 million people in Poland were working solely under a civil law contract in 2014, up from 580 000 in 2002. Unfortunately, due to the lack of appropriate information from the LFS,⁷ it is impossible to identify the socio-demographic groups who were most likely to engage with this form of employment. However, based on Polish Social Security Institution (ZUS) data, Lewandowski *et al.* (2015) found that contracts of mandate were most prevalent among younger workers and women.

Employment through TWAs also rose (Figure 3). According to the Ministry of Labour data, the number of people working through TWAs more than quadrupled between 2004 (167 000 workers) and 2014 (700 000). Women constituted a majority of TWA workers: of all workers employed through a TWA between 2008 and 2014, an average of 55 per cent were women (own estimate based on LFS data). Women constituted a minority of all workers (45 per cent on average between 2008 and 2014); thus, women were clearly more likely to have been working through TWAs than men.

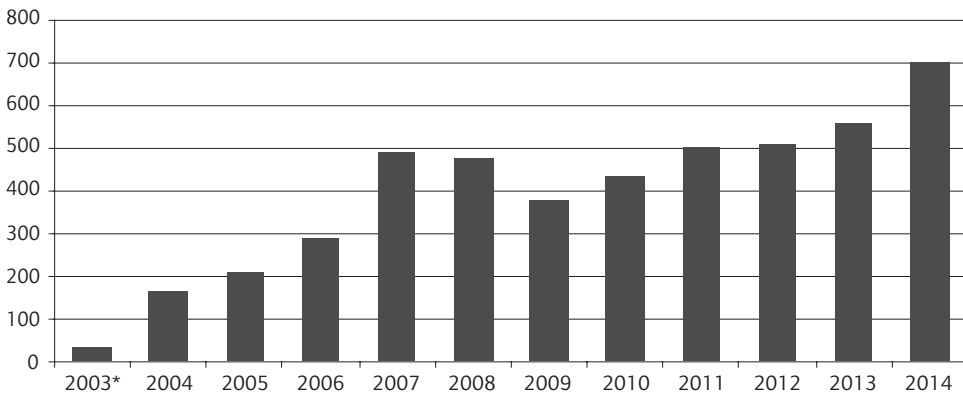
Figure 2 Numbers of persons working under various contracts in 2002–2014 (in millions)



Source: own elaboration based on LFS and Ministry of Finance data

7. In the Labour Force Survey, respondents are not asked about the type of temporary contract under which they are employed (i.e. whether it is a fixed-term or a civil law contract). On the other hand, the Structure of Earnings Survey data cover only individuals employed under an employment contract (either fixed-term or open-ended).

Figure 3 Numbers of persons employed through TWAs between 2003-2014 (in thousands)



* In the first year in which TWAs were operating, not all entities were obliged to report temporary work; hence, the number of TWAs in 2003 is probably underestimated.

Source: own elaboration based on "Informacja o działalności agencji zatrudnienia w 2014r."

Temporary employment has become widespread among all age and educational groups, yet the most intensive growth in temporary employment indicators has occurred among individuals aged 20-29 (Lewandowski *et al.* 2015). Approximately 294 000 people aged 20-29 were working under a temporary contract in 2000, yet this figure had risen to more than 1.35 million by 2006. In absolute terms, the temporary employment level among young adults aged 20-29 reached its peak in 2007 (more than 1.4 million) and then slightly decreased during and in the aftermath of the Great Recession (to 1.34 million in 2014). Between 2003 and 2007, an average of 48 per cent of the women and 44 per cent of the men working under a temporary contract were aged 20-29 but, by 2011-2014, these shares had dropped to 40 per cent for both sexes (Figures 4-5). On the other hand, the share of people aged 30-39 in total temporary employment increased (from 20 per cent in 2000 to 29 per cent in 2014). Of all age groups, workers aged 30-39 experienced the second highest level of growth in temporary employment. The increasing incidence of temporary employment has affected not just people in the early years of their career, but older adults as well. In 2014, for example, nearly one in three temporary workers (32 per cent of male and 30 per cent of female temporary workers) was aged 40-64.

Temporary workers also tend to be less educated than permanent employees. Figure 6 presents the structure of open-ended and temporary employment by education. In 2014, tertiary education graduates accounted for 25 per cent of all temporary workers and for 39 per cent of all permanent workers (LFS data). The shares of people with post-secondary or vocational secondary education were comparable in both groups of workers (26 per cent of temporary workers, 27 per cent of permanent workers). The breakdown of less-educated workers in temporary versus permanent employment by highest educational attainment is as follows: 13 per cent versus 8 per cent with secondary education; 28 per cent versus 23 per cent with basic vocational education; and 9 per cent versus 3 per cent with primary education (2014 LFS data). These patterns are reflected in statistics showing how often workers with particular educational levels tend to work

under a permanent or a temporary contract. Of all workers with tertiary education (excluding agriculture), up to 80 per cent were employed under an open-ended contract in 2014. This share was significantly lower for workers in other educational groups, particularly for those with only primary or lower secondary education. The least-skilled workers, or those with primary or lower secondary education only, were equally likely to be in temporary or permanent employment in 2014.

Figure 4 Temporary employment structure by age group in the period 2000-2014, women (per cent)

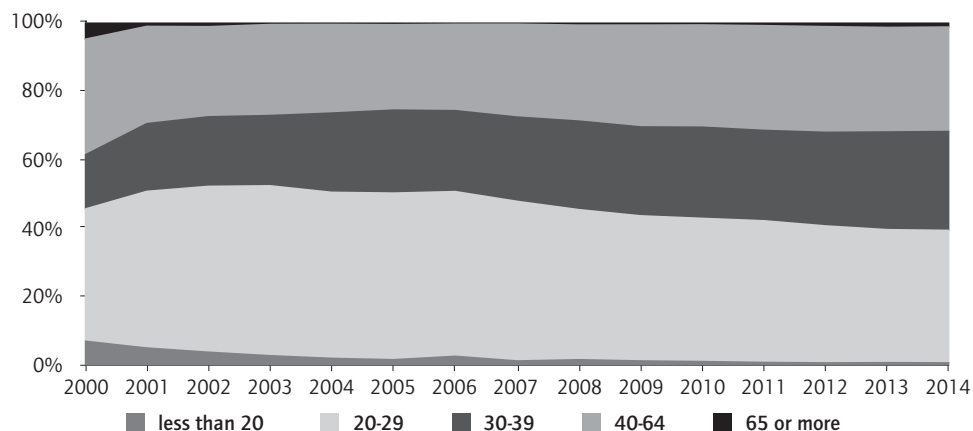
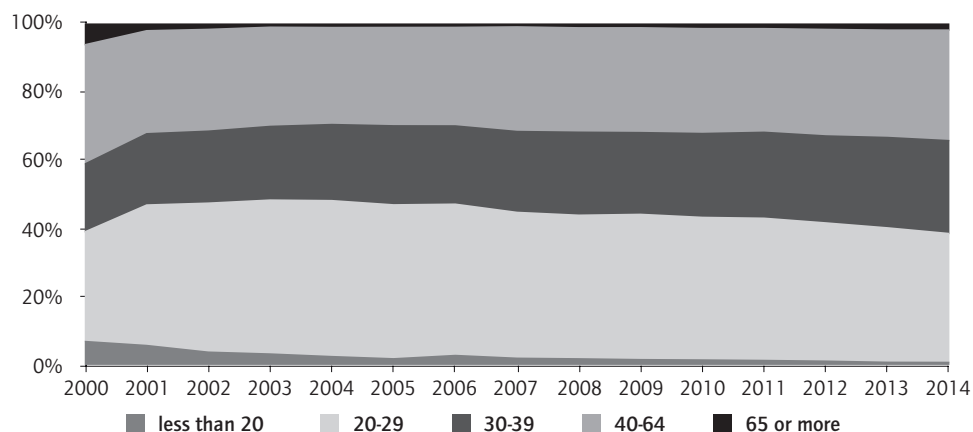
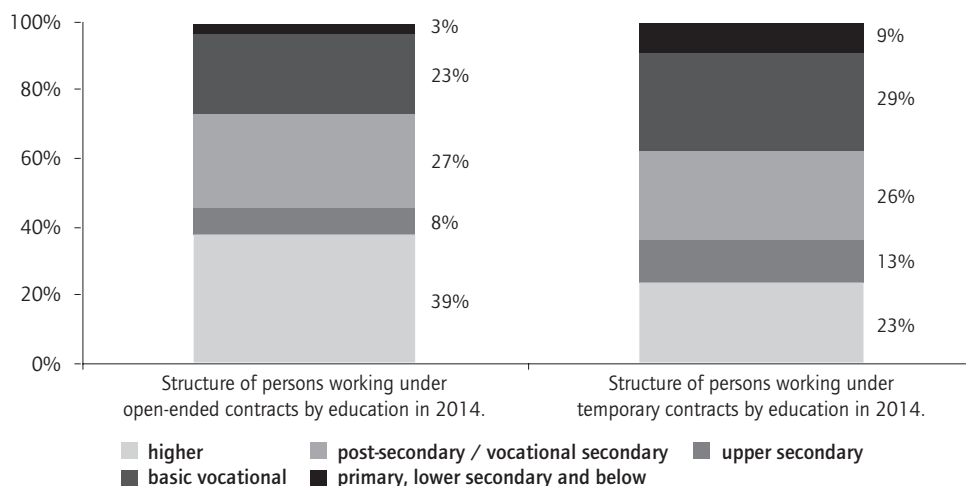


Figure 5 Temporary employment structure by age group in the period 2000-2014, men (per cent)



Source: own calculations based on LFS individual data (Figures 4-5)

Figure 6 **Structure of permanent and temporary workers in Poland by education in 2014 (per cent)**



Source: own calculations based on LFS individual data

3.2 Flows between permanent, temporary employment and unemployment

The assessment of the economic and the social impact of widespread temporary employment largely depends on whether a temporary employment spell is a stepping stone to permanent employment or is a dead end. It also depends on who are the workers occupying temporary jobs; i.e. whether they were previously in permanent employment but were downgraded, or whether they were previously unemployed and were entering employment. We cannot fully answer these questions because the data available allow us to analyse labour market flows only over a single year (with the LFS data), whereas career transitions from joblessness to temporary and permanent employment tend to take place over longer periods. Nevertheless, we can shed light on these issues via an analysis of one-year transitions between unemployment, inactivity and various forms of work.

Table 4 **Yearly labour market flows of people aged 15-64 in Poland, average 2003-2014 (per cent)**

t \ t + 1	Permanent Employment	Temporary Employment	Self-employment	Unemployment	Inactivity
Permanent Employment	94.0	1.5	0.6	1.3	2.6
Temporary Employment	15.5	70.5	1.2	7.2	5.6
Self-employment	1.0	1.2	94.7	0.8	2.2
Unemployment	4.2	18.7	2.4	56.6	18.1
Inactivity	0.9	2.9	0.6	3.1	92.4

Source: own calculations based on Polish LFS data

Figure 7 Labour market flows from temporary employment in Poland, 2003-2014, people aged 15-64 (per cent)

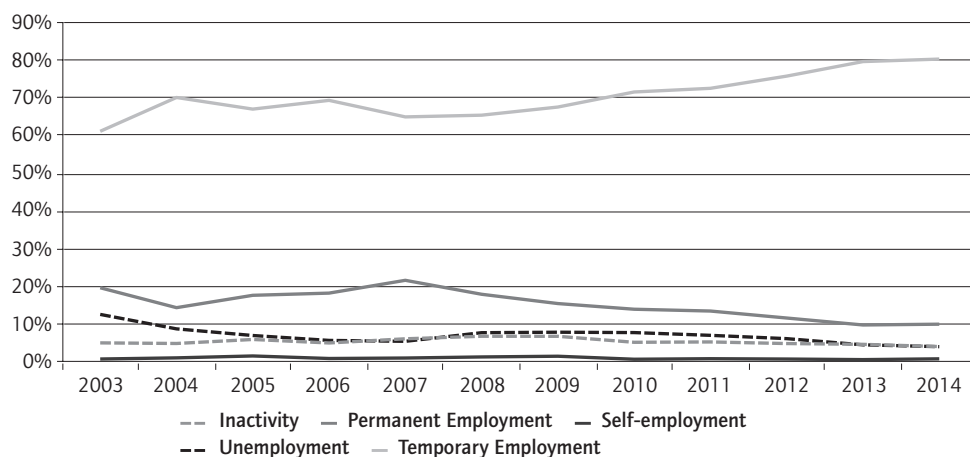
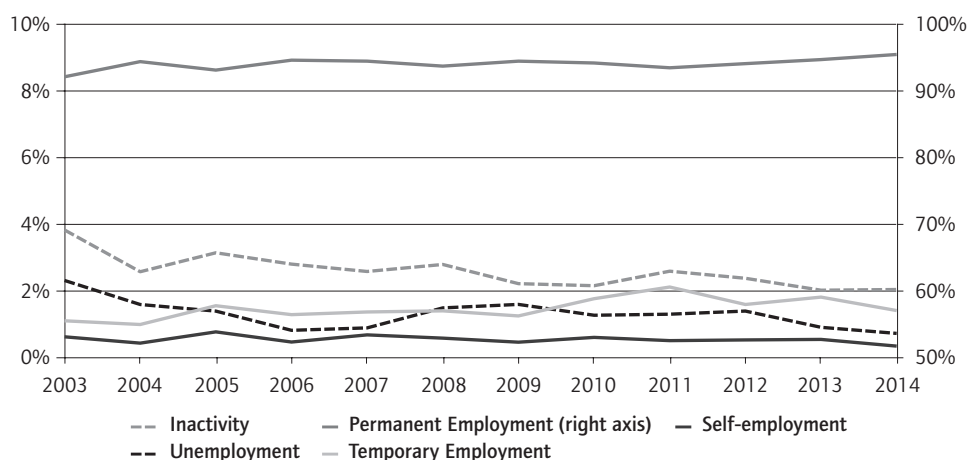


Figure 8 Labour market flows from permanent employment in Poland, 2003-2014, people aged 15-64 (per cent)



Source: own calculations based on Polish LFS data (Figures 7-8)

The flows of workers between permanent and temporary employment in Poland were relatively limited.⁸ Table 4 shows that, on average in 2003-2014, 94 per cent of workers with a permanent contract retained their status one year later, and 1.5 per cent had moved to a temporary job; while 70 per cent of temporary workers remained in a temporary job one year later, and 15 per cent had moved to permanent employment. The fraction of workers remaining in a temporary job one year after the survey (though not necessarily in the same job) rose from 61 per cent in 2003 to 80 per cent in 2014

8. Data issues have meant that, when analysing labour market flows, we have had to group fixed-term contracts, civil law contracts and temporary agency work into a single category of temporary workers.

Figure 9 Labour market flows from unemployment in Poland, 2003-2014, people aged 15-64 (per cent)

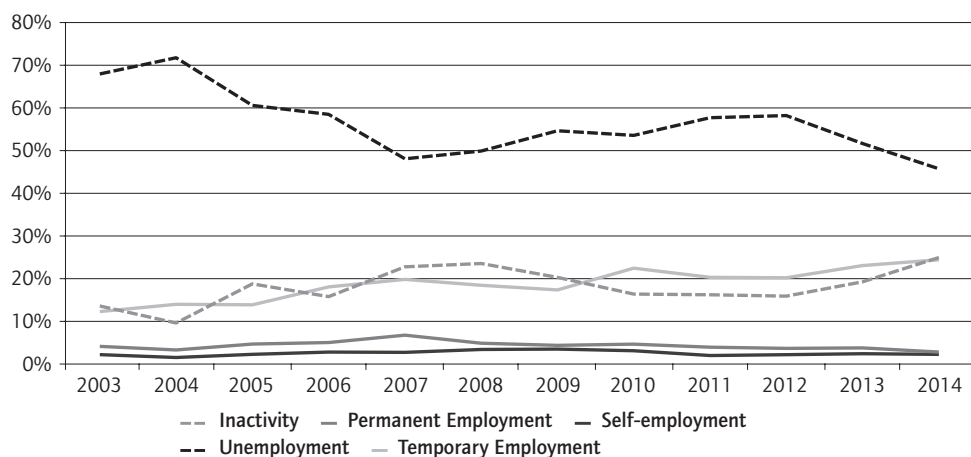
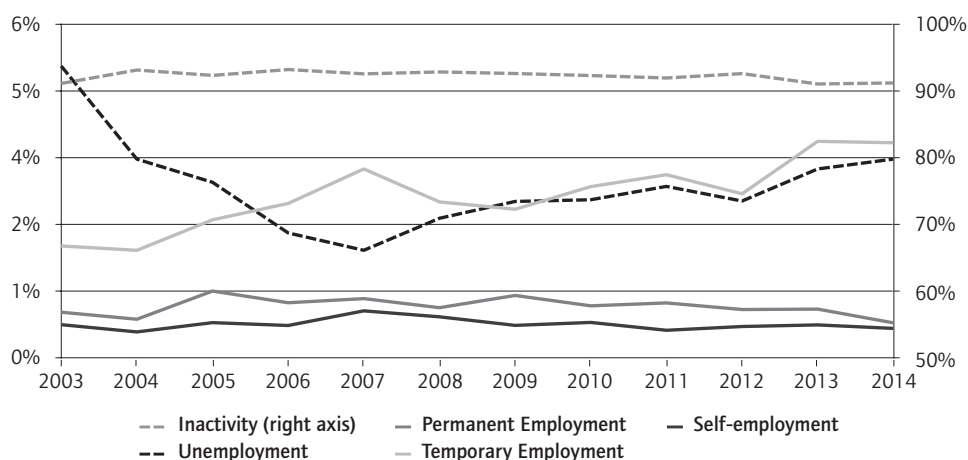


Figure 10 Labour market flows from inactivity in Poland, 2003-2014, people aged 15-64 (per cent)



Source: own calculations based on Polish LFS data (Figures 9-10)

(Figure 7). Together with the increase in the pool of temporary workers, this trend translates into a significant growth in the number of temporary workers who had the same temporary worker status one year previously (which indicates that they remained in a temporary job for at least one year). This number grew threefold between 2004 and 2014, from 0.7 million to 2.1 million, with the steepest increase occurring between 2007 and 2012. The flows from temporary to permanent employment averaged 15 per cent in 2003-2014. On average in 2003-2014, the largest flows from temporary to permanent jobs (18 per cent) were among the 25-34 age group, while the smallest flows were among the 55-64 age group (10 per cent). The incidence of flows from temporary to permanent employment declined over time, from approximately 17 per cent in the early 2000s to

approximately 11 per cent in the early 2010s. Transitions to open-ended employment declined for all age groups, but most significantly among workers aged 15-24 and 25-34.

At the same time, temporary jobs were becoming increasingly important for transitions from unemployment to employment. This does not mean that, if there were no temporary jobs, the unemployed who took them would have been unable to find another job. However, there is also no reason to believe that these individuals would have found permanent employment in the absence of temporary jobs. What is clearly visible in the data is that more unemployed people found temporary jobs than permanent jobs (Figure 9). Between 2003 and 2014, the yearly flows from unemployment to permanent employment oscillated between 3 per cent and 7 per cent, at an average of 4 per cent. Over the same period, the yearly flows from unemployment to temporary jobs were much higher and increasing, rising from 12 per cent in 2003 to 24 per cent in 2014; and involved an average of 19 per cent of the unemployed (Table 4). On the other hand, flows from temporary employment to unemployment decreased from 13 per cent in 2003 to 4 per cent in 2014, which was related to the unemployment rate decreasing substantially over this period. Meanwhile, flows to unemployment affected between 1 per cent and 2 per cent of workers with permanent contracts (Figure 9), depending on the overall macroeconomic conditions.

Flows from inactivity to temporary employment were also more common than flows to permanent employment (on average in 2003-2014: 3 per cent to temporary and 1 per cent to permanent jobs, cf. Table 4).⁹ The largest flows from inactivity to temporary jobs involved young people. On average in 2003-2014, 7 per cent of inactive people aged 25-34 found a temporary job, compared to 4 per cent of inactive people aged 35-44. The fraction of inactive people aged 25-34 who moved to a temporary job was the highest in 2013, but only 4 per cent of inactive people aged 25-34 found a permanent job in that year. This suggests that, for jobless people, temporary employment was an important avenue to employment.

This flow analysis shows that temporary employment in Poland grew primarily because increasing numbers of people remained in a temporary job for more than one year. Furthermore, the incidence of temporary employment grew and it became an increasingly absorbing segment of the labour market: in 2014, 80 per cent of temporary workers were still in a temporary job one year later, while the remaining 20 per cent were almost as likely to have become jobless as to have upgraded to a permanent contract.

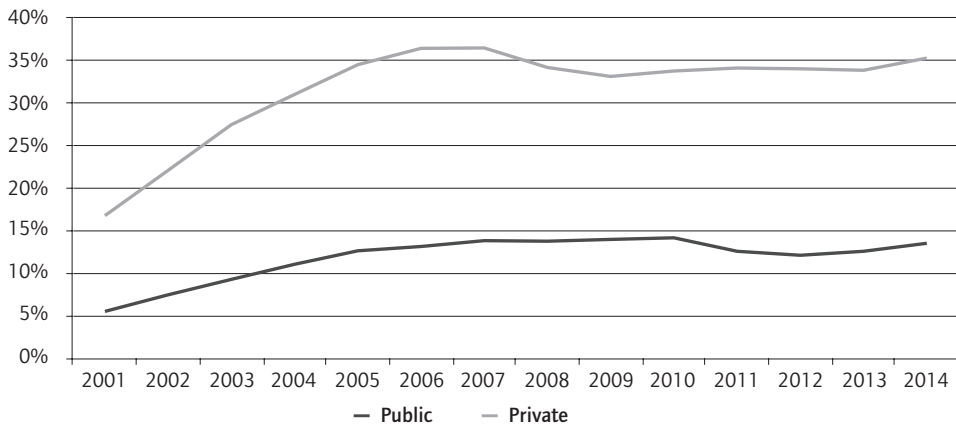
4. State role in undermining employment standards

The incidence of temporary jobs in the public sector has been consistently lower than in the private sector (Figure 11), but the state and the public sector have played important roles in increasing the incidence of temporary jobs and in changing public perceptions of non-standard employment forms. The share of temporary workers in public sector

9. Flows from temporary employment to inactivity were stable over time and involved an average of 6 per cent of temporary workers (Table 4).

employment nearly tripled between 2001 and 2014. This rising trend reflected the practice of hiring new workers under a fixed-term contract, but also under a civil law contract (NIK 2010). The latter practice gradually became widespread in the public administrative agencies, largely because local and central administrative offices were seeking not to increase, or even reduce, their payroll (NIK 2015). For instance, in 2012 the Ministry of Labour and Social Policy employed 14 per cent of its workforce under civil law contracts; a share that was substantially higher than the national average of 6 per cent in 2012 (Pawłowska 2012). The rising incidence and acceptance of employment under a civil law contract in public administrative agencies, state-owned companies and universities contributed to the perception that these arrangements represented a ‘new normal’ in labour relations. This trend, in turn, is likely to have increased workers’ acceptance of such arrangements.

Figure 11 Incidence of temporary jobs in the private and public sectors in Poland, 2001-2014, per cent of paid employment



Source: own calculations based on Polish LFS data

The shift in the regulation of public procurement represents another example of the state’s role in undermining employment standards. Public sector institutions began to outsource cleaning and security services to the private sector but paid no attention to the quality of employment offered by subcontractors. Even worse, they actually indirectly encouraged contractors to contract workers on precarious contracts (with no social security contributions or minimum wage protection) by using the lowest price as the only selection criterion (UOKIK 2013: 35-39, 61-62). Duda (2016: 14-16) showed how the practice of *lean government* led to the outsourcing of large numbers of auxiliary government workers (in services, mainly cleaning and surveillance) to private companies in the mid-2000s and at the beginning of the 2010s, and that this practice led to a significant deterioration in conditions for these workers. They became much more likely to lose their job (or to leave their job due to the difficulties they encountered) and to be employed under a civil law contract with no, or a minimum level of, social security contributions. The lowest price criterion was inherent in the concept of *lean government*, which was supposed to reduce the operational costs of public administration.

Attempts (in 2014) to change the public procurement system so that price was no longer the sole criterion used were unsuccessful: the additional criteria (such as ‘encouraging subcontractors to hire employees under labour contracts’) that were introduced were not obligatory and most institutions did not use them.¹⁰ Public companies, public universities, and local and regional governments continued to evaluate contractors’ bids on the basis only of price. Duda (2016, p. 32-33) found that in just seven out of 30 public institutions she analysed, the tenders included special clauses that required contractors to hire workers under permanent employment contracts. Moreover, in three out of these seven cases, the contractors circumvented the rules in a number of ways by, for example, employing workers part-time (e.g. 1/8 of full-time) and paying the remaining wages under civil law contracts for which social security contributions or compliance with the minimum wage was not required. Indeed, she found that, in some cases, workers were being paid 50 per cent less than the minimum wage and that, in other cases, managers were employed as ‘cleaning workers’ in order to meet the employment contract targets.

Public sector employees whose jobs were outsourced to the private sector were often transferred to a new company (in line with the Labour Code regulations), but they had the right to retain the same working conditions (contracts, wages, working time) for a certain period of time only, usually one year. Afterwards, most firms changed the working conditions, usually by terminating open-ended employment contracts and offering civil law contracts instead, reducing employees’ wages and increasing the workload (Duda 2016). In addition to increasing the level of precariousness in this segment of the labour market, these practices led to concerns being raised about health and safety among both workers and public sector clients (e.g. in hospitals or courts where cleaning and security tasks were outsourced).

The case of the restructuring of the Polish public broadcaster, TVP SA, offers another example of how the new, lower employment standards were shaped in the public sector. In 2014, TVP transferred approximately 16 per cent of its workforce (journalists, editors, make-up artists and graphic designers) to a private firm, with a year-long guarantee of unchanged employment conditions. According to an official resolution of the TVP board, it was also anticipated that many of the outsourced employees would continue working, but as self-employed individuals (NIK 2014). This move was aimed at reducing the costs related to paid absence (such as sick leave) and social security contributions. After the guaranteed employment period expired, most employees were not offered new contracts and their relationship with TVP was terminated.

Moreover, in several public services, fixed-term employment contracts have been introduced as the default contract type for entrants. This practice is especially prevalent in the public education system, in which apprentices (the first career stage for graduates) and so-called contract teachers (second stage) are employed on fixed-term contracts. In 2014, there were approximately 140 000 individuals occupying such positions. The

10. The 2016 reform also aims at reducing the number of civil law contracts used by contractors by introducing a requirement that Labour Code contracts must be used ‘if the jobs fall under a category of paid employment’. However, it is not clear if – and, if so, how – these rules will be enforced (<http://prawo.gazetaprawna.pl/artykuly/963426,koniec-przetargowego-paralizu-nowelizacja-odblokuje-zamowienia-publiczne.html>).

other important group is that of university teachers: except for tenured professors, all university lecturers and professors are employed under fixed-term contracts. In 2014, about 75 000 belonged to this group. The third important group is made up of resident doctors, who are employed by hospitals on fixed-term contracts during the period of their career known as specialisation practice. In 2014, there were approximately 10 000 resident doctors and apprentices (also on temporary contracts) in the public healthcare system. In total in 2014, the public sector employed approximately 225 000 temporary workers in early career stages in respected professions such as teaching and as professors and doctors. Working in a temporary position can be an appropriate approach to building a career path in academia or healthcare, but it is also possible that this widespread practice has contributed to the increase in public acceptance of the use of temporary contracts.

Ultimately, these various actions and measures undertaken in the public sector all appear to have contributed to the weakening of employment standards, the proliferation in the use of non-standard jobs and the evolution of their perception by labour market actors.

5. Conclusions

In the early 2000s, an unemployment rate above 20 per cent constituted the main labour market concern in Poland. By the late 2000s, this rate had declined to single-digit figures but most of the new jobs that led to this reduction in unemployment were temporary. Virtually all of the net employment growth between 2002 and 2014 in Poland was in temporary employment and its share in total employment became the highest in the EU. The incidence of both fixed-term and civil law employment contracts increased. Civil law contracts are especially precarious as they are not covered by the Labour Code. These contracts can be terminated without cause or a notice period, and those employed under them may not receive full social security contributions and are not covered by the minimum wage. The issue of precarious employment has replaced unemployment as the most pressing labour market challenge in Poland. The growing incidence of employment with no, or very low, social security contributions aggravates the problems of the healthcare and pension systems and offers rather gloomy prospects to precarious workers, many of whom will find it difficult to accrue even the minimum level of old-age pension benefits.

Importantly, there was no single reform of the regulatory framework that could have triggered the increase in the incidence of non-standard employment in Poland. This distinguishes Poland's experiences from those of countries like Spain, where temporary employment grew in response to employment protection reforms that made it easier for employers to hire workers under temporary contracts. Despite the drawbacks of the OECD Employment Protection Legislation index, the story it tells about regulation in Poland is largely accurate: there were no legal changes that substantially changed the incentives to use temporary contracts and that can be identified as the culprits behind the temporary employment boom. Instead, there was a gradual increase in the use of temporary job contracts and civil law contracts, while minor regulatory changes sometimes loosened, but sometimes tightened, the regulations regarding temporary employment.

It appears that the boom in temporary contracts was fuelled both by the cost competitiveness strategies used by employers to minimise labour costs and the increasing weakness of the state. Employers took advantage of the very lenient rules governing these arrangements, including the ease of termination under fixed-term contracts, the limited social security contributions required under civil law contracts and the almost non-existent bureaucratic burden associated with civil law contracts. The state failed to enforce the existing regulations in full (such as non-compliance with the requirement to employ workers under Labour Code-based contracts), while weak and ineffectual labour inspectorates were ill-prepared to cope with abuses. Public administrative agencies and the public sector in general also helped to undermine employment standards. First, the public sector increasingly employed workers under civil contracts and outsourced support jobs to private firms that competed for contracts by minimising personnel costs and shifting workers to cheaper civil law contracts. Second, the public sector employed all entry-level workers in education and healthcare under fixed-term contracts, a practice that may have had spillover effects on public acceptance of temporary contracts. Finally, collective bargaining was largely decentralised. The partners involved in the Tripartite Social Dialogue Commission (which ceased its activities in 2014 and was dissolved in 2015) had low levels of workforce coverage and their activities were weakly coordinated. These developments have led to a further deterioration in labour's position and bargaining power in the workplace, and have hindered any attempts to create a concerted policy agenda that would seek a new balance between the demands of employers for flexibility and cost effectiveness, the demands of workers for secure and high-quality jobs and the demands of the unemployed for good job employment prospects.

In the current debates, a number of ideas for improving this situation have been proposed, including closing the existing loopholes in the law by increasing the social security contribution requirements associated with civil law contracts and providing civil law contractors with hourly minimum wage protection. Yet, we believe these ideas have two main drawbacks. The first drawback is related to enforcement. Enforcing the existing regulations has already been shown to be problematic in Poland and successfully implementing new policies could thus be even more challenging. The second drawback is that these measures could represent a *de facto* legitimisation of the use of civil law contracts as a regular substitute for permanent employment contracts. Higher social security contributions, the right to join unions and minimum wage coverage are all valuable provisions but, even if they are enacted, workers on civil law contracts would still have no contract termination protections or a guaranteed right to paid holidays or sick leave. Blurring the line between Labour Code-based contracts and civil law contracts by improving levels of social security or minimum wage coverage may create the illusion that serious progress is being made and may actually hamper further reforms aimed at increasing the job security of civil law contract workers.

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Chapter 8

The atypical and gendered 'employment miracle' in Germany: a result of employment protection reforms or long-term structural changes?

Karen Jaehrling

1. Introduction

Unlike in other countries, the 'Great Recession' has not intensified the growth in atypical employment in Germany; in fact, the last few years even saw a slight decrease. However, this has barely changed the high levels of income inequality and labour market segmentation which had evolved in the years before the crisis. The current situation is therefore characterised by novel labour market structures in which a high level of atypical employment and precariousness co-exist with an all-time high for the level of employment. According to the view shared by most observers, Germany is thereby a long way from a more inclusive employment model that, up until the 1990s, used to be a defining feature for large parts of the national economy.

Despite these ambiguous developments in long-term perspective, the resilience of the German economy in the face of the crisis and continuous employment growth against European trends has made the German employment system a role model in political reform debates across Europe in the aftermath of the crisis. The 'Hartz' reforms at the beginning of the 2000s feature as an important element of the new employment-friendly institutional environment in Germany that helped to buffer the effects of the crisis. In this reading, the reforms – much in line with the OECD's 1994 Jobs Strategy – have removed barriers to job creation to the benefit of labour market outsiders. The asymmetrical relaxation of employment protection legislation has, however, given rise to critical assessments, including by the OECD itself, pointing to consequential limits on upward mobility for non-permanent workers who remain trapped in insecure jobs, and to negative effects for social cohesion (OECD 2006; OECD 2014).

Against the background of these ambiguous and partly contradictory evaluations it is therefore of particular relevance to assess empirically what factors have contributed to the novel labour market structure in Germany and how the costs and benefits of this change are distributed. The following analysis aims to show that this requires taking account of the *wider institutional environment* of employment protection reforms and both to acknowledge the impact of *long-term structural changes* on the labour market and analyse how they are amplified or mitigated by forms of employment protection.

Taking stock of the available literature and statistics, it is shown, firstly, that the 'employment miracle' that started in the mid-2000s was predominantly based on a growth of 'atypical employment', not least as a result of institutional reforms (section 3). By contrast, the reforms were of rather little importance to one long-term trend that has contributed strongly to employment expansion, namely the growth of part-time jobs in

female-dominated quasi-public industries – a trend that has been largely ignored by most reviews of the ‘German job miracle’ (section 4). Finally, section 5 looks at available evidence on the upwards mobility of non-standard employees and discusses potential explanations for the obviously rather limited ‘stepping stone’ effect of atypical jobs. To start with, however, section 2 gives a brief overview of the most important changes in the institutional environment, including employment protection reforms.

2. Asymmetrical employment protection reforms and their wider institutional environment

Germany is among the countries with the most polarised employment protection legislation, according to the OECD EPL index. Traditionally high restrictions on the individual and collective dismissal of employees with regular contracts have remained virtually unchanged, but the EPL index value for employees with a temporary contract has dropped considerably since the mid-1990s (see the Introduction chapter by Myant and Piasna in this volume). Table 1 summarises the most important legislative changes. It confirms that there have already been substantial relaxations in the use of fixed-term and temporary agency contracts since the mid-1980s. The reforms at the beginning of the 2000s have brought about the further deregulation of temp agency work in particular, as well as the introduction of mini-jobs.

The apparent stability for employees on regular, open-ended contracts conceals important changes for this group, however. At the legislative level, the most important reform was to raise the firm-size threshold for the application of dismissal protection law from five to ten full-time equivalent employees. The result is that an additional 10 per cent of dependent employees were thereby excluded from dismissal protection (Koller 2010) and, overall, it can be assumed that around 20 per cent of dependent workers are not covered by this law.¹ It is therefore difficult to understand why this reform in 2004 has not translated into any change in the OECD index value for individual and collective dismissal regulation.²

Moreover, by focusing exclusively on the legislative level, the EPL index tends to underestimate changes in *de facto* employment protection as a result of weakened institutional preconditions for the effective enforcement of the law. In the case of collective dismissals, the application of the law hinges essentially on the existence of works councils since they are endowed with substantial bargaining power in the event of individual and collective dismissals. In fact, empirical evidence shows that works councils generally reduce the separation rate in German companies (e.g. Hirsch *et al.* 2010; Grund *et al.* 2015). Apart from their co-determination rights in case of dismissals, this is also attributed to a more indirect effect, namely works councils’ general ability to ‘voice’ employees concerns and thereby reduce voluntary ‘exits’ by employees. The

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1. In 2014, 17 per cent of employees were working in micro enterprises with up to nine employees (either full-time or part-time) (Bechmann *et al.* 2015: 17); the group excluded from dismissal protection is still larger since the law only applies to firms with more than ten full-time equivalent employees.
 2. Dependent employees in small firms nevertheless remain covered by social security and other statutory labour rights (e.g. on sickness pay, paid holidays, etc.).

Table 1 Most important employment protection reforms in Germany since mid-1980s

Standard employment	
2004 (1996*)	Firm-size threshold for application of dismissal protection raised from minimum of five to ten FTE In the case of dismissal on operational grounds, employers can offer a redundancy payment (of 0.5 monthly wage per year employed) in a letter of notice, in exchange for the employee forgoing appeal to court
Fixed-term contracts (FTC)	
1985	FTC possible without specifying an objective reason, for up to 18 months (no limits imposed on FTC with objective reason)
1996	Overall duration of FTC without objective reasons increased (18 → 24 months). Three permissible (seamless) renewals within 24 months Specific rules implying fewer restrictions for persons aged 60 and older
2001	Specific rules extended to persons aged >58 (age limit further lowered to >52 in 2003) FTC without objective reasons restricted to new hires. Clarification of 'objective' reasons for FTC (based on previous jurisprudence)
Temp agency work (TAW)	
Since 1985	Maximum assignment period at same hiring company progressively widened (1985: three → six months; 1994: nine; 1997: 12; 2001: 24 months)
1997	Relaxations with regard a) 'synchronisation ban' = ban on employing TAW on a contract covering only the assignment period; b) employing TAW on a fixed-term contract (FTC) c) re-employing TAW
2002/2003	Maximum limits for assignment period lifted. Synchronisation ban + restrictions with regard to FTC + re-employment abolished Equal pay principle introduced; but opening clause for collective agreements
2012	Introduction of hourly minimum wage for TAW: (€ 7.89 West/€ 7.01 East); increased to € 9.00/€ 8.50 in 2016
From 2017	Maximum assignment period restricted to 18 months; equal pay after 9/15 months at the latest (on condition of collective agreement, otherwise from 1st day); loophole closed for 'hidden' TAW (bogus subcontract work)
Marginal part-time employment ('mini-jobs')	
Since 1960s	Exemptions from taxes and social security contributions for jobs with low monthly income. Income threshold progressively increased (1999: DM 630 = € 325)
1999	Tax + social security exemptions for mini-jobs as a second job abolished Employers' contributions to social security introduced (at 22 per cent of gross income = level of regular employees)
2003	Income threshold raised (€ 325 → € 400 / month); hours threshold (max 15h/week) abolished Tax+social security exemptions for mini-jobs as a second job reintroduced
2006	Mini-jobbers can opt-in to statutory pension insurance Employers' contributions to social security raised from 22 per cent to 30 per cent
2013	Mini-jobbers have to opt-out if they wish to remain excluded from pension insurance. Pay threshold raised to € 450/month

* Firm-size threshold was first raised in 1996; the regulation was cancelled in 1999 and reintroduced in 2004.

Source: author's compilation

decline in the presence of works councils in German establishments, in particular in medium-sized companies (see Ellguth and Trinczek 2016), is therefore bound to weaken the effective enforcement of employment protection legislation. Changes in the Works Council Act in 2001 have tried to address the representation gap in small and medium sized companies, e.g. by speeding up the procedures for setting up a works council in companies with 5-50 employees, and by granting temp agency workers (after three months in the same hiring company) voting rights in works council elections. However, in 2012, only 6 per cent of small firms (5-50 employees) had a works council (Ellguth and Kohaut 2013). More far-reaching reform proposals from trade unions and some political parties aimed at increasing the prevalence of works councils and/or their co-determination rights with regard to the use of atypical employment have, so far, failed (see Absenger and Priebe 2016; Deutscher Bundestag 2015).

These reforms in employment protection legislation have been accompanied by social policy reforms which have indirectly affected employment protection, mostly by modifying incentives on the labour supply side.

Firstly, the ‘Hartz’ reforms have supported a general recommodification of labour, in two ways: the unemployed are now expected to accept any job offer, virtually without restrictions regarding occupation, skill levels and wages.³ Additionally, earnings-related benefits have lost in importance (the reforms have abolished unemployment assistance, reduced the maximum duration of unemployment benefit and tightened eligibility criteria). In conjunction with the high share of low-wage work – leading to very low-wage replacement even for part of those still entitled to unemployment benefits⁴ – this has contributed to raise the at-risk-of-poverty rate among the unemployed to the highest level in the EU (2013: 86 per cent, compared to 67 per cent in the EU-28).⁵ Thus, the imminent risk of falling into poverty is certainly higher for those in atypical employment, but the risk is real for standard employees as well.

A second important reform bundle relates to early retirement which was used extensively in the past in order to cushion negative demand shocks and structural unemployment. From the second half of the 1990s, a number of reforms to the pension system and the unemployment benefit system have reduced early retirement options and increased the financial disincentives for exiting the workforce before the legal retirement age (which, additionally, is currently being successively delayed to 67). This might contribute to diminish the employment effects of negative demand shocks – and this was indeed noted as one factor explaining the ‘resilience’ of the German labour market in the Great Recession (Knuth 2014: 27). However, it also raises the question if and how employers seek to substitute for this loss of external flexibility through other means, e.g. the use of temp agency work.

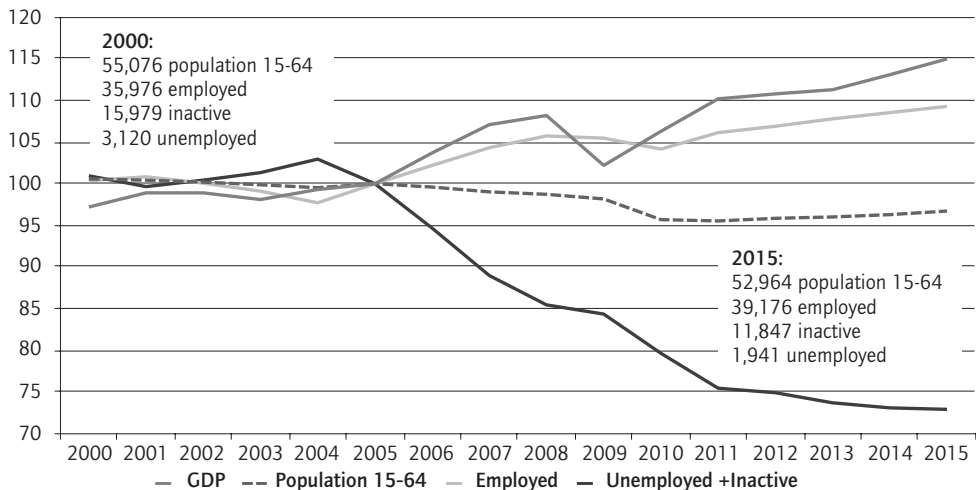
3. This means that the unemployed risk being sanctioned with benefit cuts if they refuse job offers that do not match their occupation and skill level. In practice, employment agencies may nevertheless first try to place the unemployed in jobs matching their occupational profile.
4. More than 50 per cent of male unemployment benefit recipients received a monthly benefit of less than € 900 in 2014; among female benefit recipients, the share was 75 per cent (Sozialpolitik aktuell 2016).
5. Source: data provided by Eurostat, based on EU-SILC, referring to the share of the unemployed (aged between 18 and 64) with household income below 60 per cent of median equivalised household income.

The interdependent or complementary relationship between EPL in a narrower sense (i.e. the de- or re-regulation of the labour market) and other policy fields, in particular social policy and industrial relations, has been widely acknowledged in academic research on the rise of precarious forms of work in Germany and elsewhere. This research is challenging orthodox economic theory which predicts that the negative effect of rigid EPL is reinforced by highly centralised collective bargaining, high union density and high unemployment benefits (see e.g. Heckmann 2003; and Abrassart 2015 for a recent study testing these assumptions). A range of authors have highlighted how, rather to the contrary, a decline in union density, the decentralisation of collective bargaining and cuts in unemployment benefits have tended to reinforce the asymmetrical relaxation of EPL and to channel the risks to the periphery of the labour market, either intentionally or unintentionally (Palier and Thelen 2010; Eichhorst and Marx 2012; Hassel 2014). The evidence presented below generally confirms the asymmetrical distribution of risks, but also points to the increased risks for standard workers and highlights how this, in turn, might paradoxically additionally hamper upwards mobility for non-standard workers.

3. The atypical employment miracle: the role of institutional reforms and the long-term trend in 'wage flexibility'

The mid-2000s saw a trend reversal on the German labour market. Unemployment had almost continuously increased since the 1990s, but unemployment and inactivity began to drop from 2005 and an increasing GDP was accompanied by a substantial and steady employment growth that was only briefly interrupted by the economic crisis in 2009 (Figure 1).

Figure 1 Trends in GDP, working age population, employment and unemployment 2000-2015 (Index: 2005=100)



Source: EU-LFS, provided by Eurostat, own calculations

The ‘German employment miracle’ is, however, to a large extent based on a growth in atypical employment: more than 1.5m (60 per cent) of the additional employment created between 2000 and 2015 was in either fixed-term contracts, temp agency work, mini-jobs or regular part-time work of up to 20 hours per week (see Table 2). The number of atypical employees has slightly declined since 2010 but, at 23.3 per cent, their share is still larger than it was at the last cyclical peak in 2000 (20.1 per cent).⁶ Within standard employment (as defined by the Federal Statistical Office, i.e. an open-ended contract of more than 20 hours/week, covered by social security, and excluding temp agency work), there has been a shift from full-time to part-time jobs of more than 20 hours per week. Their inclusion in the definition of ‘standard employment’ is debatable, given that part of these long(er) part-time jobs provide relatively low earnings and a limited upwards perspective. The assertion of a recent decline in the overall number of atypical jobs therefore needs to be treated with some caution.

Table 2 Employees in atypical and standard jobs, 2000-2015 (in 000)

	Solo self-empl.	Dependent employment							Total
		Standard (=open-ended, no TAW)		Atypical					
		Full-time	Part-time > 20h	Total*	Fixed-term	Part-time up to 20h	Mini-job	TAW	
1991	1,284	25,197	1,751	4,437	1,968	2,555	654	n.a.	31,385
2000	1,697	22,130	1,720	6,012	2,265	3,944	1,749	n.a.	29,862
2005	2,110	20,159	1,979	6,854	2,498	4,673	2,416		28,992
2010	2,169	20,560	2,571	7,945	2,858	4,942	2,517	743	31,076
2015	1,991	21,422	3,410	7,534	2,531	4,844	2,339	666	32,367
2000-15	294	-708	1,690	1,522	266	900	590	n.a.	2,504

Figures refer to employees aged 15-64, not in education, and to their main job only.

*The different categories of atypical jobs (fixed-term, part-time...) are overlapping, but the total number of employees on atypical jobs does not double-count them.

Source: Statistisches Bundesamt (website), based on German LFS (Mikrozensus)

The question to what extent this trend reversal, as well as the particular form it took, has been caused by the institutional reforms and who was affected by it has fueled political debates and stimulated research ever since.

Firstly, with regard to the question of the extent to which the increase in atypical and low-waged jobs is an effect of the institutional reforms, the available empirical evidence suggests that the institutional reforms at the beginning of the 2000s did not kick-off, but rather amplified, more long-standing trends that had started in the 1990s. Both wage inequality and non-standard employment had already begun to grow during the 1990s (see Table 1 and Dietz *et al.* 2013 for atypical employment; and, for wage inequality, Bosch and Weinkopf 2008; Dustmann *et al.* 2009). However, as we have seen above, atypical employment increased strongly after 2000 as well, and the bulk of this increase occurred between 2002 and 2007, taking its share of all dependent employees from

6. However, the figures above exclude an important number of atypical jobs – e.g. those held by students or elderly people aged 65 and over.

20.4 per cent to 25.7 per cent. Atypical employment increased most strongly among low-skilled workers (from 31.3 per cent in 2001 to 39.9 per cent in 2007), but it increased for those with a vocational degree as well (from 19.5 per cent to 25.0 per cent) (Statistisches Bundesamt 2008) – including employees in core manufacturing sectors (see Benassi 2016). Wage inequality, which increased from the mid-1990s following long years of wage moderation, outsourcing and the decline in collective bargaining, also received a strong additional boost from 2003 that lasted until 2009. The drop in real wages was particularly strong in the lowest quintile of the wage distribution (Card *et al.* 2013; Felbermayr *et al.* 2015) but also led to decreases at the median wage level.⁷ Focusing on low-waged work (two-thirds of the median wage), Kalina and Weinkopf (2015) provide some approximate evidence on how standard and non-standard workers have been affected by the rise in wage inequality: between 1995 and 2013, the share of low-wage workers has increased most strongly in fixed-term employment (+13 percentage points) and mini-jobs (+9 percentage points), raising their share to 42 per cent among fixed-term workers and 76 per cent among mini-jobbers (compared to 24 per cent in the overall group of dependent employees). Even so, low-wage work has also increased for those in open-ended contracts (+4 percentage points), according to the same study.

With regard to the question of how exactly the institutional reforms have translated into this atypical employment miracle, observers predominantly emphasise the effect on the labour supply side, as intended by the reforms. A number of studies (Fahr and Sunde 2009; Klinger and Rothe 2012; Krebs and Scheffel 2013; Klinger and Weber 2014; Stops 2016) have found that the reforms have contributed to a better functioning of the labour market, by permanently (not just cyclically) increasing job-search intensity among the unemployed and improving 'matching efficiency', i.e. speeding up the matching of the unemployed and job vacancies. This is consistent with findings which show that the reform has increased employees' fear of unemployment (Erlinghagen 2010) and altered the job concessions and search behaviour of unemployed people (e.g. Rebien and Kettner 2011). Knuth has pointed out that this can be seen as indicating a sort of 'deterrent effect' of the 'Hartz' reforms that both accelerated the transitions of the short-term unemployed into employment (as they want to avoid having to claim the new means-tested benefit after the first year of unemployment) and also prepared employees to make wage concessions in return for keeping their job during the Great Recession (Knuth 2014: 6).⁸ This view is supported by the analysis of Engbom *et al.* (2015) showing that earnings losses after a spell of short-term unemployment considerably increased after the 'Hartz' reforms. Other elements of the overall reform package, namely the reduced early retirement options mentioned above, partly explain why the rise in employment was particularly strong among older people (aged 55–64). Yet it is also a result of a cohort effect, since female cohorts entering this age group had a higher employment rate than the previous generation (Knuth 2014: 22).

Thus, there seems to be little doubt that the reforms have increased pressure on the part of both employees and the unemployed to take up (or stick to) jobs even with poor terms

7. This is a different pattern than in the previous decade, when the rise in earnings inequality was mainly a result of disproportionately strong increases at the higher end (Dustmann *et al.* 2014).

8. Even so, from 2007 the absolute number of the long-term unemployed dropped strongly as well and, since 2011, stands at less than 1.1m, a lower level than in the mid-1990s (source: Sozialpolitik aktuell).

and conditions, thereby contributing to the rise in wage inequality and non-standard employment. By contrast, it is a less consensual matter whether this growth of low-waged and atypical jobs has also contributed to the increase in aggregate employment levels or whether overall employment growth has been caused by other factors and would have occurred even without the help of the rise in inequality. With regard to these macroeconomic effects, a few researchers hold that the reforms had few effects and that the ‘German jobs miracle’ is mainly to be explained by strong GDP growth (Herzog *et al.* 2013). A predominant reading in the economic literature is, however, that the rise in low-waged and atypical employment has, in fact, contributed to employment growth and greater job opportunities, in particular for those at the margins of the labour market.

Two distinct explanations for such a positive relationship can be distinguished in the literature: Summarised in a somewhat stylised way, the first explanation stresses that additional employment has been created through greater flexibility and market-clearing wages, in particular in low-paid service sector occupations (e.g. Eichhorst and Tobsch 2015; Burda and Seele 2016). The second explanation focuses rather on the external effects of wage moderation in the service sector: this has created a cost-containing environment for the manufacturing sector and helped to keep labour costs in export-oriented sectors down, thereby improving competitiveness (e.g. Hassel 2014; Dustmann 2014; Klinger and Weber 2015).

Both explanations are certainly plausible assumptions that are, in part, backed up by the empirical findings provided by the studies, but some aspects raise some doubt with regard to the magnitude of these effects as well as with regard to the lessons to be learnt:

- Firstly, wage moderation, particularly at the lower end of the wage distribution, tends to depress private consumption and thereby internal demand. According to model calculations by Herzog-Stein *et al.* (2013), employment growth between 1999 and 2011 would have been stronger if wages had developed in line with productivity increases and inflation, and even more so if supported by higher public demand made possible by forgoing cuts in taxes and social security contributions. This finding does not contradict the assumption that employment growth in Germany was a result of wage moderation (and occurred at the expense of other countries’ employment levels), but rather highlights that there would have been other alternatives yielding the same or even better macroeconomic results, without the downside of a strong increase in inequality. In a similar vein, another recent simulation study finds that German gross domestic product would have increased more strongly between 1991 and 2015 if income inequality had remained the same as in 1991. The study attributes this to the immediate negative effect on consumption, but also to the more long-term negative effect of income inequality on individuals’ ability and propensity to invest in skills and training (Albig *et al.* 2016).
- Secondly, the available empirical evidence suggests that atypical employment has, in fact, partly substituted for regular employment: for instance, Hohendanner and Stegmaier (2012) show that, in some of their companies, mini-jobs grew simultaneously with a decline in jobs covered by social security, thus pointing

at substitution effects. This negative correlation was strong and significant in particular in industries with a high share of mini-jobs – retail, hospitality, health and social care – and in small firms across the economy. With regard to temp agency work, Jahn and Weber (2012) apply a more rigorous method of estimating substitution effects (including possible macroeconomic effects) and find that around half of the temp agency jobs created between 1991 and 2010 substituted regular dependent employment covered by social security.

Against this background, it seems fair to conclude that, while there have undoubtedly been important changes in job security and earnings, there is less clarity if and to what extent this has had beneficial effects on aggregate employment levels. With a few exceptions (e.g. Jahn and Weber 2012), most analyses finding positive employment effects fail to quantify in a meaningful way how much of the employment growth can be attributed to greater (wage) flexibility. Both the magnitude of the employment effects and the question whether there would have been alternatives is, however, crucial when it comes to drawing policy conclusions since a weak effect would hardly justify the strong downside of greater insecurity across large parts of the workforce.

With regard to the latter, the available evidence allows the conclusion that the institutional reforms are part of the explanation for this rising inequality, albeit that other long-term trends account for this as well. The evidence also confirms that the risks of being low-paid and on an atypical contract are strongly correlated and concentrated at the margins of the labour market (e.g. among low-skilled employees). Yet the unequal distribution of risks does not mean that standard workers have been spared. Over the last 15 years, not only have unemployment benefits come to provide lower and shorter social protection for all, but available jobs provide less security and income for standard workers as well, as indicated by the decrease in the median wage, the spread of low-wage work among standard workers and the increased share of atypical employment among those with a vocational degree. This is important to retain, not only for the sake of getting a more nuanced picture of changes in job security and earnings in the aftermath of the reforms, but also for the sake of explaining mobility patterns in the labour market, as I will argue further below (section 5).

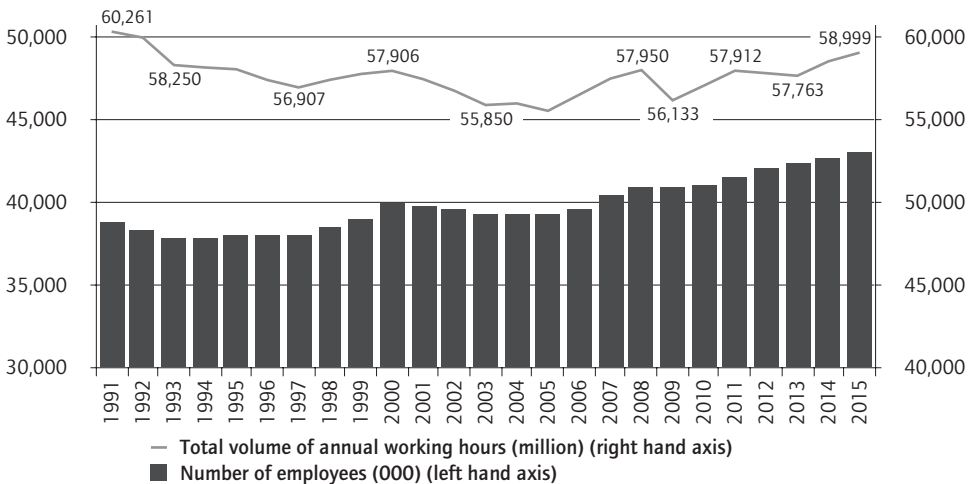
4. A gendered employment miracle: the role of working time flexibility, part-time work and public sector employment

There is a more or less converging view across different research strands that, besides the institutional reforms and the long-term trend of wage moderation, other long-term structural changes need to be taken into account in order to explain the 'German employment miracle'.

One trend in particular has received attention, namely the re-distribution of working time. Several studies have, for instance, highlighted the use of short-time working and other instruments of internal flexibility, such as working time accounts, as a means of buffering the employment impact of the Great Recession – which was comparatively short-lived in Germany (Möller 2010; Burda and Hunt 2011; Herzog-Stein and Zapf

2014). However, the re-distribution of working hours across a larger number of employees started well before the Great Recession and also well before the ‘Hartz’ reforms: Figure 2 shows that, while the volume of working hours increased by merely 1.9 per cent between 2000 and 2015, the number of employees increased almost four times as much (+7.8 per cent).

Figure 2 **Volume of annual working hours (million) and number of employees (000), 1991-2015**



Figures refer to all employees and all working hours (i.e. including self-employed and secondary jobs).

Source: own compilation based on data from IAB. Working time accounts data provided by Wanger *et al.* 2015 and Fuchs *et al.* 2016

Therefore, the instruments of internal flexibility, such as the use of short-time working, working time accounts and the reduction of overtime, etc., have certainly helped to stabilise employment levels over the short-term (i.e. during the crisis), but they seem to play a minor role in explaining the long-term increase in employment levels. This is, almost exclusively, the result of an increase in part-time employment (see Table 3): (near) full-time employment (35+ hours) has merely returned to the levels it had during the peak of the last economic boom (2000), but the number of part-time employees increased by 3.4m between 2000 and 2015. According to calculations provided by Burda and Seele (2016: 12), the growth of part-time employment was strongest in the lower segments of the hourly wage distribution after 2003, whereas it had previously been concentrated on the upper segments.

Strikingly, the critical role of (low-waged) part-time employment has received little attention in the debate about the ‘German labour market miracle’, which is mirrored in the restriction of many of the analyses quoted above to full-time employment and some even to male full-time employment. The result, often left unmentioned, is the gender bias of employment growth: 80 per cent of employment growth between 2000 and 2015 is female employment and more than 90 per cent of this is part-time work (see Table 3).

Table 3 Employees by usual hours worked in main job, 2000-2015 (000)

	Total	By usual weekly working hours in main job				
		1 to 19	20 to 29	30 to 34	Total 1 to 34	35 +
	All					
2000	35,977	3,276	2,922	1,271	7,469	28,508
2015	39,176	4,366	3,925	2,587	10,878	28,298
2000-15	+3,199	+1,090	+1,003	+1,316	+3,410	-210
	Women					
2000	15,789	2,733	2,586	1,070	6,388	9,401
2015	18,368	3,372	3,335	2,069	8,776	9,592
2000-15	+2,579	+639	+750	+999	+2,387	+192
	Men					
2000	20,188	544	336	201	1,081	19,107
2015	20,808	995	590	518	2,103	18,705
2000-15	+620	+451	+254	+317	+1,022	-402

Figures refer to all employees (including self-employed) aged 15-64.

Source: EU-LFS (via OECD.Stat), own compilation

Given the strong gender segregation of the German labour market, this part-time and gender bias requires a review of common explanations for the 'resilience' of the German labour market which emphasise dynamics of particular importance to the male-dominated manufacturing sector (e.g. short-term working and wage moderation) and help to explain why employment has not decreased here to the same extent as in other countries. However, in order to explain the steady employment growth, it seems to be of much greater importance that the Great Recession obviously has not stopped one long-term structural trend, namely the shift to predominantly female part-time employment. This job growth was strongest in sectors that are only very weakly linked to the manufacturing sector: the bulk of additional jobs was created in 'quasi-public' service industries, in particular education, health and social care. More than 50 per cent of the overall employment growth between 2000 and 2008 was in education, health and social care and more than 40 per cent of it in the period between 2008 and 2013 (see Brenke 2015: 83). This was not merely reached through a re-distribution of working time across more heads: the volume of working hours increased by 11 per cent in 'quasi-public' sectors in the period between 2000 and 2015, while it shrank by 6 per cent in manufacturing.⁹

The contributions in Karamessini and Rubery (2014) have shown that the differential impact of the crisis by gender is a rather common feature across European countries, primarily as a result of gender segregation in labour markets: the industries hit hardest and most immediately by the fall in demand were those dominated by male employees; whereas the austerity measures set in the second round of the crisis predominantly affected female-dominated (quasi-public) industries. Overall, female employment rates dropped less strongly than male ones. Even so, the Great Recession has thereby

9. Source: own calculations, based on National Accounts (VGR) data provided by the Federal Statistical Office Website (www.destatis.de).

interrupted the long-term upwards trend in female employment in many European countries. This is different from the growth pattern in Germany (see Table 4). Here, the increase in the female employment rate and the growth in quasi-public sector employment remained strong, and was virtually the same in the seven years leading up to the crisis (2000-07) and in the seven years afterwards (2008-15), whereas the average growth dynamic in the EU-27 strongly slowed down after 2008, for both public sector employment and the female employment rate.

Table 4 **Change in employment rates and in quasi-public sector employment between 2000-07 and 2008-15**

	Germany		EU-27	
	2000-07	2008-15	2000-07	2008-15
Employees in (quasi-) public sector employment*	+10%	+10%	+13%	+6%
Female employment rate (change in percentage points)	2007: 63.2% (+5.5 pp)	2015: 69.9% (+5.6 pp)	2007: 58.2% (+4.5 pp)	2015: 60.4% (+1.5 pp)

*=public administration, education, health and social care (sectors L-N in NACE Rev 1.1 (till 2007); O-Q in NACE Rev. 2 (from 2008))

This raises the question of what may be the reasons behind these different dynamics. One obvious factor is certainly that Germany has not experienced the same pressure on public budgets as other European countries. There might, however, also be other reasons that have had an impact more specifically on female participation rates, such as the delayed modernisation of gender roles in Germany which resulted, among others, in a delayed expansion of institutional child care facilities from the mid-1990s. This could explain not only the strong rise in the female labour supply but also the increasing labour demand in quasi-public services as care tasks are transformed into paid work.

In any case, this continuous employment growth in the ‘quasi-public’ segment is, to some extent, at odds with the functionalist explanation that low wages in the service sector helped to keep down labour costs in export-oriented sectors since these jobs are, to an important extent, funded by social security contributions and company taxes. One might argue that the strong performance of export-oriented industries has contributed to refinance job growth in the quasi-public sector – albeit often in the form of jobs with relatively low and obviously even declining wages. In fact, the available data on hourly earnings show that ‘wage moderation’ was much stronger in the service sector than in the manufacturing sector. Between 2006 and 2014, median nominal wages increased by 14 per cent in industry and construction (NACE B-F), but only by 5 per cent in business services (NACE G-N) and by 4 per cent in other service industries (NACE P-S) dominated by education, health and social care; and there was even no increase at all (0 per cent) for part-time employees in this last group of industries.¹⁰

10. Source: own calculations based on data from Structure of Earnings Survey, provided by Eurostat.

5. Labour market mobility: Stepping stones or traps

Even if atypical and low-waged employment has partly replaced regular employment and is therefore not entirely or even not predominantly additional employment, a beneficial effect that both might have is in being more accessible to disadvantaged groups and serving as entry points for them to the labour market and, further on, as stepping stones to regular employment. It is something often assumed in political debates, but the share of atypical employment increasing strongly among, for example, young people is not by itself indicative here as it does not indicate higher entry rates for these groups but only that, *if* they enter the labour market, they are increasingly forced to take this route. Gebel and Giesecke (2016), for instance, find that deregulating the use of temporary contracts across several European countries has increased the risks for young people of temporary employment but it has not reduced the risks of unemployment among them. More fine-grained analyses are therefore required that follow the labour market trajectories of individuals and try to disentangle how, for example, taking up a mini-job or a temporary contract benefits them in the longer run – compared both to peers who have not experienced spells of atypical employment and to previous cohorts.

Empirical studies on transition rates (from atypical to regular employment) have repeatedly confirmed that fixed-term contracts are better 'stepping stones' than mini-jobs or temp agency jobs (e.g. Gensicke *et al.* 2010; Gebel 2013) – albeit with the exception of low-skilled workers for whom firms obviously predominantly use fixed-term contracts as a means of external flexibility and not as an extended probation period (Schmelzer *et al.* 2015).

With regard to mini-jobs, one study finds that, compared to remaining unemployed, taking up a mini-job only increases the probability of transition to regular employment for a very specific group, namely for the long-term unemployed, and this only if the mini-job is in the same sector as the previous job (Caliendo *et al.* 2012). The findings of Wippermann (2012) also call into question the 'transitory' character of mini-jobs; according to his retrospective survey, people employed as mini-jobbers remained on average in such jobs for 79 months. It is important to retain here that the limited upwards mobility of mini-jobbers cannot be explained solely by their (adaptive) preferences, e.g. the intention of mothers to match working time volume to care responsibilities: even after controlling for working time preferences and further socio-demographic factors, mini-jobbers move considerably less frequently into standard employment relationships (Brülle 2013). A recent study by Lietzmann *et al.* (2016) focuses on the group of unemployed singles taking up a mini-job and finds that, for those who are unemployed for at least five months, the probability of being employed in a regular job increases by between ten and twenty percentage points compared to their unemployed peers.

Finally, with regard to temp agency workers, their upwards mobility has been shown to be very weak, if indeed it exists at all. Baumgarten and Kvasnicka (2011) and Burkert *et al.* (2014) find no statistically significant effect, while Lehmer and Ziegler (2010) find that TAW is a 'small bridge', at least for the long-term unemployed, raising their

probability of being employed in a job outside the temp agency (compared to their statistical twins who remained unemployed) by twenty percentage points. Nevertheless, according to the additional calculations of the same authors, despite the economic upswing, only a small minority of the unemployed who took up a TAW job in 2006 were predominantly employed in a job outside the temp agency industry in the following two-year period (ranging from 13 per cent to 22 per cent, depending on their previous employment history).

These findings broadly confirm, in particular for mini-jobs and temp agency work, something that the OECD has identified as a problem, namely that atypical employment very often works as a trap, or even a revolving door, instead of as a stepping stone; and hence that the disadvantages of atypical jobs are not offset by higher upwards mobility at a later stage of individual careers. The OECD has tended to attribute this to high(er) levels of EPL among standard workers: ‘When regulations on regular contracts remain overly strict, employers tend to recruit mainly through temporary contracts and are reluctant to convert these contracts into permanent ones. The result is an increased concentration of labour turnover on workforce groups who are over-represented in temporary jobs, potentially trapping some of them into a future of “precarious” jobs’ (OECD 2006: 96).

However, there is a possible alternative explanation which relates to changes in overall mobility patterns: several studies show that labour turnover decreased compared to the economic upswing around 2000, and more strongly so as a result of a decrease in separation rates (Gianelli *et al.* 2013; Bechmann *et al.* 2015). Around half of this decrease is due to a reduction in voluntary leavers (Bechmann *et al.* 2014). Apart from fewer early retirement options that, at least transitorily, reduce elderly workers’ premature exit from the workforce, another likely explanation for this lower separation rate is, again, the ‘deterrent effect’ of the institutional reforms as well as the general deterioration in wages and job quality: if unemployment is associated with higher income losses and insecurity, both during unemployment spells (due to lower and shorter benefits) and afterwards (because the jobs ‘on offer’ are more often low-paid and/or atypical), this will also reduce voluntary exits by those in employment. The strong increase in the use of fixed-term contracts and TAW as a prolonged probation period also increases the risks of job-to-job transitions for employees.

This is a different explanation for reduced levels of mobility in dualised labour markets than the orthodox explanation offered by the OECD (see above): the OECD attributes the reduced opportunities for upwards mobility to employers’ strategies in adjusting to ‘overly strict’ employment protection for regular workers, but the reduced number of voluntary leavers points to the role played by employees’ strategies in coping with increased levels of insecurity (via making fewer voluntary exits). Obviously, addressing the latter source of mobility requires distinct political responses than merely levelling down employment protection for regular workers.

6. Conclusion

It is widely acknowledged across different research strands and ideological camps that the institutional reforms at the beginning of the 2000s, as well as the asymmetrical relaxation of employment protection legislation in the previous decade, have tended to increase labour supply and speed up the matching process, mainly through their impact on the supply side (job search behaviour, wage concessions). This has allowed employers to recruit on worse terms and conditions than before, albeit that the reforms have merely amplified trends that were already underway since the mid-1990s. It is a less consensual matter if and to what extent the deterioration of wages and the spread of atypical forms of employment have also contributed to increase aggregate employment levels, or whether this is mostly the effect of other structural changes – like the redistribution of working time that was made possible in particular by an increase in the female labour supply.

With regard to these long-term structural changes, the above analysis reveals that reviews of the 'German labour market miracle' have so far neglected the importance of one trend in particular, namely that the last 15 years were characterised by a heavily gender-biased employment growth. This requires a review of the common explanations of the 'resilience' of the German labour market which have emphasised dynamics that were of particular importance to the male-dominated manufacturing sector (e.g. short-term working and wage moderation) and help to explain why employment has not decreased here to the same extent as in other countries. But in order to explain the pattern of steady employment growth, it seems to be of much higher importance that, unlike in other European countries, the Great Recession has not slowed down or even frozen one long-term structural trend, namely employment expansion in female and part-time dominated occupations, mostly in sectors that are only very weakly linked to the manufacturing sector (education, health, social care). Thus, in a comparative perspective the different employment dynamics in Germany compared to its European neighbours cannot merely be attributed to the competitiveness of the German manufacturing sector, but also seem to have their roots in the different development of female labour supply and demand. This requires further research on the factors behind this development.

One factor that is rather obvious is the delayed modernisation of gender roles in Germany, as noted above. The demographic change – implying not least an increasing share of elderly people in need of care – also contributes to increased labour demand in the quasi-public sector. Several indicators presented above, however, suggest that employment growth in these services has been accompanied by a decline in job quality (in terms of wage levels, or a spread of mini-jobs substituting for jobs covered by social protection). Hence the EPL reforms have probably contributed to shape the form in which job growth took place. However, it seems likely that, even without these reforms, increased labour demand would have materialised in more (and rather better) jobs.

With regard to policy implications, two more results of the analysis above require specific attention. Firstly, the reviewed evidence shows that institutional reforms have certainly channelled risks asymmetrically to those on atypical contracts. However, the

decline in real wages has affected a much larger group, including standard workers, and this can, not least, be attributed to a 'deterrent effect' emanating from unemployment benefit reform and from increased levels of atypical employment that contribute to raise workers' willingness to make concessions on wages and other working conditions. Moreover, the long-term trend of a re-distribution of working hours and the widespread use of all kinds of instruments allowing for internal working time flexibility have also contributed to increase employers' leeway for flexibly adapting the workforce to fluctuations in demand. All this, however, does not seem to have greatly reduced the use of atypical work as an additional source of flexibility, as its persistently high level shows. This calls into question the usual assumption (by OECD and the EU) that standard and non-standard forms of work substitute for each other (i.e. the more flexibility for standard employment, the less flexibility is required to be shifted to non-standard work). It rather suggests that once companies have become accustomed to an extensive use of atypical forms of employment they stick to them even when the environment changes, or at least they are slow in changing these practices.

Secondly, next to the obvious disadvantage of increased inequality, greater (wage) flexibility and a general sense of increased insecurity may also be responsible for the reduced number of voluntary leavers which, in turn, also limits the number of job vacancies that are open to unemployed or employees on non-standard jobs. This is a very different explanation for the limited upwards mobility of non-standard workers than the orthodox explanation advanced by the OECD, which stresses the negative impact of too high EPL for standard workers. Obviously, supporting job-to-job transitions and thereby enhancing labour turnover requires distinct political responses than simply levelling down employment protection for regular workers. At the same time, this is also a somewhat different explanation than that suggested by the insider/outsider theorem underlying much of the current political and academic debates: the latter implies that non-standard workers' risks have increased because standard workers have been spared, whereas the hypotheses advanced here means that non-standard workers' risks have increased even more because standard workers have been affected as well.

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Chapter 9

Labour market performance and deregulation in France during and after the crisis

Tim Vlandas

1. Introduction

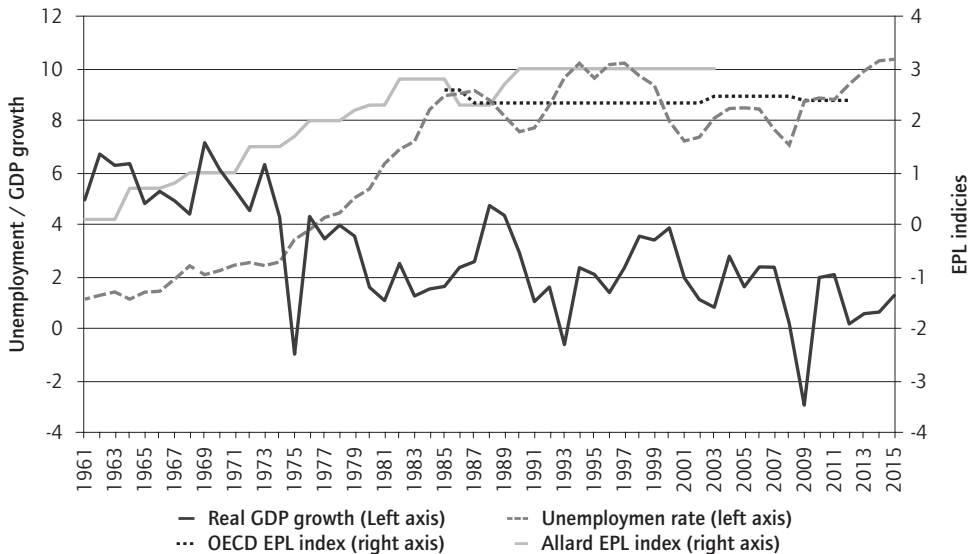
What explains the cross-national variation in unemployment rates over time? A vast literature in orthodox economics highlights the importance for unemployment of labour market institutions (e.g. Scarpetta 1996: 45, Elmeskov *et al.* 1998: 29-30, Nickell *et al.* 2005: 22). Among labour market institutions, previous literature has paid particular attention to employment protection legislation (EPL) and its political and economic consequences for European welfare states, unemployment, wages and consumption (Bentolila and Bertola 1990, Esping-Andersen and Regini 2000, Oesch 2010, Scarpetta 1996, Siebert 1997). Several studies argue that high EPL is associated with higher unemployment (e.g. Elmeskov *et al.* 1998, Nickell *et al.* 2005, OECD 1994, Scarpetta 1996, Siebert 1997).

This chapter focuses on the case of France, where there is a long-lasting concern that a 'rigid' labour market results in high unemployment, labour market dualisation and social exclusion. It analyses how the crisis has affected the French labour market and what labour market reforms have been implemented by governments during and after the crisis. France is often taken as an example that EPL leads to higher unemployment and that the appropriate solution is to deregulate EPL. For instance, the OECD notes in its Economic Survey of France that: 'The key challenge [in France] is to reform the labour market to promote job growth. Further labour market reforms should be the top priority. The strong protection accorded by open-ended contracts hinders labour mobility.' (OECD 2015: 2). By contrast, I argue that France's labour market resisted well, on average, during the crisis partly because the crisis was less pronounced than in other countries and partly because EPL insulated large parts of the workforce from the economic shock. After the crisis, EPL deregulation did not lead to a reduction in unemployment.

More specifically, my findings reveal that workers with permanent contracts have been mostly protected from the crisis while the costs of the crisis have been concentrated on more vulnerable labour market groups. The young, foreigners, those with low education and on non-standard contracts have been particularly hard hit by the crisis. This resulting higher labour market segmentation occurred despite several attempts by governments to help outsiders and reduce labour market dualism, for instance by attempting to regulate non-standard work, introducing new in-work benefits, extending the eligibility of unemployment benefits and subsidising the hiring of unemployed workers. Lowering EPL does not seem to have been an appropriate policy response to the crisis as it reduced neither unemployment nor labour market dualisation.

This chapter unfolds as follows. The next section examines the evolution of France's labour markets before the crisis. I show that France's employment problems before the crisis do not seem to be about high EPL but that France is struggling to adapt to deindustrialisation and the growth of the labour force, driven by the entry of more women into the labour market, and the expansion of the temporary work sector. The second section then describes the impact of the crisis and identifies how policy-makers have responded by deregulating EPL and attempting to reduce labour market dualisation. In the third section, I analyse how labour markets have evolved during and after the crisis. I show that reforms failed to reduce unemployment, while labour market dualisation increased. The final section draws some conclusions.

Figure 1 EPL, unemployment and GDP growth in France since the 1960s



Source: Real GDP growth, unemployment and the OECD index of EPL are taken from Armingeon *et al.* 2015. Comparative Political Data Set 1960-2013. The Allard index is taken from Allard (2005). Note that data for the Allard EPL index is only available until the early 2000s and data for the OECD EPL index is only available until 2013.

2. EPL, unemployment and France's labour market in historical perspective

There is a large literature blaming high unemployment on 'stringent dismissal regulations', understood as high EPL (e.g. Bassanini and Duval 2006, Elmeskov *et al.* 1998, Layard *et al.* 1991, Nickell 1997, Nickell *et al.* 2005, Scarpetta 1996, Siebert 1997). Siebert (1997: 49) sums up this orthodox view by arguing that 'job protection rules can be considered to be at the core of continental Europe's policy toward the unemployment problem: protecting those who have a job is reducing the incentives to create new jobs.' The effect may be particularly detrimental for disadvantaged groups. For instance, Scarpetta (1996: 63) finds from a study of 17 OECD countries that EPL is correlated with higher unemployment but that the effect is stronger on youth unemployment and long-term unemployment.

France is claimed to have a very high EPL index (European Commission 2014), though its EPL for regular contracts does not appear substantially higher than the OECD average (e.g. 2.39 versus 2.08 in 2012). However, the weighting of the different dimensions underpinning the index may be problematic. Disaggregated data for EPL as regards regular contracts in 2012 reveal that there are a number of dimensions (notification procedures, length of notice period after 20 years tenure, severance pay after 9 months tenure and the possibility of reinstatement following unfair dismissal) where France scores lower than the OECD average.¹ Whether the overall index ranks France below or above the OECD average therefore depends on the weighting that is used.²

Moreover, most of the increase in France's unemployment rate occurred before the mid-1980s. The unemployment rate has since oscillated between 7 per cent and 12 per cent for all ages – with no apparent link with changes in EPL – and between 15 per cent and 24 per cent for the 15-24 age group. Unemployment peaked in the middle of each decade, i.e. in the mid-80s, mid-90s, mid-00s and mid-2010s. The long-term unemployment rate (>1 year) has been more or less stable at around 40 per cent of the unemployed for several decades. At the same time, the civilian employment rate, as a share of the working age population in 2010, was almost as high as it has ever been since the mid-1950s (when EPL, as measured by the Allard index, was close to zero): it fell between the mid-1950s and the mid-1980s, but it has subsequently increased more or less continuously since the mid-1980s (OECD annual labour force statistics database).

Figure 1 plots GDP growth, unemployment and EPL³ since the 1950s. EPL and unemployment do, at times, trend upwards together but developments in the unemployment rate follow developments in GDP growth far more closely. Indeed, the 1960s were characterised by rising EPL but there was no notable rise in unemployment, which remained below 5 per cent until the oil shocks of the 1970s and the associated negative growth of the late 1970s. In the mid-1980s, the conservatives briefly won parliament (while the socialist party retained the presidency) and slightly reduced EPL. The 3rd July 1986 law removed administrative controls on the validity of economic necessity for an economic collective dismissal (Seguin 1986). This was followed by a fall in unemployment, but it also coincided with a period of particularly strong growth. Unemployment initially remained low when EPL was raised again as the left regained a parliamentary majority. Unemployment has varied significantly since the early 1990s, whereas the EPL index for regular contracts has remained stable (it was 2.56 in 1986, 2.34 throughout the 1990s, and increased to 2.47 after 2002). It is also notable that, despite the highest EPL ever recorded, economic growth led to falling unemployment during the socialist Jospin government (1997-2002) which introduced the 35 hour week as well as some targeted reductions in social security contributions (see Clift 2002: 332).

The average unemployment rate also hides massive compositional shifts in employment. First, the male employment rate fell from 90 per cent to 70 per cent between 1956 and 2000 (and to 67.1 per cent in 2015) while the female employment rate increased

1. See OECD Indicators of Employment Protection, www.oecd.org/employment/protection

2. See the chapter by Myant and Brandhuber on the arbitrary construction of the EPL index in this volume.

3. The OECD EPL index only starts in the 1980s and covers the period up to 2013, whereas the Allard EPL index starts much earlier but ends in 2000 – see sources of Figure 1 for more details.

from below 50 per cent to above 60 per cent in the same period.⁴ In 1956, there were 13.5 million employed men and 6.2 million employed women. By 2013, the number of men in employment had barely increased, to 13.8 million, while the number of women in employment had risen to 12.8 million (OECD annual labour force statistics database). Second, France experienced a profound deindustrialisation in which the share of employment in industry dropped from slightly below 40 per cent to less than 20 per cent of civilian employment. Third, like other developed countries, France has entered an ‘age of dualisation’ (Emmenegger *et al.* 2012: introductory chapter) where the rights and entitlements of outsiders, in unemployment and precarious work, have been reduced while insiders, in permanent employment, have, for the most part, been protected (Palier and Thelen 2010).

There has been a large expansion of precarious work. Temporary employment has been multiplied by four in the last three decades, reaching 16 per cent in 2013 (OECD annual labour force statistics database).⁵ Other factors often play a role – as the chapter by Rubery and Piasna (this volume) makes clear – but increases in EPL and changing economic structures do seem to have spurred employers to look for flexibility elsewhere. In France, the emergence of labour market segmentation is partly linked to employer responses to pushes by the labour movement for higher job security as well as to the tertiarisation and globalisation of the economy. Following the protests and strikes in 1968, labour and employers reached a compromise in the ‘*Accords de Grenelle*’. With an emboldened worker movement, several reforms later introduced further restrictions on redundancies and dismissals as well as allowing for a greater role of workers’ representatives in companies (Piore 1978: 35, 36; Emmenegger 2014: 12).

At the same time, the service sector expanded and companies faced increased competition and economic uncertainty, and experienced supply side shocks. Employers responded to this higher ‘rigidity’ and greater need for flexibility by shifting some of their activities into less rigid settings, such as companies with fewer than 50 employees where certain legislation did not apply, or in places where union organisations were less strong (Piore 1978: 38, 39). Paul Marx (2012: 711) similarly notes that: ‘enforced restrictions on the prerogative to dismiss regular workers and growing economic uncertainty inspired new management strategies.’

Employers also increasingly relied on temporary work, which was given stronger legal status in the 1960s and 1970s (Vlandas 2013b). For instance, temporary agency work (TAW) companies appeared in the 1950s, but TAW became fully legal only in 1972 (Belkacem and Kornig 2011: 10). However, this does not mean that higher EPL was the only, or even the main, factor that explained companies’ search for flexibility: intensified global and European competition, and the rise of unemployment which provided a pool

4. This compositional shift is not unrelated to the emergence of dualisation in France: there is some evidence that ‘employers actively sought out new female workers because they could be made to bear the flux and uncertainty to which the traditional labour force was becoming increasingly resistant’ (Piore 1978: 44).

5. Cochard *et al.* (2010: 185) reports that, among developed economies, France has one of the highest percentages of workers with more than 1 year seniority (nearly 12 per cent of workers), but also one of the highest percentages of those with less than 1 month seniority.

of available unemployed people searching for work, also provided companies with both the will and the ability to rely on temporary agency work (*ibid*: 11).

Growing segmentation is also linked to the changing sectoral composition of employment, consistent with temporary work being used mostly in the service sector. For instance, 69.9 per cent of temporary workers in 2000 were in the service sector, 27.4 per cent in industry and 2.8 per cent in agriculture (OECD 2002: 139). However, this aggregate figure hides an important difference between TAW and fixed-term contracts. The latter tend to be more prevalent in the service sector, while TAW is more prevalent in industry (Sauze 2006: 97; Macaire and Michon 2002). For instance, in 2000 there were 310 980 full-time equivalent agency workers in industry, compared to 186 333 in the service sector and 104 399 in the construction sector (DARES 2016c).

In sum, when the crisis hit, policy-makers had managed to reduce unemployment, after it peaked in the late 1990s, while keeping a high level of EPL, but youth unemployment rates and temporary work represented a problem. Historically, segmentation is the result of companies' strategies in the context of growing economic uncertainty and legal as well as structural changes.

3. The French crisis and labour market policy responses

3.1 The crisis: overview and policy responses

The slowdown in economic activity and the appearance of mass unemployment in the 1970s came about with the first crisis after the Second World War (Amable *et al.* 2012: 1177). The recent crisis is the third time that GDP growth fell into negative territory in the last 60 years (see Figure 1).⁶ The slow recovery from the latest crisis is consistent with long-term trends since the 1960s, in which the highest real GDP growth in each decade has been lower than that in the decade preceding. It is therefore striking that we observe only a moderate deterioration in unemployment levels, with few changes in employment (European Commission 2014, Chart 17: 36). The elasticity of labour input (i.e. the reaction of both employment and hours worked) to the output shock brought about by the recession was lower in France in this recession than in the past and also lower than in a number of other advanced economies such as the US, UK, Portugal, Spain, Canada, Finland and others (OECD 2010: 43).

Adding to the unemployment rate the share of the labour force which is marginally attached to the labour market and underemployed workers does not fundamentally change the picture: this measure increased from below 15 per cent in 2008 to about 17 per cent in 2009, higher than in Germany and the UK, but lower than in the US, Italy and Spain, and only slightly higher than the G7 average (OECD 2010: 26). Thus, if one considers the unemployed plus the marginally employed, France resisted reasonably well in the initial stages of the crisis.

6. In 2009, the economic recession was more marked than in the past: 2.6 per cent compared to 0.9 per cent in 1993 and 1 per cent in 1975 (Bardaji 2011: 1).

One reason lies with the relatively limited depth of the recession in France compared to certain other advanced economies. The recession in France was worse than previous ones, but it was categorised by the OECD as a medium GDP shock (OECD 2010: 32). France's macroeconomic aggregates did not fall significantly and recovered fairly fast. Thus, for instance, the chain linked volume index (2010=100) for gross capital formation peaked in France (110.2) in the first quarter of 2008, but the trough was reached in the third quarter of 2009 (97.2) (Eurostat 2016a). Consumption even increased during the crisis: the chain linked volume index (2010=100) for consumption expenditures increased from 96.1 in the first quarter of 2007 to 97.5 in the first quarter of 2008, 97.7 in the first quarter of 2009 and, by the first quarter of 2014, it was 102.1 (Eurostat 2016a).

Another reason is that automatic stabilisers worked fairly well during the crisis (OECD 2010: 32, 48–52). Microsimulations using information on households and government policies in 2008 show that France had the 7th highest unemployment stabilisation effect from automatic stabilisers in the EU and that, unlike other countries, a lot of this effect operated through social insurance rather than tax contributions (Dolls *et al.* 2010: 16).

Policy-makers introduced many labour market reforms between 2008 and 2013 across several policy domains identified in the LABREF tool developed by the European Commission. Table 1 reveals a surprisingly high degree of policy activism, with 81 reforms in total.⁷ The majority of these reforms concerned active labour market policies (ALMPs), followed by welfare-related benefits and job protection. Most of

Table 1 Overview of policy responses

Policy domain	2008	2009	2010	2011	2008–2011	2012	2013	2012–2013
Active labour market policies	7	2	1	4	14	3	6	9
Labour taxation	2	2	0	1	5	3	1	4
Other welfare-related benefits	2	6	0	1	9	3	1	4
Wage setting	5	0	1	0	6	2	3	5
Working time	2	2	0	0	4	3	2	5
Unemployment benefits	1	2	0	1	4	0	0	0
Job protection (EPL)	3	0	1	1	5	0	7	7
Total	22	14	3	8	47	14	20	34
President	Sarkozy					Hollande*		
Prime Minister	Fillon					Ayrault		

* Elected 6th May 2012.

Source: LABREF database, DG EMPL, European Commission. For more information, see <http://izajolp.springeropen.com/articles/10.1186/s40173-015-0038-5>

7. Even before the crisis, (Ross 2006: 317) had argued that patterns of welfare state reforms in France 'demonstrate hyper-active reformism.'

the reforms occurred at the beginning or end of the period under consideration. The European Commission also codes the direction of the policy reform as ‘increasing’ or ‘decreasing’. All reforms of ALMPs were ‘increasing’, which suggests they entailed increasing expenditures, for instance on training or direct job creation schemes. For labour taxation, the majority were ‘increasing’ reforms in the sense that they increased taxes on income. The majority of working time reforms were ‘decreasing’, while three out of four reforms of the unemployment benefit system were ‘increasing’. Due to space constraints it is beyond the remit of this chapter to review *in toto* the reforms that were passed since 2008 (for more comprehensive reviews, see Milner 2012 and 2014).⁸ Given the focus of the volume, the next section first discusses the main EPL reforms and then reviews attempts to reduce labour market dualisation.

3.2 Deregulating employment protection legislation

Between 2008 and 2013, several labour market reforms decreased EPL. These covered various aspects of EPL, including collective dismissal regulations, procedural requirements, permanent contracts and temporary work. Nicolas Sarkozy won the 2007 presidential election with manifesto commitments that emphasised reforming the 35 hour working week; tackling ‘welfare dependency’ by increasing incentives to work; promoting job quality through vocational training; and reforming EPL (Milner 2012: 290-291, Levy 2016). On 25th June 2008, his government introduced two main labour market reforms that increased flexibility in the Law concerning the modernisation of the labour market (*Loi portant sur la modernisation du marché du travail*).

The first was the so-called negotiated termination (*rupture conventionnelle*) where employees and employers can ‘mutually agree to terminate an employment contract and negotiate its end’, thereby adding an additional way – alongside resignation and dismissal – for a contract to be terminated. If the termination is not contested by the Ministry of Labour, the termination (*rupture*) is validated and the employee receives a lump sum calculated as one-fifth of one month’s pay per year of work. In August 2008, 1 692 requests for termination were received by the Ministry of Labour, among which 198 were inadmissible (*irrecevable*) and 263 were refused. By December 2011, 29 558 requests had been received, while 741 were inadmissible and only 1 708 refused; and, by July 2015, 35 984 requests for termination had been received (DARES 2016a). The second reform consisted of lengthening the probation periods for permanent employment contracts, with longer probation periods for professional and managerial staff (between three and four months) than for manual and clerical workers (between 1 and 2 months).⁹

8. For instance, the reforms aimed at rationalising employment policy are not discussed in detail. In 2008, the *Pôle Emploi* was created out of a merger of the agency previously responsible for paying unemployment benefits to the unemployed (*Assédic*) and the French national employment agency providing public employment services, previously responsible for helping jobseekers. At the time of writing there are discussions to merge the RSA with the other in-work benefit, the *Prime pour l’emploi* that provides tax exemptions to low-income workers.

9. Source: LABREF database, DG EMPL, European Commission. For more information, see Turrini *et al.* 2015.

In 2009, the government attempted to facilitate entrepreneurship through the creation of a new self-employed status, called *auto-entrepreneur*, which involved less ‘red tape’ in acquiring self-employment status and no upfront taxes to pay. In the context of increasing unemployment and limited demand, this led to an increased use of this type of contract: there were 320 000 in 2009, 350 000 in 2010, 290 000 in 2011 and 307 500 in 2012, which resulted in a total of about 1.2 million *auto-entrepreneurs* created as of 2012 (Deprost *et al.* 2013: 13). Many of the self-employed in this category earn very little, if anything: in 2012, only 48 per cent declared a positive revenue (Deprost *et al.* 2013: 14). The creation of this self-employed status may explain why France experienced an increase in the number of self-employed without employees since the crisis started.¹⁰ The number of self-employed without employees increased from 1 342 000 in 2008 to 1 616 500 in 2010, and to 1 739 300 in 2015. This contrasts markedly with trends in the number of self-employed with employees, which fell from 1 178 800 in 2008 to 1 128 600 in 2010, and then to 1 091 900 in 2015 (Eurostat 2016b).

Socialist President Francois Hollande was elected in 2012. One year later, several measures were agreed in the Law on securing jobs (*Loi portant sur la sécurisation de l’emploi*) that was voted in June 2013. First, companies with more than 50 employees were required to draft a ‘social plan’ when dismissing more than ten employees. This could, in principle, be interpreted as a tightening of the collective dismissal regulations, but it also introduced greater legal certainty for companies by reducing the lawful period in which the dismissal may be contested in court from 12 to 3 months. Second, the ‘prescription period’ – specifying the time period in which a dismissed employee is allowed to contest the dismissal – was reduced from 5 to 2 years. Third, as part of the Act on maintaining employment (*Accord de maintien de l’emploi*) under the socialist government, companies with ‘economic difficulties’ were allowed to ‘agree’ with unions an ‘adjustment of wages/working time for no longer than two years.’ This introduced internal numerical flexibility in addition to the external flexibility introduced by other reforms. Crucially, it specified that ‘those who refuse can be dismissed under individual economic dismissals’, which is easier for companies to do than to undertake collective dismissals, thereby linking external with internal flexibility.

3.3 Fighting dualisation and unemployment while preserving employment

The previous section has shown that several deregulatory reforms have been implemented. At the same time, governments have also tried to protect workers on permanent contracts by the use of short-time working arrangements, which have been shown to be efficient at preventing dismissals during recessions (OECD 2010: 68). In the case of France, the estimates for the period before 2010 is that 60 000 jobs were saved (OECD 2010: 61). In terms of hours, Calavrezo and Lodin (2012) find that, between 2007 and 2010, manufacturing firms, especially car manufacturers and the metalworking industry, were the first consumers of these schemes. More than one-third of the schemes were used by companies with more than 500 employees. From an almost

¹⁰. Source: OECD Annual Labour Force Survey, Summary tables, accessed 12th September 2015.

non-existent level in 2008, the use of this partial unemployment arrangement peaked in the third quarter of 2009 (DARES 2012:2).

Moreover, the use of the scheme continued to be promoted thereafter. One example is the introduction of a long-term short-time working scheme, which was added to the normal short-time working scheme in May 2009. This new scheme compensated up to 75 per cent of the gross income of workers experiencing lower work activity over a long time period (Bardaji 2011: 2). Another example is the 2012 national collective bargaining agreement (*Accord inter-sectoriel national*), which made it easier for companies to use short-time working. Despite this continued emphasis, France did not rely as much as it could have on these schemes, especially when compared to other countries: in February 2011, only 0.8 per cent of French employees were on short-time working compared to 5.6 per cent in Belgium and 3.17 per cent in Germany (Cour des Comptes 2011).

Surprisingly, given the expectations from the insider-outsider literature that countries with high EPL neglect the interests of outsiders and, therefore, do not spend much on labour market policies that benefit them, French governments have also been very active with labour market policies targeted at outsiders. Some policy initiatives benefited both insiders and outsiders by jointly subsidising the hiring of an outsider alongside the retention of insiders. For instance, the generational contract (*Contrat de génération* - Loi n. 2013/185, March 2013) aimed to help employers hiring a young worker between 16 and 25 years old while, at the same time, retaining an older worker above 57 years old.

Some reforms were directly targeted at the unemployed. An April 2010 agreement aimed to extend unemployment benefit duration for 325 000 unemployed people reaching the end of their eligibility. In addition, the plan specified paid training schemes for 70 000 beneficiaries (Erhel 2010: 14). Additionally, employment subsidies were directly targeted at unemployed outsiders. Thus, for instance, the government reformed existing subsidies for special contracts. The recently created future job scheme (*Emplois d'avenir*) subsidised the hiring of unemployed young people with low skills in either the public or the not for profit sector. In autumn 2008, the government announced greater spending on the 'initiative for employment contract' (*Contrat Initiative Emploi* - CIE) and 88,500 new contracts were created in 2009 (Erhel 2010: 18). Subsidised contracts have had an important mitigating impact on overall employment numbers (Bardaji 2011: 2). Some less targeted schemes also subsidised any recruitment in a company of fewer than 10 employees, by exempting all employer social contributions of employees earning up to 1.6 times the minimum wage (the SIMC), with the highest subsidy for minimum wage earners. More than 1.1 million requests had been accepted by 1st October 2010 and this helped mitigate the fall in recruitment during 2009 (Bardaji 2011: 4).

In addition, the government also attempted to help those ineligible for unemployment benefits and in low income work. In France, those that have been in unemployment for a long time or have not contributed to the unemployment benefit scheme in the past claimed from the guaranteed minimum income scheme (*Revenu minimum d'insertion*). In 1988, Rocard had introduced the scheme to provide a minimum income benefit to those not covered by unemployment benefits, but this meant that returning to work would entail a loss of benefits. In 2008, the Sarkozy government introduced a

new scheme (*Revenu de solidarité active* – RSA) that allowed workers earning below a certain income to claim benefits, thereby minimising some of the benefit loss when returning to work (for more on the politics behind the reform, see Vlandas 2013a). The RSA was later made accessible to those aged between 18 and 25 years old, which were previously excluded, but only if they had worked at least two years.

There were also attempts to improve the regulation of non-standard work. Temporary work, including fixed-term contracts and temporary agency work, had been the focus of previous labour market reforms (Vlandas 2013b). Temporary work was seen as creating precariousness (*précarité*) while not improving efficiency. For instance, Blanchard and Landier (2002) have argued that the increase in fixed-term contracts over time in France has not reduced the duration of unemployment but instead has increased turnover, leading to worse labour market outcomes for young people. In 2013, the Hollande government introduced regulations preventing interns being used instead of permanent workers while contributions to insurance funds for temporary work were stepped up. In 2014, the government further targeted interns and also introduced reforms aimed at improving the conditions for part-time work: the minimum legal pay of interns was increased and the minimum statutory hours for part-time work was raised. In 2015, the regulations surrounding the posting of workers, which can be seen adversely to affect outsiders the most, were tightened (LABREF).

In sum, unlike accounts that suggest that governments in more dualised countries were less likely to use labour market policies to help outsiders during the crisis (e.g. Rueda 2014), in France there was a continuing attempt to reduce labour market dualisation. This pro-outsider position is consistent with pre-crisis dynamics. In the pre-crisis period, both the unions (Benassi and Vlandas 2016) and the French government (Vlandas 2013a, 2013b) had attempted to combat labour market dualisation (for a contrarian view, see Palier and Thelen 2010). France pursued many policies that aimed to improve the welfare of outsiders in unemployment and precarious work, despite its high EPL and its large temporary work sector (see Vlandas 2013b for a summary of pro-temporary worker legislation). Both left and right-wing parties pursued ALMPs, for instance training schemes, direct job creation programmes and employment incentives (Vlandas 2013c).

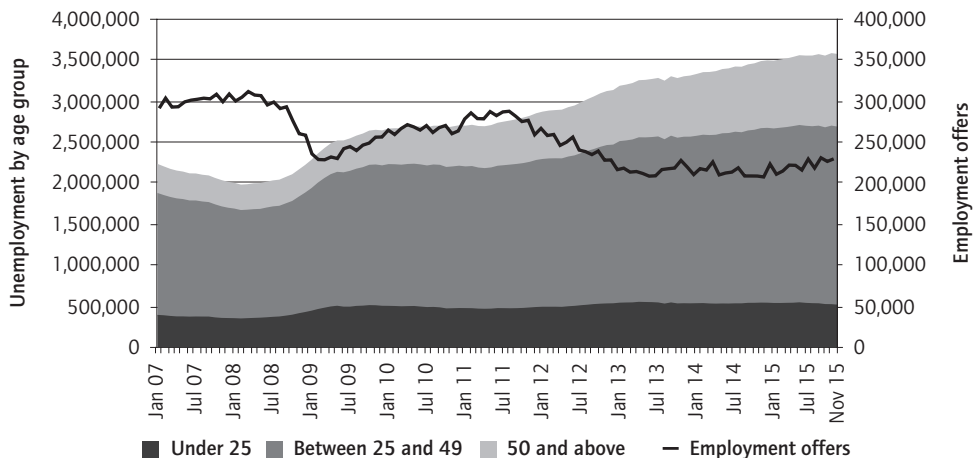
4. Labour market during the crisis

In this section, I argue that it is not apparent that these reforms fulfilled their stated aims to reduce unemployment and labour market dualisation. Indeed, unemployment continued to increase in the aftermath of the crisis as job offers fell. Few employees on permanent contracts were dismissed, but many workers in temporary agency work and on fixed-term contracts did not see their contracts renewed and the number of unemployed people managing to exit unemployment by finding a job fell. Long-term unemployment increased, many people exited the labour market altogether and the number of RSA recipients rose. Labour market dualisation also worsened as the employment of some groups was particularly affected: young and old unemployed males, non-EU28 citizens and those with low education.

4.1 Flows into and out of unemployment

We can unpack the changes in unemployment for different groups by examining the flows of jobseekers in and out of French job centres. Figure 2 shows the number of jobseekers that are asked to search actively for jobs and are currently without a job. It distinguishes between three age groups: the under 25s; those between 25 and 49; and those above 50 years. After an initial increase in unemployment of roughly 500 000 during the height of the crisis, unemployment increased much more thereafter (by another one million by December 2015). Between December 2008 and December 2010, youth unemployment increased by 42 per cent, whereas it only increased by 35 per cent for those above 50 and by 27 per cent for those between 25 and 49. Thus, after each of the main reforms mentioned in the previous section, unemployment continued to increase. At the same time, deregulation did not result in a return to the level of employment offers that prevailed prior to the crisis. In the absence of a counterfactual, one cannot conclude that deregulation had no effect on unemployment and job creation, but *prima facie* it failed to stop unemployment from rising and did not lead to job creation reaching pre-crisis levels.

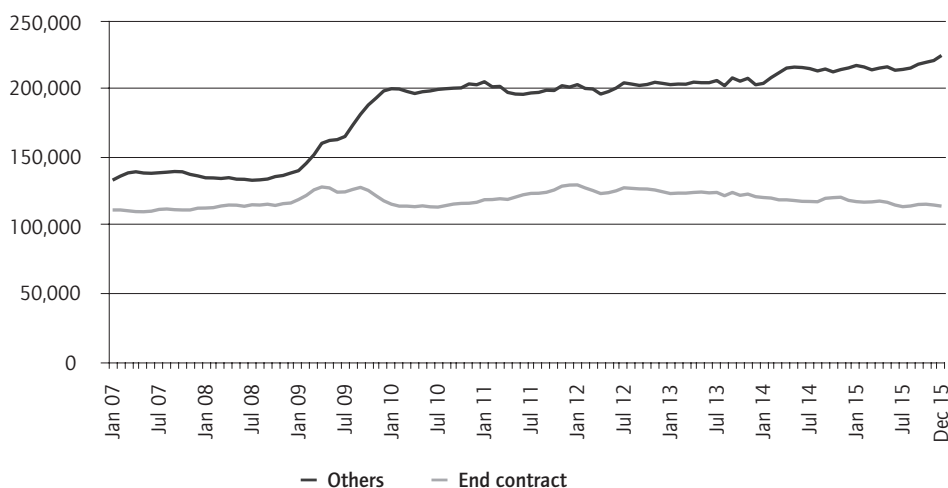
Figure 2 Total unemployment numbers by age group



Note: This figure shows the total number of jobseekers registered at the end of the month in the French public employment agency (*Pôle Emploi*) that are asked to search actively for jobs and are currently without a job. Three different types of job offers are included: permanent employment; temporary employment; and occasional employment.

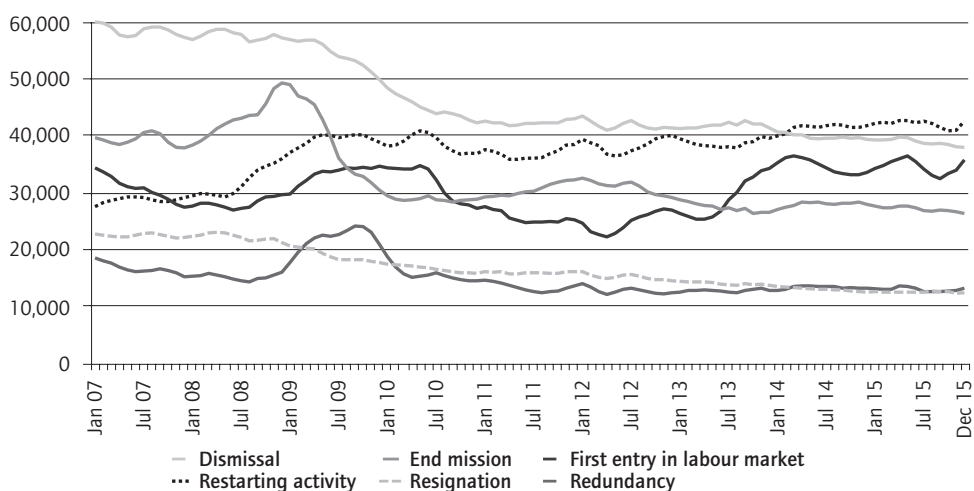
Source: data taken from the French public employment service (*Pôle Emploi*) – Monthly Labour Market Statistics, Department of Research, Studies and Statistics, Ministry of Work and Employment

Figures 3 and 4 analyse what the unemployed newly registering with the French job centre were doing before registering. Note that the figures exist only for workers actively seeking jobs, regardless of whether they have not worked in the previous month (recorded as category A in the French labour market statistics); they have worked fewer than 78 hours in the previous month (recorded as category B); or they have worked more than 78 hours in the previous month (recorded as category C). Figure 3 shows that the biggest number were those that the French public employment agency *Pôle Emploi* records as being in the ‘other’ category. This includes individuals that were working

Figure 3 The two biggest sources of registration with *Pôle Emploi*

Note: Registration with the French public employment service (*Pôle Emploi*), which only reports registration numbers for all categories of unemployed (i.e. a more inclusive measure than the one used in Figure 2): those seeking work and having not worked in the previous month; those seeking work and having worked fewer than 78 hours in the previous month; and those seeking work and having worked more than 78 hours in the previous month (in French labour market statistics, these are referred to as categories A, B and C, respectively). The 'others' include: end of non-salaried work (individuals whose work is not remunerated by an income, i.e. liberal professions, traders, etc.), 'rupture conventionnelle' (see discussion above on the new method for terminating contracts), return to France, end of detention and other cases.

Source: same as Figure 2

Figure 4 Other sources of registration *Pôle Emploi*

Note: Registration with French public employment service (*Pôle Emploi*), which only reports registration numbers for all categories of unemployed (i.e. a more inclusive measure than the one used in Figure 2): those seeking work and having not worked in the previous month; those seeking work and having worked fewer than 78 hours in the previous month; and those seeking work and having worked more than 78 hours in the previous month (in French labour market statistics, these are referred to as categories A, B and C, respectively). 'End mission' refers to the end of temporary agency work.

Source: same as Figure 2

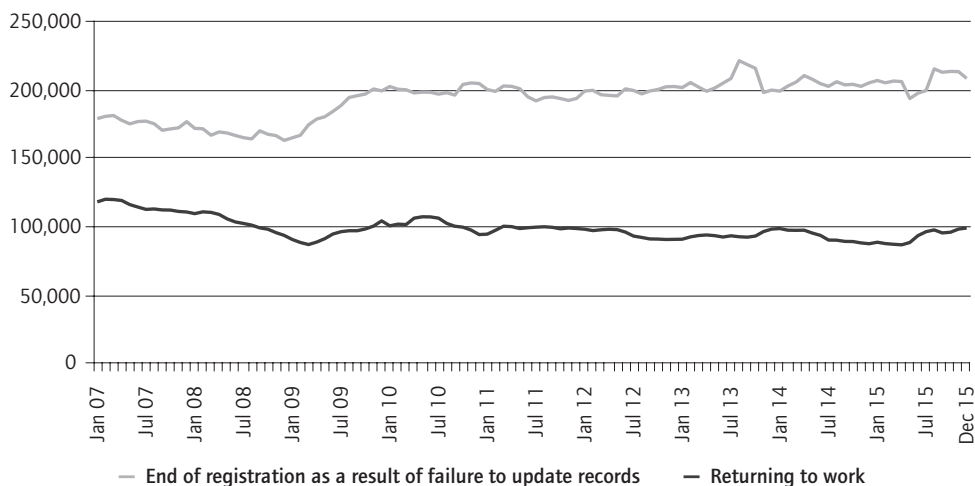
but not in paid (salaried) employment – i.e. self-employed, small shop owners or other ‘liberal professions’ – but also the ‘*rupture conventionnelle*’ (negotiated termination of contract) that was introduced in one of the reforms discussed earlier. The ‘other’ category increased appreciably in 2008 and 2010 and continued to increase thereafter. The second biggest group of people were registering with *Pôle Emploi* because their contracts had ended. This concerns, first and foremost, workers on fixed-term contracts. Figure 4 shows that workers that were engaged in temporary agency work also represented a large and increasing group of people registering with *Pôle Emploi*.

Thus, the two groups most affected by the crisis were the self-employed and temporary workers: outsiders that are the most at risk of unemployment. Similarly, the third biggest group is composed of those ‘entering the labour market’: also an outsider group at risk of unemployment given the more limited work experience. The size of this group increased between 2007 and 2009 and then fell before increasing again between 2012 and 2015. By contrast, very few of the newly-registered unemployed were formerly on permanent contracts, although this could, in principle, reflect both the protective nature of the contract type and the profile of workers on permanent contracts, for instance in terms of skills. Strikingly, dismissals actually fell during the crisis while redundancies increased only until 2009 – but fell thereafter and represented one of the smallest contributing factors to registrations.

Figures 5 and 6 show what reason was recorded for people who stopped being registered at *Pôle Emploi*. Figure 5 reveals that most unemployed exit as a result of a failure to update records. This could, in principle, also include people who have started working but failed to notify *Pôle Emploi*, although the increase in this indicator during the height of the crisis between 2008 and 2010 suggests it is more plausible that many of the failures to update records are encapsulated by people dropping out of the labour market. The second biggest reason for exiting unemployment was unemployed people who returned to work and informed *Pôle Emploi* that they had therefore stopped seeking work. We can observe that this fell over time, especially between 2007 and 2009, and never returned to pre-crisis levels. In Figure 6, I analyse other reasons: deregistration and the number that stopped searching for work fell during the crisis, whereas the numbers that were forced to take an internship increased massively.

Overall, labour market flows reveal that temporary workers were particularly affected by the crisis, whereas there was actually a fall in the number of dismissals. Once in unemployment, fewer people managed to exit unemployment by returning to work. The result was that many simply stopped updating their records and dropped out, while others were forced to take internships. This evidence suggests that the impact of the crisis was concentrated on temporary workers, who were much more likely to lose their job, and the unemployed, who found it harder to find permanent jobs; insiders were, in contrast, mostly insulated.

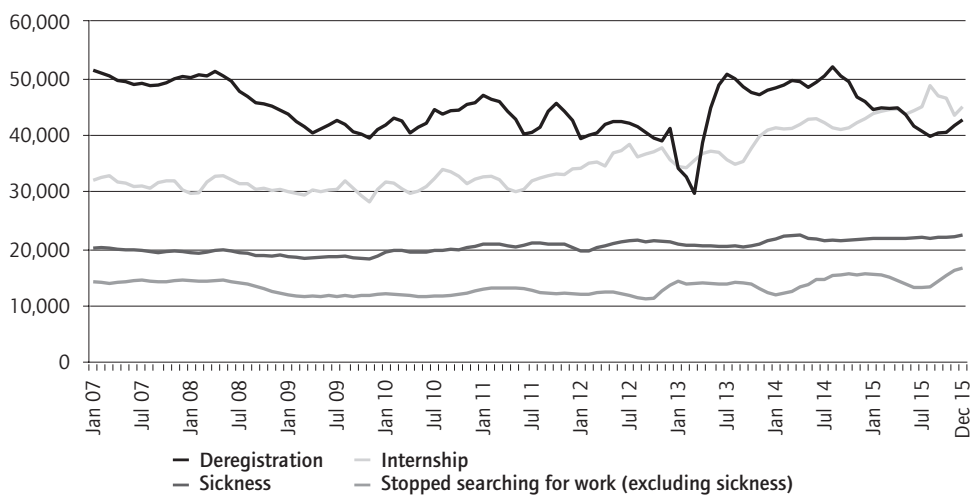
Figure 5 Two biggest reasons for exiting *Pôle Emploi*



Note: This figure records the reason given by those exiting *Pôle Emploi*. The French public employment service does not report what caused the failure to update records.

Source: same as Figure 2

Figure 6 Other reasons for exiting *Pôle Emploi*



Note: this figure records the reason given by those exiting *Pôle Emploi*.

Source: same as Figure 2

4.2 Rising labour market dualisation?

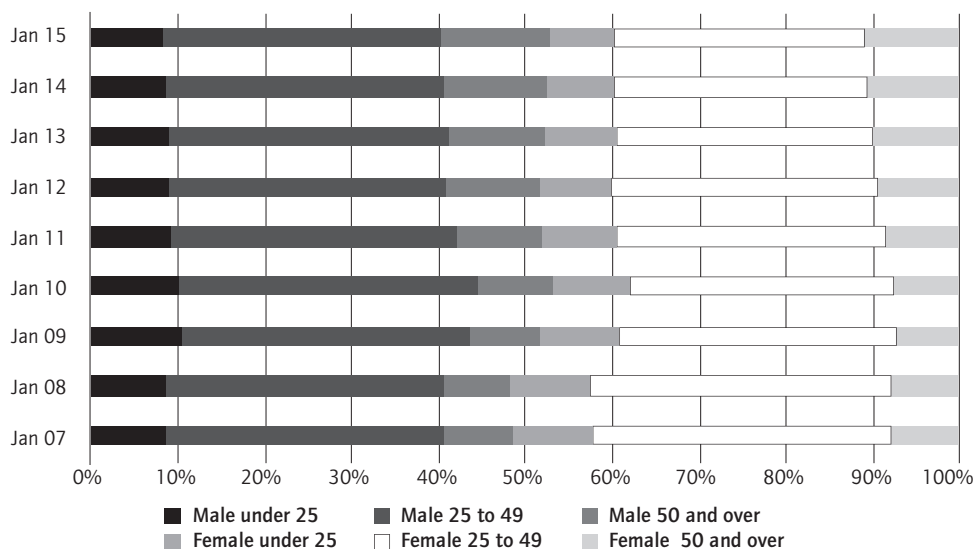
In addition to deregulating EPL, policy-makers have also attempted to reduce labour market policy dualism by introducing policies targeted at outsiders. The previous section has shown that this has failed to reduce unemployment. In this section, I analyse whether the reforms were successful in reducing labour market dualisation.

Figure 7 disaggregates unemployment figures by age and gender. During the first two years of the crisis, young males were the most adversely affected: unemployment of males under 25 increased by 22 per cent compared to only 7 per cent for those between 25 and 49, and 1 per cent for those 50 years old and above (and it actually decreased for females above 25). In the aftermath of the crisis, from January 2009 onwards, unemployment continued to increase for those under 25 (by 23 per cent for males and 19 per cent for females), but the biggest increases were for those 50 years old and over (143 per cent for males and 135 per cent for females). This worsening of the labour market position of older workers over time reflects their greater difficulty in returning to work when they lose their job. This is consistent with the massive increases in the number of unemployed registered for more than 12 months (Figure 8). If we broaden the measure to include those seeking work but having worked in the previous month (a measure that captures both the unemployed and those that are under-employed) the picture is even worse: there were around 1 000 000 long-term unemployed in parts of 2008, but almost 2 500 000 in October 2015. Even this measure is likely to underestimate the size of the problem since those that have been looking for work for a long time may lose eligibility. During the crisis, there was an explosion in the use of RSA '*socle seul*', which gives benefits to households with no income from work; this rose from 342,290 in July 2010 to a peak of 608 825 in March 2015. The number of RSA recipients that are in work also increased: from 101 228 in July 2010 to a peak of 179 090 in November 2015.¹¹

In addition to the differences between workers of different age and gender, disaggregating employment rates for different labour market groups also highlights the growing inequalities between workers depending on their origins and educational backgrounds (see Table 2). The employment rate of workers from different origins varied greatly during the crisis. The employment rate of those born in the EU-28 is now higher than it was before the crisis: it increased from 64.4 per cent in 2007 to 64.8 per cent in 2009, and 67.6 per cent in 2011. By contrast, those born outside the EU-28 had a much lower employment rate even before the crisis (55.7 per cent in 2007) and this has further deteriorated during the crisis, falling to 54.1 per cent in 2011. A similar divergence can be observed between workers with different educational backgrounds. Workers with tertiary education have seen their employment rate improve continuously, from 79.3 per cent in 2007 to 81.3 per cent in 2013. By contrast, the employment rate of workers without upper secondary education has fallen from 47.6 per cent in 2007 to 45.4 per cent in 2010, and to 42.9 per cent in 2013; while the employment rate of individuals with upper secondary education has deteriorated further: it fell from 69.3 per cent in 2007 to 66.3 per cent in 2013.

11. Source: same as Figure 3. Note: the RSA was voted in in 2008 and started in January 2009. However, detailed data are only available after July 2010.

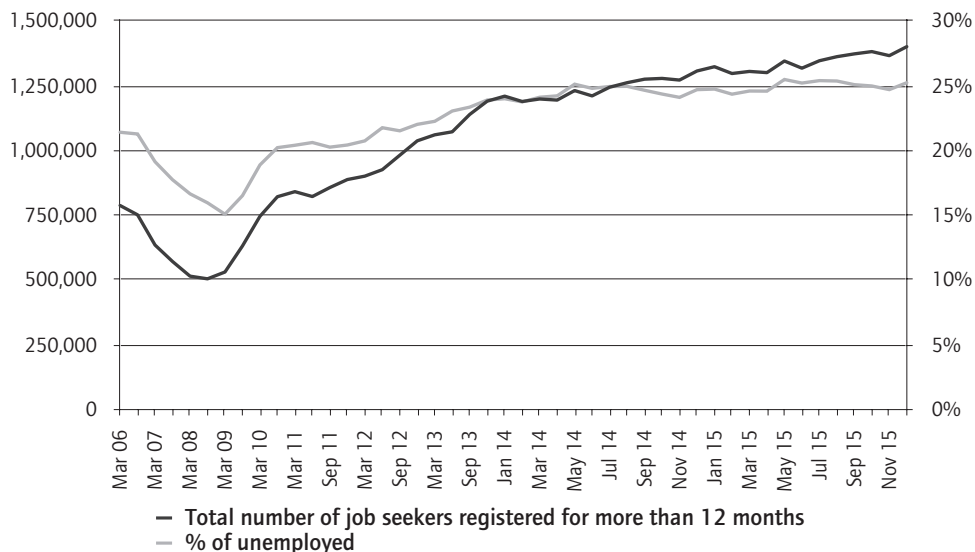
Figure 7 Unemployment composition by age group and gender



Note: this figure differentiates the gender and age group of jobseekers registered at the end of the month in *Pôle Emploi* that are asked to search actively for jobs and are currently without a job.

Source: same as Figure 2

Figure 8 Unemployment by duration



Note: jobseekers registered at the end of the month that have not worked in the previous month and have been registered for more than 12 months.

Source: same as Figure 2

Table 2 Evolution of employment rates by education and country of origin

Year	Lower than primary, primary and lower secondary education	Upper secondary and post-secondary non-tertiary education	Tertiary education (levels 5-8). France	EU-28 countries except reporting country	Extra EU-28
2006	47.6	68.8	78.5	64.7	54.2
2007	47.6	69.3	79.3	64.4	55.7
2008	47.2	69.4	80.7	64.4	58.3
2009	46.1	68.3	79.9	64.8	55.3
2010	45.4	68.0	80.3	67.1	54.8
2011	45.2	67.3	80.5	67.6	54.1
2012	44.7	66.9	80.9	65.8	54.8
2013	42.9	66.3	81.3	67.7	53.4
2014	41.2	65.7	81.2	67.0	53.0

Source: Eurostat 2016

Finally, the reforms that were undertaken during the crisis, like the reforms undertaken beforehand, did not contain the rise of temporary contracts, even if temporary work initially contracted during the crisis. The exit rates for fixed-term contracts increased and temporary agency workers have been particularly hard hit: their exit rates from employment doubled in two years, from 19 per cent in 2007 to 39 per cent in 2009 (Bardaji 2011: 5). In the longer run, however, temporary employment increased from about 3 092 000 in 2005 to about 3 696 000 in 2014, an increase of nearly 20 per cent (Eurostat 2016b). This increase in temporary employment shows that firms can find flexibility in France by using temporary contracts so that the deregulation of permanent contracts is unlikely to generate new employment. Indeed, job offers for contracts of durations both above and below six months fell during the crisis but, if we examine the number of job offers by contract duration in percentage terms, we observe an increased percentage of contracts for less than six months, which rose from 55.4 per cent in 2007 to 57.9 per cent in 2011 (DARES 2016b).

Overall, labour market segmentation along several dimensions (age, gender, origin, educational background and contract type) increased even though policy-makers attempted to help outsiders and reduce ‘policy dualism’ (Emmenegger *et al.* 2012). Thus, reducing the protection of workers on permanent contracts did not result in falling segmentation or less precarious contracts. This paradoxical result is consistent with the argument of Tsakalatos (2004: 417) that reducing the protection of insiders affects the bargaining power of all workers and, hence, makes outsiders worse rather than better off.

5. Conclusion

There is a long-lasting concern in France with high unemployment, social exclusion and ‘excessive’ labour market ‘rigidities’. High EPL is blamed for persistent and high unemployment and labour market dualisation, in which certain groups are excluded from the labour market or relegated to jobs with low protection, poor prospects for advancement and lower job satisfaction. Following this conventional wisdom, certain policy-makers, economists and international organisations have recommended that France deregulates its EPL as a response to the crisis.

This chapter suggests these policy prescriptions are based on a problematic reading of France’s pre-crisis labour market problems. The reductions in unemployment rates prior to the crisis in the absence of deregulation show it is possible to achieve lower unemployment without lowering EPL; while high EPL can minimise the impact of recessions by making it harder to fire workers. During the initial phase of the crisis, the French labour market resisted well on average, as a result of a combination of factors: the crisis was more limited than elsewhere; automatic stabilisers mitigated the impact of the crisis; and high EPL limited dismissals and redundancies.

Conversely, the deregulation that did take place after the crisis had occurred did not result in lower unemployment. Labour market segmentation did increase, however, and those in non-standard employment were particularly hard hit by the crisis: younger, non-educated, and non EU-28 workers experienced quickly-deteriorating labour market positions, in contrast to native middle-aged workers with tertiary education. This occurred despite the government’s efforts to reduce policy dualism alongside the introduction of benefits targeted at outsiders to help them return to work – a finding that contrasts with the expectation of insider-outsider theory.

In the light of this analysis, the continuing deregulatory agenda in France appears ineffective on its own terms: it has reduced neither unemployment nor labour market dualisation. Instead, attempts to reduce dualisation without undermining the existing protections for permanent employment should be further supported. In the short-term, macroeconomic policy should focus on increasing economic growth rather than balancing budgets. In the future, a greater focus on the long-term causes of labour market problems will be necessary to address unemployment and dualisation.

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Chapter 10

Security and labour market flexibility: an alternative view from Denmark

Bjarke Refslund, Stine Rasmussen and Ole H Sørensen

1. Introduction

In the face of the economic and financial crisis, several European countries have implemented a number of structural reforms to increase employment and the flexibility of the labour market, in particular by reducing employment protection in an effort to deregulate labour markets. Reform proponents believe that a reduction of the gap between the protection of regular and non-standard contracts will decrease the alleged disincentives to offer permanent contracts, which should then lead to an increase in open-ended employment contracts and, thereafter, to greater productivity and consequently higher employment. Conversely, reform opponents claim that this view builds on a misguided view of labour market dynamics. They do not believe that such reforms will lead to job growth, asserting that such reforms are as likely to reduce as to increase employment and that they will lead to growing inequality and labour market segmentation.

In Denmark, employee protection in terms of notice periods and dismissal compensation, which is mainly regulated by collective agreement, is among the lowest in the EU. Unemployment was, before the crisis, among the lowest in the EU but the crisis also negatively affected employment in Denmark. However, there have been no major moves to deregulate employment protection; probably because flexibility is already high in the so-called Danish flexicurity model and because much of employment protection is settled in the collective agreements.

Instead, politicians have turned their attention to the security part of the flexicurity model by reducing rights and eligibility for benefits. Especially since the crisis, the political system has focused much on the group of persons outside the labour force who are on some sort of public support, and political debates have often emphasised that the size of this group must be reduced. An often-used number in the political debate is that just less than 800 000 people of the active workforce age are on public support compared with 2 861 000 in the labour force. This relatively large number is used to form the argument that, with so many not working, the incentives to take on work are not strong enough and must be strengthened even more. However, in reality, this group is rather heterogenic and mainly consists of students with the remainder being persons on many different types of benefits and on different leave schemes as well as those who are ready to take on work and people with disabilities or health problems who are not able to work. According to experts, it is only possible to mobilise around 150 000 of this group and they therefore criticise the political debate for being misguided (Bennike 2014).

This idea of a large group of people on passive support that do not have the incentives to take on work seems to have been the driving force behind several reforms targeting and reducing social security in Denmark after the crisis. The rationale has therefore not so much been to reduce the level of social security in order to create more labour market flexibility, but more to mobilise and activate a larger number of passive citizens to take on work, thus also increasing labour supply.

This chapter discusses the question whether there are indications that the effects of such reforms can be detected in employment levels and in changes in labour market dynamics and how this relates to a Danish labour market known for high flexibility. The reforms may affect low- and high-skilled workers differently and it may differ between sectors due to differences in sectoral collective agreements.

To answer these questions, we:

- explain the particularities of the regulation of the Danish labour market: collective agreements, flexicurity, welfare regulation, etc. to give the reader an understanding of the context of the reforms;
- analyse the development in employment and unemployment from 2000 to 2015;
- discuss recent reforms of the social security system and in the unemployment benefit system;
- discuss the relationships between reforms in social policies and unemployment insurance schemes and changes in the labour market.

2. The regulation of the Danish labour market

This section¹ highlights the key features of the Danish labour market in order to provide an understanding of how its characteristics, functioning and regulation affect employment levels.

There is a strong tradition of voluntary collective bargaining and strong social dialogue between trade unions and employer associations in Denmark. The social partners negotiate and reach agreements on most of the terms and conditions of employment through collective agreement (e.g. wages, pensions and notice periods) without state intervention. Legislation exists, but it often has a second tier position either as framework law or by securing the coverage of segments of workers who are not included in the collective agreements. This tradition builds on strong social partners with mutual respect for each other's position and a rather strong consensus that voluntary bargaining is still the right approach to labour market regulation, albeit still with re-occurring industrial conflicts (Andersen *et al.* 2014).

The strong consensus builds on the presence of strong and representative social partners (trade unions and employer associations). Union density is very high in international perspective. In 2014, this figure is 68 per cent (DA 2014). There are numerous unions

1. A large part of this section builds upon chapter 2 in Rasmussen *et al.* (2015).

– mainly organised on the basis of trades – but, despite some internal conflicts, they predominantly act as a coherent movement, in many cases in sector coalitions, and they mostly avoid competing with each other over members and agreements. However, it should be mentioned that, within the last three decades, union membership rates have declined from over 80 per cent and there has been a noticeable growth in so called ‘yellow unions’, or alternative ideological unions. These are not members of one of the three union confederations and do not take industrial action; some of them do not sign collective agreements and, where they do so, these typically offer a lower level of wages and rights for employees (Ibsen *et al.* 2013). Competition does occur between these unions and the traditional ones.

Almost all unions are organised into three main confederations (traditional blue-collar workers in LO (Landsorganisationen i Danmark [Danish Confederation of Trade Unions]); academics in AC (Akademikerne [Danish Confederation of Professional Associations]); and mostly public sector employees in FTF (Funktionærernes og Tjenestemændenes Fællesråd [Confederation of Professionals in Denmark]). This unity also applies at workplace level where, in contrast to many other countries, there is a single channel of worker representation. The Danish ‘cooperation system’ normally consists of a cooperation committee and a worker-elected shop steward in workplaces, where coverage remains high, especially in the larger workplaces and companies.

When it comes to employers, all employers in the public sector are members of employer organisations and, in the private sector, the degree of employer organisation is about 58 per cent (measured in terms of the share of the workforce employed in a company which is a member of an employer organisation). Employers’ organisation rates have increased in recent years (Ibsen 2014:126) but has historically been a little below the European average (Jensen 2007:202-204).

Around 84 per cent of all employees are covered by collective agreements, mainly at sector level although there are also some company-level agreements, while, of the remaining 16 per cent, a substantial share is employed as salaried workers, which secures them certain rights (DØR 2015: 306-307; Rasmussen *et al.* 2015). In the public sector, all employees are covered by collective agreements while, in the private sector, 74 per cent are covered (DA 2013:262). However, there are quite substantial differences between sectors. For instance, the construction sector and manufacturing have substantially higher coverage than the private services sector, and particularly low levels of coverage can be found in sectors such as cleaning, hotels and restaurants, and transportation (Ibsen 2012:72). In agriculture, the level of collective agreements is below 50 per cent (Refslund 2016: 602).

The collective agreements settle most conditions on wages and terms of employment. In general, the agreements regulate working time, overtime, minimum wages, notice conditions, pension and representation in the workplace. However, the specific content of the collective agreements varies a great deal between sectors and there are some significant differences across sectors. These result in some gaps e.g. in wages between such sectors but also in employee protection, where dismissal rights also differ for different groups of employees. These variations are grounded in historical developments,

different institutional configurations, variations in labour market organisation and work organisation in the sectors, as well as sector specific trade-offs between wages and redundancy benefits and other benefits (Rasmussen *et al.* 2015). However, the different unions and wage groups are somewhat trapped by these historical conditions since general wage developments more or less follow the same overall pattern in the collective bargaining system. This is partly because collective agreements are still highly coordinated in the Nordic countries (Vartiainen 2011).

The collective agreements give rights to all employees in the organisation within a certain area, including employees who are not union members (Jørgensen 2014:18), and they cover all types of wage-earners working in the firms covered by the agreement. This means that the agreements not only apply to full-time employees with open-ended contracts but also to part-time workers, temporary workers and casual workers, if they conform to the definition of wage-earner (Lorentzen 2011:83). In some countries, a standard employment contract may be understood solely as a full-time open-ended contract; however, in the case of Denmark it is more appropriate to understand standard employment as employment regulated through the collective agreements, because being employed under a collective agreement means that the employee has certain rights and a certain level of protection regardless of the type of contract (Rasmussen *et al.* 2015). This does not, however, mean that workers not covered by collective agreements are in an atypical employment *per se*; they can also enjoy the same rights and terms of the collective agreements if their employer chooses to follow the agreement without actually signing it.

Consequently, the Danish labour market model combines state regulation and voluntary agreements between unions and employer associations, in which the voluntary element is dominant. Thus, state-driven labour market reforms are limited to certain policy areas, although some changes in the labour market have started with the government putting pressure on the social partners in tripartite negotiations. This, for example, happened in a recent agreement on a new labour market introduction training scheme for refugees in spring 2016. Some reforms have been implemented as a result of EU regulation but, even in these cases, the social partners have been involved through the so-called ‘implementation committee’ and have been given due time to negotiate changes to collective agreements that adapt these to the new EU requirements. Subsequently, the state has typically supplemented these with legislation to cover workers who are not covered by the collective agreements.

2.1 Danish Flexicurity

Another important characteristic of the Danish labour market is the unique combination of high labour market flexibility (low employment protection), high levels of unemployment benefits and a high level of active labour market policy and education. These three legs together have become known as the Danish Flexicurity model (Bredgaard and Madsen 2015; Kongshøj Madsen 2006). The collective agreements’ relatively low degree of employment protection combined with high levels of social security and active labour market policies helps the unemployed return to the labour

market by raising their skills (labour market education, training, etc.) and motivation strategies. Some sectors, e.g. construction, have notice periods as low as ten days for employees in open-ended contracts with tenure of up to ten years in the same company. A low level of employment protection normally creates job insecurity for the workforce but, in the Danish case, this insecurity is compensated for by a high level of social security (income security) and an active labour market policy (employment security). Owing to high unemployment benefits and strong active labour market policies, the unions have accepted the low levels of employment protection while the social partners in general have a positive perception of labour market flexibility. Labour market flexibility is thus a trade-off for higher income security and other labour market benefits such as a comparatively high wage level.

Flexicurity should be seen as a negotiated equilibrium so, when policy reforms alter one part of the flexicurity model (e.g. income security in terms of unemployment benefits), this will typically spill over into collective bargaining. The trade unions in general have also strongly opposed the shortening of the period of unemployment benefit, so the development of flexicurity is contested in the Danish context.

According to the OECD's EPL indicator (see the chapter by Myant and Brandhuber in this volume for a discussion), Denmark is placed either in the middle or lower part of all OECD countries.² However, the indicator does not take into account the relatively large differences in employment protection between different sectors and different groups in the labour market that has arisen because of the tradition of regulating employment protection in collective agreements, in which the social partners in different sectors have been able to adapt the notice periods to the needs of the sector. For instance, in construction notice periods are typically really short (often from day to day), while other sectors have somewhat longer periods. Furthermore, more than one-half of the Danish workforce is also employed on terms similar to salaried employees, which are regulated by law, so these employees have more favourable notice periods than stipulated in the collective agreements. This further complicates the measurement of EPL. However, salaried employee terms mainly apply to white-collar workers, of which many are public employees. There is no legislation for notice periods in the private sector (public employees are covered by the regulation of public administration and, in many cases, the law on salaried workers), so this must be agreed either in the collective agreement and, if the worker is not covered by a collective agreement (or the law on salaried workers), it must be defined in the contract. Hence the notice periods established in the collective agreements are most important for employees in the private sector (cf. Rasmussen *et al.* 2015).

It is, in general, assumed that low employment protection for ordinary employees combined with the higher level of unemployment benefits contributes to high labour market flexibility, with employees not as concerned about losing their job as in many other countries. Denmark is, therefore, also characterised by a high level of mobility

2. In 2008, Denmark was placed towards the bottom, with only regimes like the United States, UK, Canada, Australia and Switzerland ranking lower (Madsen 2015:57). In 2013 (after a revision of the EPL indicator), Denmark was placed in the middle (OECD 2013:78), further away from these countries.

between jobs, a lower level of job tenure and higher job creation than other countries (Andersen *et al.* 2015). According to statistics from the OECD and the Labour Force Survey, average job tenure in Denmark was 8.1 years in 2014 which is one of the lowest averages in all OECD countries.

Table 1 Examples of notice periods in selected industries

	After 1 year of employment	After 5 years of employment	After 10 years of employment
Construction	3 days	10 days	10 days
Manufacturing and transportation	21 days	56 days	90 day
Salaried employees	3 months	4 months	6 months

Sources: Collective agreements for manufacturing, 2014-2017; for construction, 2014; and the law on salaried workers

Owing to the flexibility of the ordinary workforce, the use of non-standard forms of employment (such as, for instance, fixed-term employment and temporary agency work) is not as dominant as in many other European countries (Grimshaw *et al.* 2016). According to statistics from the Labour Force Survey, approximately 8 per cent of all employees are employed in fixed-term positions and this is a share that has been relatively stable during the last 10 years, including during the economic crisis (Rasmussen *et al.* 2015). Temporary agency work accounts for approximately 1 per cent of all employment and has been more sensitive to the economic crisis, with the number of temporary agency workers falling drastically during the first year of the crisis but re-attaining the previous level in 2014 (Dansk Erhverv 2015).

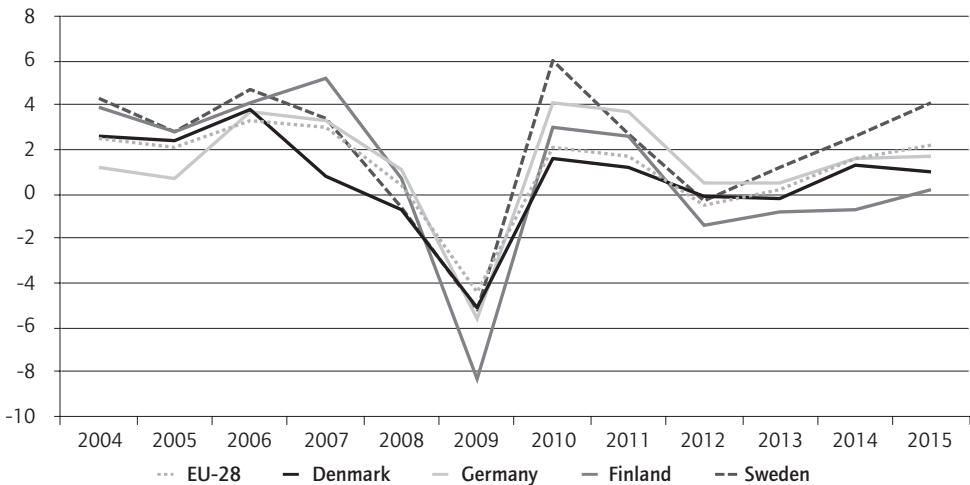
We described in the Introduction that there have been no major legal moves to deregulate employment protection in Denmark, partly because it is already at a low level and partly because it is regulated in the collective agreements. There have, however, been some reforms that have affected the institutional power of the Danish unions, e.g. by allowing cross-trade unemployment insurance funds and thus challenging the Ghent system (Klitgaard and Nørgaard 2014), which is also a distinct feature of the Danish labour market. However, we will not discuss these changes in any detail here (see Refslund and Sørensen 2016 for some of these discussions). Instead, politicians have, as mentioned in the Introduction, cast their attention on the security part of the Danish flexicurity model by reducing rights and eligibility for benefits, mainly for people on the fringe of the labour market. The rationale has been that the number of persons outside the workforce on different types of public support is too large and that the system therefore is too expensive. Less security will increase the incentives to take on work and create a larger labour supply. In the next section, we take a look at the levels of unemployment and employment in Denmark since the crisis and, in the following section, we will describe the reforms targeting social security in greater detail.

3. Employment, unemployment and economic performance after the crisis

Denmark is often included in comparative political-economic analyses due to interest in the combination of high equality (Denmark had the lowest Gini coefficient in the latest OECD figures from 2012), strong competitiveness and strong economic performance (Kristensen 2013; Kristensen and Lilja 2011; Refslund and Sørensen 2016). This has also been reflected in the labour market, where the Nordic countries in general have been able to sustain high levels of employment and low levels of unemployment as well as high general wage levels in a compressed wage structure (Refslund and Sørensen 2016). Compared with European averages, the employment rate remains high and unemployment rates are still low. However, the crisis put the Danish flexicurity model to the test, since it was claimed by critics that the model had never been tested in an economic downturn (Andersen *et al.* 2015). Following the crisis, there have been some changes in the Danish labour market which we will discuss here and in the next sections.

Denmark was hit rather hard by the economic and financial crisis that started in the autumn of 2008. Danish GDP dropped 0.7 per cent in 2008 and by as much as 5.1 per cent in 2009 in the peak year of the crisis, which was higher than the EU-28 average of 4.4 per cent. GDP has improved significantly, but recovery in the Danish economy and the Danish labour market has been somewhat slow; the overall GDP level had, in 2015, still not regained its level of 2008. However, the Danish economic recovery has followed the same pattern as other Northern European countries, as seen in Figure 1. Growth rates in the Danish economy have been close to the EU average, but the accumulated growth since 2008 has been below the EU average and lower than the growth rates in Germany and Sweden, albeit better than e.g. Finland.

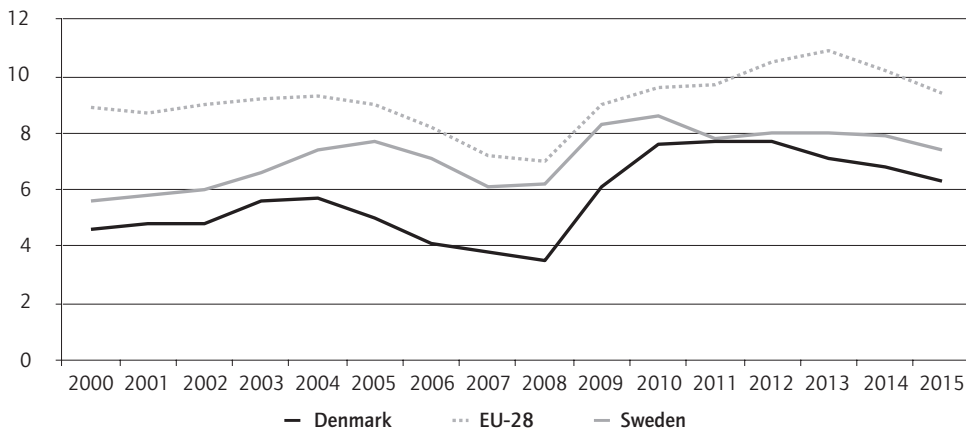
Figure 1 GDP Growth in selected European countries



Source: Eurostat

Unemployment in Denmark has been significantly below the European average and the Danish labour market has performed well in the last fifteen years, which is the main reason why the Danish flexicurity model has received so much attention. When the crisis started, the Danish labour market was in a situation close to full employment, with an unemployment rate of 3.5 per cent in 2008. However, as in most other European countries, unemployment rose sharply in 2009 and 2010; even higher than the EU-28 average (albeit from a lower level) and higher than in the other European countries with which Denmark is normally compared, such as Sweden, Norway and the Netherlands (Goul Andersen 2013: 32 – see also Figure 2). However, unemployment peaked earlier than the EU-28 average, which did not peak until 2013. In Denmark, unemployment reached 7.6 per cent in 2010 and then remained stable at 7.7 per cent in 2011 and 2012 before dropping to 6.3 per cent in 2015. Compared with the pattern of the EU-28 average, the Danish labour market adjusted faster than the Swedish, which could reflect that flexibility in the labour market made it easier for employers as well as employees to adjust to the crisis. However, in the Netherlands, which has also been known for a flexicurity system, unemployment did not peak until 2014.

Figure 2 Unemployment in Denmark compared with EU-28 average and Sweden

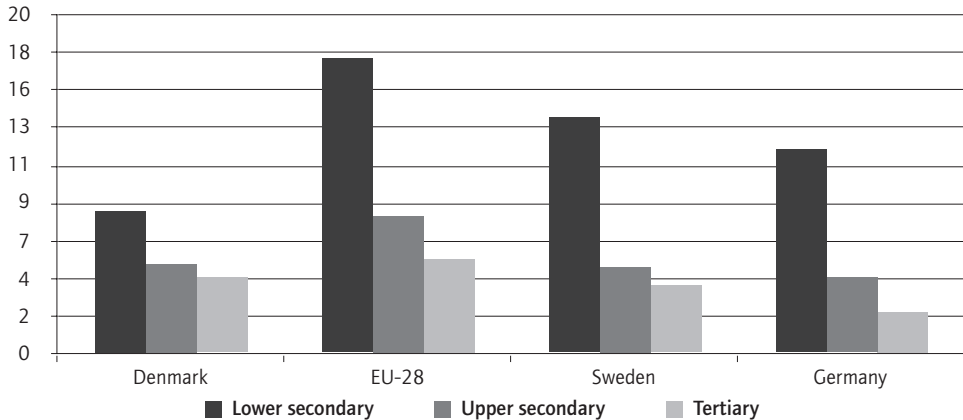


Source: Eurostat, LFS figures

The Danish labour market also performs well when it comes to long-term unemployment and youth unemployment – two crucial issues in European labour markets. Unemployment spells in general remain comparatively short (Andersen 2012). In 2014, 25.2 per cent of the unemployed were long-term unemployed, which puts Denmark at the top end of the list, outperformed only by the other Nordic countries; this is around half the European (EU-28) average of 49.5 per cent. When it comes to youth unemployment (15–24 years) Denmark is also way below the EU average, at 10.5 per cent compared to 19.4 per cent in the EU-28, with only Germany, United Kingdom and Czech Republic being lower. Finally, if we look at the differences in unemployment between various educational groups, workers with the lowest educational levels were most affected by the crisis in almost all European countries and, while this is also the case in Denmark, Danish low-skilled workers are less affected. When we compare the unemployment rates in 2014 for various educational groups, we can see in Figure 3

that the differences are smaller in Denmark both when compared with the EU average but also when compared with Swedish and German workers with only lower secondary education, a group which has a lower level of unemployment in Denmark.

Figure 3 Unemployment levels for educational backgrounds 2014

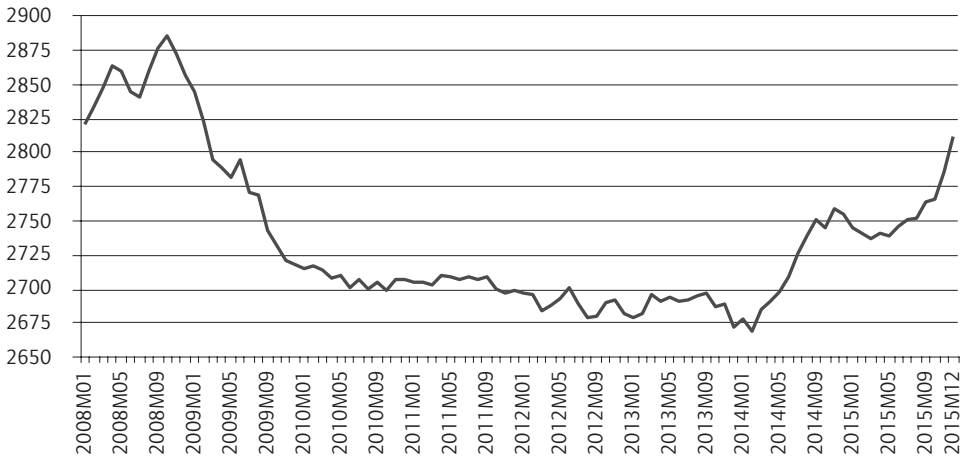


Source: Eurostat, LFS

The Nordic countries have historically had high employment rates and these remain high, although employment rates fell significantly during the crisis especially in Denmark, where it dropped from 77.9 per cent in 2008 to 72.8 per cent in 2014. Low-skilled workers in Denmark also have a significantly higher employment rate (61.4) compared with the EU average (52.6). Overall, Denmark is placed at the top end of the European ranking while the other Nordic countries are also at the top. The decline seen in Denmark between 2008 and 2015 can be problematic, especially if it reflects permanent exits from the labour market; however, recent figures from Statistics Denmark show that the figure is up to 73.5 per cent in 2015.

Almost 200 000 workers lost their jobs in the crisis, as seen in Figure 4 below. This is very significant, but the changes in jobs are not particularly high compared to the impact of the economic downturn in Denmark (see Andersen 2012; Andersen *et al.* 2015). A significant share of those leaving employment moved entirely out of the labour market, since the rise in unemployment does not match exits from employment. This is explained by a decline in workers with a second job and others moving into inactivity, education or activation schemes (Andersen *et al.* 2015: 248). It is most likely that the crisis has enhanced some of the tendencies towards movement in the labour market, e.g. either for workers considering retirement or for younger workers starting an education course (or further education); such decisions may have been accelerated by the crisis. However, there has been a strong increase in recipients of social assistance benefit, from around 110 000 to around 180 000 in the same period, some of which are most likely to have moved from employment before the crisis. There has been a significant increase in employment since 2014, although it is still below the pre-crisis level, and job creation has also remained at a high level during the crisis (Andersen 2012).

Figure 4 Employment in Denmark 2008-2015 (15-74)



Unit: Thousands
Source: Statistics Denmark, LFS

The Danish labour market was affected by the crisis, but it has followed the pattern of most other European countries as regards downturn and recovery. However, on most measures, the Danish labour market still outperforms most other European countries, including on long-term unemployment, youth unemployment and unemployment for workers with lower secondary education. When it comes to the unemployment rate, which is the variable most often emphasised by policy-makers, Denmark is also doing rather well, with the 8th lowest unemployment rate in the European Union. Compared with European averages and many other countries, unemployment peaked somewhat earlier in Denmark following the crisis. An explanation may be the high flexibility of the Danish labour market, in which enterprises can more easily adjust their activities. Economic growth has been sluggish since the crisis, but economic measures have been successful as overall performance and public finances are stable and, in particular, Danish exports are performing well. There are no clear indications that low economic growth is explained by developments in the labour market as such. Obviously, a further decline in unemployment would have a positive effect on growth rates but there are other factors, especially low domestic demand, which appear to be more central in explaining sluggish Danish growth (Goul Andersen 2013).

4. Recent reforms targeting social security

We mentioned before that, especially since 2010, there have been several reforms targeting social security in Denmark with the aims of strengthening incentives to make work pay and increasing the labour supply. Before we discuss these reforms in more detail, we provide a short description of the different social security arrangements in Denmark, because the two systems – the unemployment insurance system and the social assistance system – target two different groups in the labour market.

The unemployment insurance system is a voluntary insurance scheme mainly administered by the unions (the so-called Ghent system) but largely public funded. Seven out of ten Danes in the active labour force are members of an unemployment insurance fund (Klos 2015). Accessing unemployment insurance benefits requires membership of an unemployment insurance fund for a certain amount of time: the member must have worked at least 1 924 hours (52 weeks) within a period of three years. Those who not members of an unemployment insurance fund or are not eligible for unemployment insurance benefits may receive social assistance benefit, which is a means-tested public benefit aimed at citizens who are not able to provide for themselves.

There have been some significant changes during the last years in both systems (unemployment funds and the social assistance system) which, among other things, have tightened entitlement to benefits and toughened the requirements for receiving benefits. These changes have to be seen in connection with the idea of ‘making work pay’ which has been the dominant strategy in labour market policy during the last decade (Bredgaard *et al.* 2011:22-23). We described earlier that the Danish flexicurity model consists of three ‘legs’ – the flexible labour market; the social security system; and active labour market policy.

4.1 Changes to the unemployment insurance system

Some major changes were made to the unemployment insurance system in 2010 by a right-wing government coalition as a part of a wider attempt to revive the Danish economy by cutting expenditure. The most significant change was that the eligibility period for unemployment benefits was halved from four to two years, while the requirement for qualifying for a new period of two years was increased from six months of full employment to one year. This may still be seen as a generous system in international comparison (the benefit rates were kept at the comparatively high level), but the changes were understood as very substantial in Denmark. This was especially true since the changes came more or less in the wake of the financial crisis that hit Denmark relatively hard in terms also of unemployment (Goul Andersen 2013), which made it difficult for the unemployed to find new jobs. Previous reforms in the unemployment systems have not been carried out during economic downturns, which made the impact of this particular reform harder (Bredgaard 2015).

The tough aftermath of the crisis as regards the labour market meant that the succeeding Social Democratic government (2011-2015) first postponed the full implementation of the reform and subsequently enacted several temporary benefits to mitigate some of the negative implications of the 2010 reform. This was targeted mainly at workers who had used their two-year benefit period and were thus falling out of the unemployment insurance system, risking having to sell their house etc. owing to the much harder asset requirements in the social assistance benefit system. It also turned out that the initial reform was built upon the optimistic idea of the imminent recovery of the Danish economy and related growth in employment. According to AK Samvirke (the federation of Danish unemployment funds), more than 60 000 unemployed people had used up two years of benefits in 2015, which is a quite substantial share compared to

the 2011 peak of 235 000 unemployed (AK-Samvirke 2015) and very far from what had been expected. First, a so-called educational benefit package was implemented, aimed at those who would fall out of the system in the first half of 2013; and then came the introduction of a labour market benefit package aimed at those who would fall out by the end of 2016. In autumn 2014, a third type of benefit was introduced (*'kontantydelsen'*) as a part of the negotiation of the national budget for 2015. This was aimed at those who had used up their entitlements to unemployment insurance benefit or temporary benefit and who were not eligible for social assistance (Klindt and Rasmussen 2015:134-135). Eligibility for social assistance benefits depend on assets as well as the income of spouses or cohabiting partners, which means that those who fall out of the unemployment insurance system are not automatically eligible for social assistance benefits.

When it comes to the level of unemployment insurance benefits, politicians have several times debated whether lower benefits create more incentives to take up work, but no such actions have been taken yet, except for marginal groups such as refugees and new graduates. However, over the years, the degree of compensation (the level of the benefit compared to previous wages) has been reduced, mainly because benefits have not followed wage developments (Bredgaard 2015). For instance, for a female blue-collar worker the degree of compensation has been reduced from almost 90 per cent of previous wages in 1982 to almost 80 per cent in 2012; while for a salaried employee it has been reduced from approximately 60 per cent of previous wages to little more than 40 per cent (Klindt and Rasmussen 2015:133).

In autumn 2015, a new reform of the unemployment benefit system was agreed upon; the changes will be fully implemented in 2017 and some of these are quite wide-reaching. The main changes are a lower rate for new graduates, while it becomes more flexible to regain eligibility rights. Here, each recipient will have a month-based account so that each hour worked within the three-year benefit qualification period can be used either to extend the period of benefit or regain eligibility rights. To be eligible for another two years of unemployment benefit, scheme members need 1 924 hours (one year) of work within three years. Along with this, it becomes easier for unemployed people to accept short-term work, such as part-time fixed-term positions, while receiving unemployment benefit; these short-term jobs will also extend the eligibility period so that one day of work gives two extra days of benefit. The effect of these changes is still to be seen since the reform is not yet fully implemented.

4.2 Changes to the social assistance system

The social assistance system has undergone significant changes over time, but in 2013 there was a wider reform of the system. This was especially targeted at young people, since it was believed that too many young people were 'parked' on social benefits and the aim was therefore to create incentives to take on education (or work). It has therefore not been possible since 2013 for young people below the age of 30 to receive social assistance. Instead, they can receive educational help (*'uddannelseshjælp'*), which is a benefit lower than social assistance, at the same level as the state education grant, but

they are required to participate in education. If they are not assessed as being able to take part in education, they will receive an 'activity benefit', which is contingent upon their participation in various activities aimed at improving their chances of moving into employment or education. This type of benefit is at the same level as for persons older than 30 years.

For persons over 30 years of age, the requirements for receiving social assistance have also been strengthened. During the first three months, they must undergo an intensive job search course and, after no more than three months, they are activated in so-called '*nyttejobs*' ('utility jobs') at municipal workplaces, which means that they must do various non-regular jobs at such workplaces. If the requirements are not met, sanctions such as reductions in benefits or a requirement for daily appearance at the jobcentre will be used. Over time, the use of sanctions has increased both in the social assistance system as well as in the unemployment insurance system.

The same reform also aimed at giving recipients with complex problems and marginalised people more job-focused help. This means that it is believed that these people are able to return to the labour market despite their problems. This focus on labour market integration for people on the edge of the labour market with problems beside unemployment has become more and more dominant during recent years, in line with the increasing focus on making work pay. In 2012, a reform regarding disability pensioners and flexjobbers³ was agreed upon. Here, it became more difficult to be eligible for a disability pension and it was decided that no-one could be eligible for disability pension by default but must undergo so-called 'resource elucidation' ('*ressourceforløb*'), in which the aim is to develop the ability to work. This has de facto made it impossible for persons below forty years to receive a disability pension, unless they are highly disabled, whereas access was, earlier, more easy. In terms of the flex job scheme, it was decided that people with very limited ability to work should be able to work in a flex job and the scheme was therefore made available for people with more complex disabilities. These reforms have led to a sometimes heated public debate about whether it is fair that sick and disabled people are expected to participate in the labour market.

The rates of social assistance have also been a key debate issue in recent years. Recently, this led to a legislative change in which these rates were curbed by a 'ceiling' (a maximum rate). The size of social benefits depends on the household situation and is higher, for example, if the household has many children. The new ceiling has been accused of putting families in special conditions in very difficult situations. In the same reform, all benefit receivers deemed capable of work are expected to work 225 hours per year; if not, their level of benefits will be reduced.

3. Flexjob is an employment relationship in which reduced ability to work due to health problems is taken into account both in terms of hours and work organisation, both in private and public employment. The employer only pays for the work received; the rest is subsidised by the state. So, if an employee has a working capability of 50 per cent (which has to be assessed by a doctor and a caseworker), and can work 20 hours, the company only pays for ten hours and the state subsidises the remaining ten hours. The person employed is typically paid on a partly subsidised basis so the income equals 98 per cent of unemployment benefits, but they can earn more if they can work more and must be paid at the going rate (usually as set in the collective agreement) for the firm or sector.

5. Discussing the changes in the Danish labour market

Most of the regulation regarding employment protection in Denmark, e.g. notice periods and dismissal compensation, is settled in the collective agreements and the Danish labour market is already flexible with comparatively short notice periods and low or no compensation for laid-off workers. It is, therefore, difficult for politicians to target employment protection and the Danish political system is in general reluctant to legislate on labour market matters due to the strong tradition of self-regulation between the social partners (Rasmussen *et al.* 2015). Hence, there have been few legislative changes in the Danish labour market aimed at increasing employers' flexibility and reducing workers' protection in regard to the hiring and firing of workers. However, there have been other legislative changes aiming at lowering social expenditure and thus increasing labour market participation for the recipients of social assistance. The public debate and rhetoric has been heavily dominated by an agenda of increasing labour supply and making it more flexible, and several of the changes in labour market-related legislation in recent years have aimed at increasing the incentives for working vis-à-vis receiving various kinds of social benefits (including unemployment benefits).

Whether these policy changes have had any substantial labour market effects is rather unclear. In a detailed analysis of the recent reform of the social assistance system based on Danish register data by the Danish Economic Councils (DØR), in which they compare the group just above and just below 30 years of age (which was affected differently by the 2013 reform in social assistance), they find that the social assistance reform had a significant effect (DØR 2015: 253). Overall, there has been an increase of nine percentage points in exit from social assistance among the age group younger than 30 which was affected by the reform. Of these, six percentage points started an education (which is still supported by public benefit in Denmark), while only one percentage point found a job, with around one and half percentage points dropping out of social assistance schemes entirely (DØR 2015: 258). All in all, the Economic Councils estimate that between 1,600 and 2,300 social assistant recipients between 25 and 29 years of age have moved into the labour market, which equals an in-employment increase of 0.5–0.8 per cent for this group (DØR 2015: 264). Previous Danish analyses have found roughly similar effects of changes in social assistance (Jonassen 2013). However, these results have to be compared with the welfare effects of the reductions in benefits and, not least, compared with the even higher number of people leaving the social assistance system altogether, which can be very problematic. Many recipients of social assistance have other social problems besides unemployment (DØR 2015).

The overall employment effect of changes in the unemployment benefit systems seems to be restricted: instead of being pushed into the labour market, a significant and higher number of people have been pushed out of the safety net and have lost their subsidies. This has led some researchers to deem the unemployment system reforms mistimed, especially since the 2010 reforms (which reduced the eligibility period of unemployment benefits from four to two years and the requirements for qualifying for a new period was increased from six months to one year) were made while the crisis still lingered on and the labour market had not regained any momentum at all (Goul Andersen 2013, 2015; see also Figure 2). Unemployment did not start to fall before 2013.

The policy reforms shortening the unemployment benefit period, combined with the impact of the economic crisis, has actually resulted in some trade unions bargaining for greater job security in collective bargaining rounds. However, a higher redundancy agreement has, so far, only been agreed in the core manufacturing collective agreements, with companies in this area having to pay a sum of money to redundant workers dependent on seniority (Klindt 2014: 5). Furthermore, it has also had an effect on people in jobs, with a majority of workers feeling more insecure and job security becoming more important for them following the changes in the unemployment benefit system (Klindt and Rasmussen 2015). If job security becomes more important for the single worker, then the workforce may become less mobile since job mobility is no longer regarded as a safe transition and, in this way, the reform could affect the rather delicate balance between flexibility and security in the Danish labour market (Bredgaard 2015). However, the rate of unemployment benefit remains at a high level and there have not been direct changes to this, although some hollowing out has occurred since benefits have not followed general wage developments.

The Danish flexicurity system cannot be assessed by looking, for instance, at the duration of unemployment benefit in isolation but it has to be seen as a system where skill formation and active labour market policy play equally important roles. Despite the changes – mainly brought in the 2010 reform – one can argue that the overall system is still in place, albeit that it is under pressure due to the shortened period of benefits. The recent changes in the social assistance system are mainly aimed at people on the fringe of the labour market and the overall impact on labour supply is, so far, modest. These changes may be seen as more ideological in their emphasis on making work pay or otherwise as a continuation of the workfare regime (Kananen 2012) which may, in the long run, have a substantial effect on the Danish labour market and change the norms on labour market participation. The number of Danes of active working age on various types and schemes of public benefits has been reduced from one million in the mid-90s to 800 000 in 2016 (DØR 2015).

Denmark has comparatively low levels of unemployment and high levels of employment, but it does seem reasonable to conclude that this stems not only from high labour market flexibility but from the specific institutional mix in the labour market, with high levels of social security combined with an active labour market policy in which both unemployed as well as employees are given a high level of labour market training. Furthermore, other institutional characteristics, such as high levels of worker discretion and participation in work (Gallie 2007), a strong tradition of innovation and high levels of education, are also most likely to have an impact on the outcome. This seems to be supported by recent research showing that national institutions have a significant impact on the level of unemployment (Avdagic 2015; Avdagic and Salardi 2013).

6. Conclusion

There have been some significant reforms of the Danish unemployment insurance system and the social security system, with the eligibility demands being tightened for both; however, the implications for the labour market remain uncertain. It seems quite obvious that the economic and financial crisis has added to this uncertainty, so that the potential labour market effects of the reforms may have been subsumed by the effects of the crisis and the subsequent slow, but enduring, recovery of the Danish economy and labour market. However, it is also hard to disentangle the effects of such macro-phenomena and macro-institutions from the relatively minor and incremental changes e.g. in the social assistance systems. Changes in socio-economic models typically occur over the longer run (Jackson and Deeg 2012), which makes it difficult to disentangle the effects in the short-term, while the long-term effect of changes in social policies are often entangled with broader socio-economic developments and policy changes.

However, the 2010 reform of the unemployment insurance system that reduced eligibility from four to two years and also tightened the requirements for qualifying for a new period may have altered the dynamics in the flexicurity model somewhat. The unions have raised demands for higher severance pay but, so far, the changes have been ultimately minor.

Denmark is, despite lower than average economic and labour market performance during the crisis, still performing well above the European level, with comparatively high levels of employment as well as low levels of unemployment. The low level of employment protection does probably play a role in this, but this cannot be isolated from the other two legs of the Danish flexicurity model: the high level of social protection and active labour market policies which aim at reallocating redundant workers and upgrading their skills better to match the needs of the labour market. The skills needed by firms are constantly changing and it is very important, especially for low-skilled workers, that their qualifications are constantly upgraded since lower-skilled workers may become redundant more quickly when skills demands are changing. Danish low-skilled workers have significantly lower unemployment and higher employment rates than the EU average.

The high flexibility of the Danish labour market may have made adaption to the crisis faster in Denmark than in countries with a more rigid labour market, as discussed in this chapter. The level of unemployment benefits remains at a high level, which sustains the flexibility of the labour market, but there have been no serious attempts to reduce the benefits level, even though this is discussed from time to time.

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Chapter 11

The governance of employment protection in the UK: how the state and employers are undermining decent standards

Damian Grimshaw, Mat Johnson, Arjan Keizer and Jill Rubery

1. Introduction

Current debates place the UK at the weak end of the spectrum of employment protections, characterising it as having a flexible or liberal market economy approach towards hiring and firing (e.g. Barbieri and Cutuli 2015; Berg and Cazes 2007; Heyes and Lewis 2014; Sarkar 2013). The UK is differentiated from most EU countries in two key respects. First, its standards of employment protection are weak. Among the 24 EU countries listed in the OECD database, the UK ranks bottom for the measure of individual dismissal protection (standard contracts) and 19th for the measure of collective dismissal protection (2013/2014 data¹). Moreover, there are few restrictions in the UK on hiring workers on atypical contracts, such as fixed-term, temporary agency, part-time and zero hours contracts, except for those related to equality of treatment established by the relevant EU directives.

The second way in which the UK differs from much of Europe is its form of labour market governance. Studies emphasise three dimensions: the strong role of the market through cost competition; the increasing role of statutory rules since the 1990s; and the limited influence of collective bargaining (e.g. Dickens and Hall 2010). The combination of the latter two aspects is relatively unusual in Europe where governments' approaches to legislation tend to align with or to be supplemented by collective bargaining, often at the industry level. Moreover, as Crouch (2015) and Rubery (2015) have argued, our understanding of employment protection reforms is extended by a fourth dimension of labour market governance – that of employer strategy (Table 1). This is particularly relevant in the UK where employers enjoy strong prerogative to shape employment standards given the relative absence of trade unions in the workplace.

In the UK, the combined influence of markets, corporate hierarchies and legal rules, with only a weak role for joint regulation via collective bargaining, points to two important avenues of investigation to be pursued in this chapter into the nature and consequences of employment protection reforms. The first is the changing approach of government towards employment protection legislation. EU directives have provided a partial bulwark, until now, but Britain's majoritarian system of democratic government encourages ideological swings rather than incremental adaptation in labour market rule-making, which suggests a period of greater instability when/if the UK leaves the European Union. The second concerns trends in employer strategies towards managing workers. In a context of major 'protective gaps' in employment rights and social

1. OECD employment protection indicators available at https://stats.oecd.org/Index.aspx?DataSetCode=EPL_OV

protection rights, recent years have witnessed public concern about employers' misuse of non-standard forms of employment – especially zero hours contracts, temporary agency work and false self-employment.

This chapter begins by laying out Britain's record on job growth since the 2008-09 crisis and then focuses on these two areas of investigation. It concludes by arguing for a new approach to correct for the failures in Britain's governance of employment protection. This new approach must include representative organisations that can give voice, in different ways, to the diverse workforce groups in today's labour market – including trade unions, independent inspectorate bodies and civil society groups.²

Table 1 Labour market governance in the UK and employment protection

Form of governance	Relative influence in the UK	Issues for employment protection
(1) Government legislation	Strong – relatively low level; boosted by EU directives	Sets minimum statutory protections against dismissal; rights to redundancy payment; maternity/paternity leave and right to return; equal treatment for atypical contracts (EU law) ² and preservation of acquired rights for outsourced workers (EU law)
(2a) Inclusive collective bargaining (industry-level)	Weak/absent – except parts of public sector; undermined by poorly coordinated private sector employers' associations	Jointly regulated top-ups to statutory rights, automatic extension to all directly employed workers, but largely confined to parts of the public sector
(2b) Organisation-level collective bargaining	Weak/absent	Wholly dependent on local strength and priorities of unions
(3) Corporate hierarchy (Employer strategy)	Strong	Both good and bad practices – some employers top-up statutory provision while others evade through opportunistic use of non-standard forms of employment
(4) Market	Strong	Labour cost competition fuels changing segmentation between winners and losers – risks for vulnerable groups (migrants, low skilled, youth, black, minority ethnic) and subcontracted workers

Source: column 1 adapted from Crouch (2015: table 1)

2. 'Jobs, jobs, jobs' – Boosting employment and cutting unemployment

'Jobs, jobs, jobs' has been the mantra of the political elite charged with steering the British economy out of recession since 2010. From 2012/2013, the strategy appears to have been successful. In terms of the share of the working age population in paid employment, the distribution of job growth among men and women and the historically low unemployment, compared with many EU states, the UK has witnessed a strong labour market performance (Figure 1).

2. The chapter draws on collective work produced as part of a European Commission funded project on 'Reducing Precarious Work in Europe through Social Dialogue', in particular the UK report by this chapter's co-authors (Grimshaw *et al.* 2016), <http://www.research.mbs.ac.uk/ewerc/Our-research/Current-projects/Reducing-Precarious-Work-in-Europe-through-Social>

For example:

- in the last quarter of 2015, the employment rate (the share of people aged 16-64 in paid employment) was 74.1%, the joint highest since records began in 1971, ranked fifth in the EU,³ and a marked improvement on the recessionary trough of 70%;
- net employment growth (headcount) has benefited men and women fairly equally – there are 9% more men in employment and 8% more women since early 2010. Labour market participation among men has recovered to its pre-crisis level and among women it is significantly higher (Britain's female employment rate ranks 6th in the EU at 69%); and
- for a prolonged period after the crisis unemployment was above 8%, but the rate for both men and women has dropped dramatically. At just 5% the UK recorded the second lowest unemployment rate in Europe in early 2015 (after Germany), along with one of the lowest average unemployment durations.⁴

Figure 1 Trends in employment and unemployment rates for men and women, 2005-2015



Source: Office for National Statistics data (all persons 16-64 years old); authors' compilation

However, there are reasons to be critical of the UK's labour market performance. First, the UK labour market has, for many decades, relied on low-wage jobs to prop up its high employment rate. Defined as those earning less than two-thirds of median hourly pay, the share of low-wage employment increased from 15% in 1979 to 22% in 1999 (Mason

3. The UK ranked fifth in the 2015 EU listing of employment rates (72.7%, within a range from 50.8% in Greece to 75.5% in Sweden) (Eurostat data at <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>, accessed 16-01-17).

4. Sourced from EC (2016: table 1.2.2 and graph 1.2.6).

et al. 2008: 16), the year the statutory national minimum wage was introduced, and has persisted at around the 21-22% level since (Figure 2). The national minimum wage has been very effective at rooting out blatantly exploitative jobs, but it has not reduced the overall share of low-wage jobs despite rising in value against median earnings up to almost 56% in April 2016.⁵ The reasons are complex but include problems of limited pay progression in low-wage jobs, the absence of collective bargaining in most private sector workplaces and the use of in-work benefits to address low pay (although reduced since 2010) (Grimshaw *et al.* 2014). It is further notable that, since the crisis, the high share of workers in low-wage jobs has persisted against a backdrop of falling real wages: in 2013 prices, real median hourly pay for all employees fell from £12.89 to £11.35 during 2009-2015, a 12% drop; for female part-time workers, it fell from £9.22 to £8.27, a 10% drop.

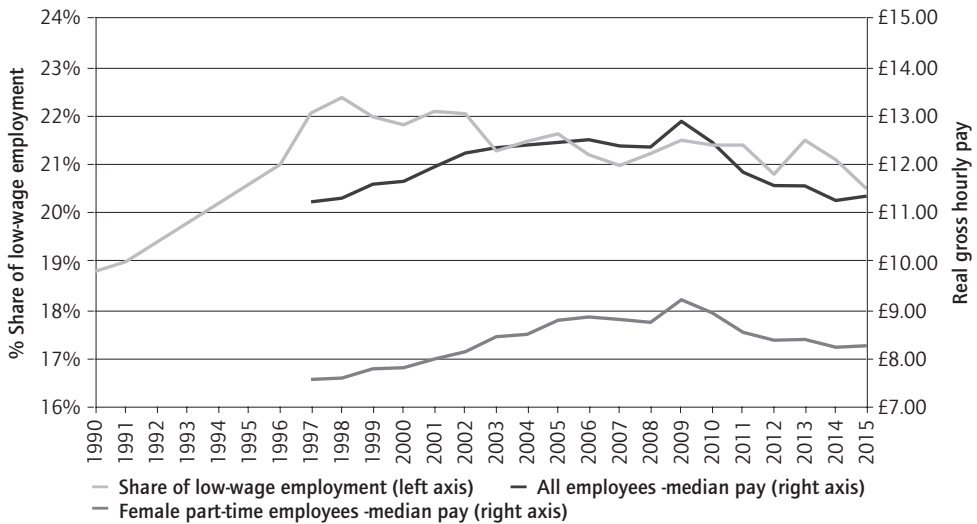
Working in low- and middle-paid jobs has thus become more and more disconnected from the real cost of living, generating problems of in-work poverty, rising welfare transfers to people in paid employment and less security of incomes among middle-income households (Hills *et al.* 2015). In 2011/12, for the first time on record, the majority of people in poverty in the UK were in working households: 6.7 million people out of a total 13 million in poverty (MacInnes *et al.* 2013: 27). Total expenditures on tax credits, one of the major welfare transfers to people in paid employment in low-income households, increased by 62% during 1997/8 to 2010/11 up to £197 billion in 2012/13 prices (DWP 2013).

In an effort to reduce in-work welfare, the government introduced a new 50 pence 'minimum wage premium' in April 2016 for workers aged 25 years and over (7% higher than the minimum for adults aged 21-24) and obliged the Low Pay Commission, the tripartite body that sets the minimum wage, to raise the new higher minimum wage to 60% of median earnings (of workers aged 25 plus) by 2020. Nevertheless, with its other hand the government is cutting welfare transfers so that the net effect for many minimum wage workers in low-income households is negative with more and more working households falling below the 'minimum income standard' defined as necessary for an acceptable standard of living (Hood 2015).

A second critical problem with the UK's labour market performance is the deterioration in employment standards. The evidence is double-edged and is analysed in detail in the following two sections. On the one hand, standards of full-time, permanent employment are slipping for many employees as rules covering pay, job security and employment rights provide weaker protections. On the other hand, many people are having to take 'second choice jobs' with part-time or zero hours, or temporary contracts, while queuing for better alternatives; others are shunted into self-employment and have to take on more of the risks of generating earned income. The 'wrong kind' of labour market flexibility appears to be thriving in the UK.

5. Median gross earnings excluding overtime for workers aged 25 and over were £12.77 in April 2016 and the adult minimum wage 'premium' was £7.20.

Figure 2 Trends in low-wage employment and real median hourly pay, 1990-2015



Source: Annual Survey of Hours and Earnings; real earnings adjusted using RPI (2013 prices), gross hourly earnings (overtime excluded) for all employee jobs; authors' compilation

3. Labour market governance part one: Statutory reforms

Over the last three decades, the approach towards British employment protection can be characterised by employer-led flexibility underpinned by minimum statutory rights. The sphere of minimum protections widened under the Labour governments (1997-2010) and has been cut back under the post-2010 Conservative-led coalition and majority Conservative governments. In Britain, not since the 1970s has collective bargaining been the dominant way of developing and sustaining employment protection – a trend also witnessed in some other European countries, albeit not as dramatically as in the UK. Moreover, the Westminster majoritarian model has enabled politicians to enact radical changes. Starting with the 1980 Employment Act, Thatcherite deregulation presented an ideological attack on collectivism and, while not dismantling the thin framework of established individual rights, it did weaken their content and reduced their coverage in ways that were especially damaging for workers in non-standard employment. The Thatcher governments attacked employment protection provisions as ‘burdens on business’ which prevented employers from hiring more people (Edwards *et al.* 1992). Governments gradually added more ‘business friendly’ factors to the list of circumstances to be considered by employment tribunals when deciding the unfairness of a dismissal and extended the period of eligibility from six to 24 months continuous employment. One intervention with lasting, albeit ‘haphazard’, impact was the new status of ‘worker’, established in the Employment Rights Act 1996, which potentially extends protections to forms of casual work (Adams and Deakin 2014: 797; see Box 1).

Box 1 Extending protections with the new ‘worker’ legal status

Traditionally, as in other European countries, UK labour law distinguished between employees and self-employed in order to determine who enjoys employment rights such as unfair dismissal, redundancy payments, maternity leave, flexible working and so on. An employee in the UK works under a contract of employment. However, because there is no statutory definition a series of court cases have established (ongoing) tests around what is employer control, the alternative notions of ‘implied contracts’ and the issue of mutuality of obligation – the latter typically excludes agency and many other casual workers. Importantly, courts do not work to a checklist, nor is any one factor decisive; the specificity and context of the employment relationship matters.

The legal concept of ‘worker’ was introduced in the 1996 Employment Rights Act (Section 230) and is defined as someone with a contract of employment or who personally performs the work. This definition encompasses all employees, as well as (potentially) many other persons in casual forms of paid employment who fail the narrower legal definition of employee. Court judgements have found it applies to varied forms of casual, freelance and self-employed persons; ultimately, it is the court not an employer decision that decides legal status (Freedland 2003). For example, one case found a self-employed joiner who worked exclusively for a construction firm was a worker despite paying his own tax and social security contributions and owning his own tools (Thompsons 2005). Worker status might potentially extend the net of labour law, but it only promises a sub-set of rights:

- worker rights: minimum wage, working time (including holidays), pro rata equal treatment for part-time work, unlawful deduction of wages
- employee rights: *the above rights plus* dismissal, redundancy, notice, maternity leave, parental leave, equal treatment for fixed-term employment, disciplinary and grievance

During the Labour governments (1997-2010), the reversal of the UK’s opt-out from the EU social chapter⁶ and legal intervention on the minimum wage and family support policies represented a ‘significant legislative development’ (Dickens and Hall 2010: 302). At the same time, however, Labour retained much of the Thatcherite legislation of the 1980s that curbed strikes and dismantled statutory support for collective bargaining. Collective bargaining and union membership continued to decline meaning that, especially in private sector workplaces, supplementary protections formerly negotiated through collective bargaining, such as more generous severance pay, sick pay or maternity leave, were eroded.

The right-wing coalition government (2010-15) and the Conservative government since 2015 have, on balance, weakened employment protection. The exceptions to the largely deregulatory agenda have come from EU law. Table 2 summarises six areas of employment protection rights provided under the legal framework in 2010 and the changes since then.

6. In 1991, the Thatcher government negotiated an opt-out from the social chapter of the Maastricht Treaty on European Union, although several other EU measures had an impact upon British workers’ employment rights, such as equality and discrimination legislation.

Table 2 Six areas of employment protection standards and reforms since 2010

Employment protections in 2010	Reforms since 2010
1. Protections against dismissal and right to redundancy payment for all employees with 12 months continuous employment	<ul style="list-style-type: none"> – Reduced consultation period for collective redundancies from 90 to 45 days – Reduced eligibility for unfair dismissal by increasing required tenure from 12 to 24 months – Removed fixed-term workers from collective dismissal rights
2. Free access to employment tribunals	<ul style="list-style-type: none"> – Introduction of fees to lodge a case and have it heard for wide range of issues
3. --	<ul style="list-style-type: none"> – Introduction of 'shares for rights' legislation – enables employers to offer company shares to employees in exchange for renouncing rights with new legal status of 'employee shareholders'
4. Maternity and paternity leave and pay, and right to return to work	<ul style="list-style-type: none"> – Shared parental leave to run alongside maternity leave and pay
5. Equal treatment provisions for part-time workers and fixed-term contract workers (EU law)	<ul style="list-style-type: none"> – Additional equal treatment provision for agency workers (EU law)
6. Preservation of acquired rights on the transfer of undertakings (EU law); supplementary Two-Tier Code extended acquired rights to all workers in public sector subcontractor firms	<ul style="list-style-type: none"> – Restriction of TUPE transferred rights to 12 months – Two-Tier Code abolished

Source: authors' compilation adapted from Dickens and Hall (2010) and Grimshaw *et al.* (2016)

Minimum standards of protection covering unfair dismissal and redundancy compensation are low by European standards and, in April 2012, the eligibility threshold of continuous service was increased from 12 to 24 months. The government and main employer bodies argued the shorter qualification period disincentivised hiring. The director general of the British Chambers of Commerce said: 'Dismissal rules are a major barrier to growth for many businesses. The majority of small businesses have ambitions to grow, and this will boost their confidence to hire'.⁷ Also, the notice period for large-scale (100+) dismissals was halved to 45 days (from April 2013) to facilitate downsizing. The then TUC General Secretary responded that,

'The last thing we need is for the government to make it easier to sack people. Unemployment has not gone as high as many feared because employers have worked with unions to save jobs, even if it has meant sharing round fewer hours and less work.'⁸

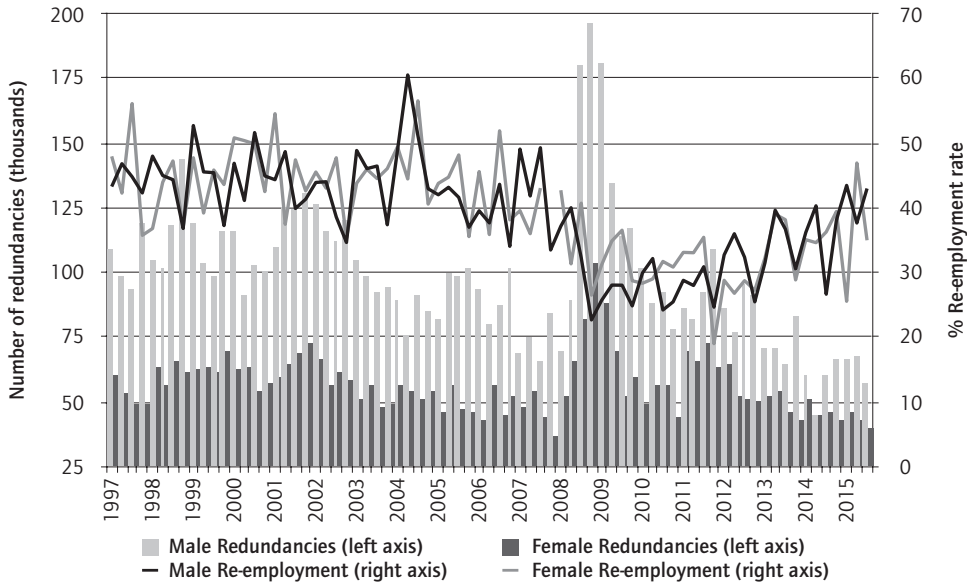
In fact, the reform came after the period of mass downsizing, which peaked during 2009-2010 (Figure 3). Despite the supposed enhanced employer flexibility, it has not improved the chances for redundant workers to be re-employed; post-2013, the data suggest a slow and sporadic recovery in male and female re-employment rates

7. *The Guardian* 06-04-12 <http://www.theguardian.com/money/2012/apr/06/unfair-dismissal-reform-government-unions>

8. Brendan Barber cited in *The Guardian* 18-12-2012, <http://www.theguardian.com/money/2012/dec/18/redundancy-consultation-period-45-days>

which, by 2015, are still below pre-crisis levels. The reforms did, however, enable public sector employers to embark on a major programme of downsizing under austerity, with especially deleterious consequences for women who are over-represented in the public sector (Rubery and Rafferty 2013).

Figure 3 Redundancies and re-employment rates, 1997-2015



Note: The re-employment rate is the percentage of people made redundant (dismissed) in the previous three months who are in employment during the survey reference week.

Source: Office for National Statistics dataset RED02; authors' compilation. <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/redundancies/datasets/redundanciesbyindustryagesexandreemploymentratesred02>

At a time of considerable labour market turbulence, in July 2013 the coalition government also made seeking legal redress for unfair dismissal more difficult by introducing fees of £250 for making a claim and a further £950 for having the claim heard, which is equivalent to around one month's salary for someone working full-time at the minimum wage (2015 rates). Similar fees apply to complaints of sex discrimination, unauthorised wage deductions and equal pay. Claimants can apply for reduced fees on grounds of financial hardship, but this is based on a household means test so that a married woman working part-time, for example, would have to persuade her better-paid husband to foot the fee. Moreover, a high share of compensation awards goes unpaid. Employment Tribunals were set up to provide an accessible route for workers to enforce their rights (sometimes with trade union support), but these fees impede justice. Research suggests seven in ten potentially successful claims are now not going ahead.⁹ The number of claims fell from around 48 000 on average per quarter during 2012-13 to 11 000 in

9. Citizens Advice research reported in *The Guardian* newspaper, <http://www.theguardian.com/money/2014/aug/17/workers-cant-fight-employment-tribunals>

the two quarters following the imposition of fees.¹⁰ Despite providing no evidence, the government was adamant this change was necessary for business growth:

‘We are ending the one way bet against small businesses. We respect the right of those who spent their whole lives building up a business, not to see that achievement destroyed by a vexatious appeal to an employment tribunal. So we are now going to make it much less risky for businesses to hire people.’¹¹

A third feature of employment protection is unique to the UK among European countries and is the most ideological of all reforms imposed since 2010. The policy encourages workers to swap their employment rights for shares. Designed with small businesses in mind, the government implemented a voluntary three-way deal from September 2013: employers would give employees shares in their business; employees would swap their rights (to unfair dismissal, redundancy, etc.) for new rights of ownership; and government would charge no capital gains tax on profits made from these shares (up to £50 000). The then Chancellor announced, ‘Get shares and become owners of the company you work for. Owners, workers, and the taxman, all in it together. Workers of the world unite.’¹²

Few ordinary employees made the swap but some high-paid managers exploited the opportunity to profit from tax-free shares. Tax specialist law firms were quick to spot the opportunities – both for management teams (since executives can be defined as employees), subject to the restriction that each individual’s controlling stake in the company is less than 25%, and for private equity backed companies where share swaps are a main feature of acquisitions. Some legal advice even encourages new employment protections to be introduced so that managers are compensated for lost statutory entitlements:

‘The idea of giving up employment rights in exchange for illiquid shares in a portfolio company will not be for everyone. But it looks like it will be possible for companies to give employee shareholders who give up these statutory rights equivalent contractual protection. That could, for example, include a longer notice period and a contractual redundancy arrangement.’¹³

Indeed, the *Financial Times* reported that the first known use of a shares-for-rights swap was in the sale of Whitworths food company by one private equity company to another. Eight members of the management team acquired equity stakes exempt from capital gains tax.¹⁴

10. Data sourced from the government’s Tribunal Statistics Quarterly, <https://www.gov.uk/government/collections/tribunals-statistics>

11. The then Chancellor, George Osborne, cited on BBC news (03-10-11), <http://www.bbc.co.uk/news/business-15154088>

12. Excerpt from the Chancellor’s speech <http://www.newstatesman.com/blogs/politics/2012/10/george-osbornes-speech-conservative-conference-full-text>

13. Excerpt from online advice by the law firm Macfarlanes, <http://www.macfarlanes.com/media/382350/the-shares-for-rights-proposal-a-tax-favoured-employee-share-scheme-for-private-equity-portfolio-companies.pdf>

14. *Financial Times* 15-09-13, <http://www.ft.com/cms/s/0/cb93fa00-1c8b-11e3-a8a3-00144feab7de.html#axzz453YMEZfc>

Employment protection for women wishing to take maternity leave or for men taking paternity leave is one important area that has not been cut. The rate of progress might have slowed, but several family support policies continued to improve post-2010, notably with a new right to shared parental leave which allows mothers to share their leave entitlement with partners. Moreover, there has been no change in the fact that, while on leave, mothers and fathers are able to accrue time towards paid holiday entitlement, benefit from pay rises (and other improved conditions) and have a right to return to their job – all key elements of modern employment protection (Smith 2010). Nevertheless, in the absence of collective agreements, women in the private sector face difficulties in managing exits for childbirth due to strict eligibility criteria for maternity leave, very low levels of maternity pay and high risks of discrimination by their employer and colleagues while pregnant (EHRC 2016).¹⁵

A fifth feature of employment protection concerns new improved rights to equal treatment for workers with non-standard contracts, whether part-time, fixed-term or agency, implemented in response to EU directives prior to 2010. As in other member states, part-time workers and workers on fixed-term contracts have the same (pro rata) rights as full-time, permanent workers to holiday entitlement, pension benefits and hourly rates of pay, as well as promotion opportunities. Fixed-term workers have the right to a permanent contract after four years of successive fixed-term contracts with the same employer (unless the employer submits objective justification otherwise or a collective agreement removes the automatic right). Rights for agency workers are more restrictive since they require at least 12 weeks with the same client organisation before enjoying equal treatment with the client's employees (although see below). A waiting period was not approved by the European Parliament but emerged as a compromise between the TUC and CBI in response to UK government opposition to the directive (Forde and Slater 2016). Equal treatment covers pay but not all payments: it includes overtime, holiday pay and bonuses but, in line with their usual 'worker' status (Box 1 above), excludes sick pay, maternity pay, redundancy pay (above the statutory rate) and bonuses linked to company performance.

A sixth feature protects workers whose jobs are transferred between organisations, typically in cases of subcontracting. With their origins once again in EU law (the Acquired Rights Directive), TUPE rules¹⁶ ensure continuity of employment and associated terms and conditions. Their application was limited to the private sector in the 1980s, but then widened to public services following ECJ rulings. However, there are gaps in TUPE protection since it excludes most rights under occupational pension schemes (although various minimum conditions do apply), ignores many core features of work organisation (such as working time), allows subcontractors to recruit new workers on inferior conditions and is easy to evade by 'fragmenting' activities for subcontracting (Grimshaw *et al.* 2015).

15. Eligibility requires 26 weeks continuous service and minimum earnings equivalent to 17 hours at the minimum wage; levels of maternity pay place the UK second bottom to Ireland among the 15 western EU member states, according to the OECD 2015 family database.

16. The Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 conforms with the 1977 European Acquired Rights Directive (revised in 1998 and 2001).

2014 reforms further restricted continuity of protection by widening the reasons justifying employer changes to conditions (the job is now only protected if it is ‘fundamentally the same’ and dismissals due to change of location are easier to defend), limiting the protected duration of collectively agreed conditions to 12 months and allowing new and old employers to conduct pre-transfer redundancy consultations (ACAS 2014).

Overall, the substitution over the last three decades of legal interventions for joint regulation (via collective bargaining and other tripartite arrangements) has made workers in the UK vulnerable to government reforms and overly reliant on employer goodwill to upgrade low-level statutory employment protections. In the UK context, we therefore need to ask whether we trust employers to improve upon low-level protections; and, moreover, whether we trust them to abide by the law. It is likely that both regulatory and non-regulatory interventions are needed ‘simply because it is not possible to legislate for high quality employment or high trust workplace relationships’ (Coats and Lekhi 2008: 8, cited in Colling 2010).

4. Labour market governance part two: Employers and the wrong type of flexibility

Unlike much of Europe, many employers in Britain organise their workforces in a regulatory space that is largely unconstrained by trade unions (Table 1 above). There are still important pockets of joint regulation (especially the public sector) and it is certainly the case that those in full-time, permanent and relatively well-paid work are more likely to enjoy union representation than those in part-time, temporary and low-paid work. But the UK has followed a downwards trajectory in union membership; union density has fallen from one in three to one in four employees over the last two decades (32% to 25%, 1995-2014¹⁷). It stands at just 13% among part-time employees in temporary employment, is highly polarised between public (54%) and private (14%) sectors and is especially low among the lowest paid. The predominance of company level bargaining and the absence of extension rights explains why the decline in unionisation has been mirrored in collective bargaining coverage – from 36% to 28% over the same period; while coverage for employees in the private sector has declined to a mere 15%.

Unions’ low presence in the context of light-touch labour market regulation means that employers enjoy considerable scope to create alternative forms of employment. Lack of awareness of their rights is especially acute among workers in non-standard employment. This, combined with gaps in enforcement, means that employers are free to invent flexible forms much on their own terms – as Colling puts it, ‘to find space beyond [the reach of employment law] to avoid its requirements’ (2010: 324). Such strategies are facilitated by the legal ambiguities in distinguishing between ‘employees’ and ‘workers’ which allow employers to profit from the lack of robust contractual safeguards for a person’s ‘employee’ status (Box 1 above).

17. LFS data reported in BIS (2015) ‘Trade union membership 2014: Statistical Bulletin’, Table 1.2b.

The result is that cost considerations have been dominant in the British labour market and this has resulted in the wrong sort of flexible employment. We focus here on three forms that have received attention following the economic crisis – zero hours contracts, temporary agency contracts and false self-employment. Employer strategy is a key determinant shaping the presence and character of these three forms, particularly the extent to which they engender a state of precariousness for workers concerned, but specific management practices and business needs are framed by the wider context of labour market governance, shaped also by government regulations and labour supply conditions (Grimshaw *et al.* 2016; Rubery *et al.* 2016). For reasons of space we highlight only the employer considerations and accompanying gaps in employment protections in the following overview (Table 3).

Table 3 Employer considerations regarding three flexible employment forms and the potential protection gaps for workers

	Considerations for the employer	Potential gaps in employment protection
i) Zero hours contract	<ul style="list-style-type: none"> – accessible pool of labour when demand arises – no legal requirement to provide minimum or regular hours of work – avoids agency fees – can profit from legal ambiguity of employee/worker status with most only providing worker status 	<p>Where treated as 'worker' (legal status) likely to be excluded from employee rights to maternity pay, redundancy compensation, unfair dismissal protection and notice period of dismissal</p> <p>Considerable legal ambiguity of status plus major problems of poor awareness of rights among employers and workers</p>
ii) Temporary agency work	<ul style="list-style-type: none"> – accessible pool of labour for clients when demand arises – no legal requirement to provide minimum, regular or ongoing hours of work – clients benefit from potentially lower wage costs than directly employed staff 	<p>Where treated as 'worker' (legal status) likely to be excluded from employee rights to maternity pay, redundancy compensation, unfair dismissal protection and notice period of dismissal</p> <p>Option of 'pay between assignments' contract means no legal entitlement to equal pay with staff employed directly by client</p>
iii) False self-employed	<ul style="list-style-type: none"> – access to pool of labour (skilled/trained/stable) with minimal outlay – contracting organisation transfers risk and bureaucratic burden on to individual workers – employers avoid usual add-on costs associated with direct employment (social security, pension) 	<p>Not entitled to rights enjoyed by directly employed staff (e.g. minimum wage, paid holidays)</p> <p>False self-employed worker likely to be dependent on client for work but no guarantee of hours</p> <p>May not qualify for in-work benefits or other welfare entitlements (e.g. pension)</p>

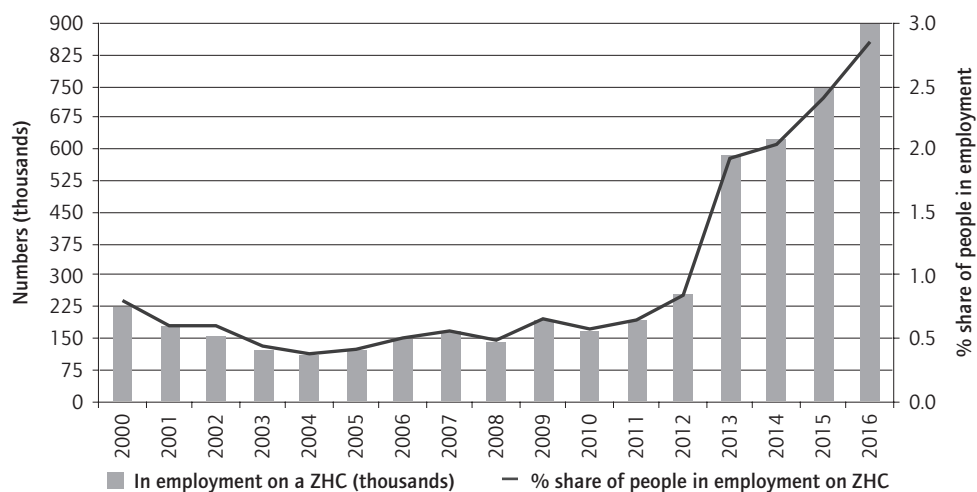
4.1 Zero hours contracts

A zero hours contract (ZHC) is not a legally defined term in the UK. It is offered when the employer is unwilling to guarantee work and equally the worker is not obliged to accept the work. This is possible in the UK because there is no regulation of minimum guaranteed working hours. ZHCs are not a new phenomenon, but have gained attention following a fourfold increase in their use since the 2008-9 recession

representing 2.8% of the total workforce in 2016¹⁸ (Figure 4). The expansion is related to workers' greater awareness they are on such a contract following media attention, but also coincides with new agency worker protections introduced in 2011 which some employers may wish to avoid – although the increase does not correspond with a drop in the number of agency workers.¹⁹ Why have workers conceded? There is no evidence that it results from concessionary bargains, such as a deal that promises higher pay in exchange for irregular, changing hours. More likely it is a reservation wage effect, since welfare reforms (especially punitive sanctions) have reduced entitlements and levels of welfare payments to those out of work, combined with a disciplinary effect caused by strengthened employer prerogative in labour market segments with weak or absent union representation (Shildrick *et al.* 2012).

Legal ambiguities about the employment relationship (Box 1) mean employers may treat ZHC staff as either workers or employees when it comes to employment rights – and a small number may even insist ZHC staff are self-employed and therefore deny them all employment rights. In a recent survey (CIPD 2013), two in three (64%) employers said they classified ZHC staff as employees, one in five (19%) as workers²⁰ and 3% as self-employed (14% had not classified them). However, these data conflict with employer responses regarding their entitlement to certain rights: one in five (21%) said they were not entitled to any protections, far above the 3% who said they treated ZHC staff as self-employed.

Figure 4 The number and share of all workers engaged on zero hour contracts, 2000-2016



Source: ONS data available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-392551>; authors' compilation

18. A majority of ZHC workers are women (55%) and one-third are young (16-24); ZHC workers work varied hours (one-third work full-time), are found in diverse sectors of employment (although especially hospitality and social care) and many have long tenure (41% have more than two years with the same employer) (2016 Labour Force Survey; published ONS data).

19. Temporary agency work increased from 272 000 to 349 000 from Q1 2011 to Q1 2016 (ONS data).

20. With the legal status of 'worker', a person with a zero hours contract is entitled to the statutory minimum wage, paid annual leave, rest breaks and protection from discrimination.

Even if treated as an employee, it is likely to be very difficult for ZHC workers to meet eligibility criteria for employment protections. ZHC workers are more likely than other workers to fail the 24 months continuous employment test for protection against unfair dismissal and many will fall below the minimum weekly earnings threshold for maternity/paternity leave. The CIPD (2013) survey reported that more than one in three ZHC workers (36%), compared to one in five other workers (21%), have less than 24 months continuous employment service. Moreover, two in five ZHC workers reported not receiving any notice from their employer if work is no longer available (*op. cit.*: table 16). Rights to core employment protections are low from both employer and worker viewpoints (Table 4): only two in five employers extended rights to maternity/paternity pay and only 16% of ZHC workers believed they were entitled; also, only slightly more than half of employers (55%) believed their ZHC staff were entitled to the right not to be unfairly dismissed and, again, this was smaller among workers (just 18%).

Table 4 Rights to employment protections for zero hours contract workers

	% of employers who extend these rights to their ZHC staff	% of ZHC workers who believe they are entitled to these rights		
	Yes	Yes	No	Don't know
Right to receive a written statement of terms and conditions	60%	45%	31%	24%
Statutory redundancy pay (24m+)	31%	10%	61%	28%
Right to receive statutory minimum notice	52%	--	--	--
Right not to be unfairly dismissed (24m+)	55%	18%	40%	42%
Statutory maternity/ paternity pay	41%	16%	57%	27%

Source: adapted from CIPD (2013: tables 24 and 25)

4.2 Temporary agency work

National data reveal a modest rise in the total number of agency staff from around 270 000 in 2001 to nearly 350 000 in 2016, a rise of 30% relative to a 14% rise in total employment. However, the proportion of workplaces that make use of agency workers has remained stable at around 11-12% since 2004. This low-level use fits with the usual narrative that UK employers have little to gain from using temporary contracts since open-ended and fixed-term contracts are lightly regulated. However, alternative data sources suggest far greater agency use by employers. The main industry body estimated in 2013 that 1.1 million people were working on a temporary basis each day (REC 2014). The data gap is caused by large fluctuations in day-to-day agency placements so that many agency workers might not be working during the Labour Force Survey reference week.

Like ZHC workers, the rights of agency workers depend on their identification as employees or workers. They tend to be considered as workers and, therefore, are not entitled to many core rights including protections from unfair dismissal, statutory redundancy pay and maternity leave, among others. Even if deemed an employee,

many agency workers are likely to fail eligibility criteria requiring a minimum period of employment continuity for certain protections. The Agency Workers Regulations (from 2011 and based on the 2008 EU Directive) attempted to strengthen protections. They require that agency workers have equal treatment with their directly employed counterparts after 12 weeks service. The exceptions include where the agency worker is assigned a ‘substantively different role’ or has a break from the client organisation for more than six weeks. Moreover, where an agency pays the agency worker between assignments (and thereby treats them as an employee) there is no entitlement to equal pay due to the so-called ‘Swedish derogation’ in the Agency Workers Regulations.²¹ The experience of equal treatment is therefore significantly limited in practice.

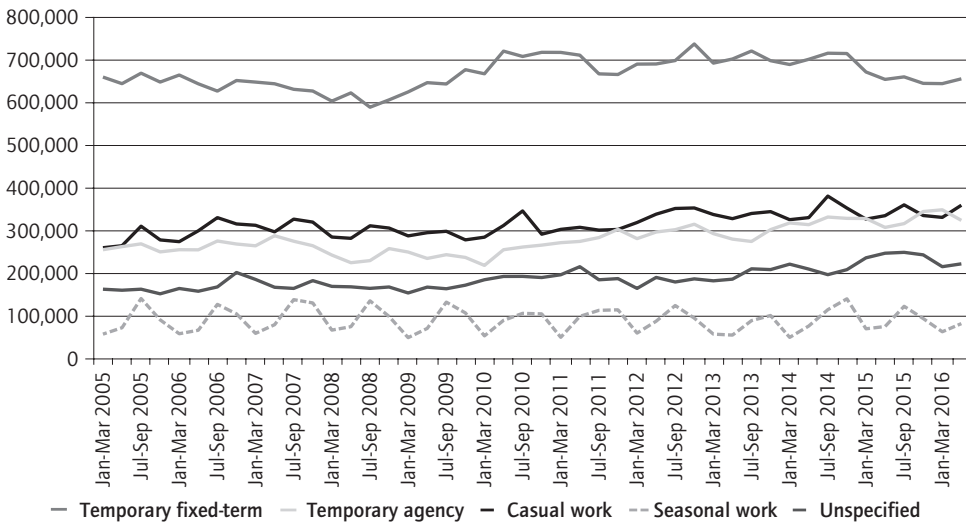
There are serious concerns about enforcing agency workers’ new employment rights. For an agency to manage a ‘pay between assignment’ contract, it must meet several criteria, including type of work, expected travel and minimum-maximum hours of work, as well as minimum pay between assignments (the higher of either half the rate of pay in the previous placement or the statutory minimum wage for the hours worked in the previous job). Agencies must honour this for four weeks before terminating the contract and must not move workers between jobs or work locations with the same client in order to reset the qualifying period. However, an agency may spuriously invent jobs for ‘de-assigned’ workers to move into within one week in order not to pay for downtime. Also, agencies cannot force workers to sign a pay between assignments contract, but it can be made a condition for being offered work. Moreover, the 12-week qualification period has proved to be a source of evasive strategies. Research commissioned by the government on employers’ attitudes towards the regulations found:

‘In most cases, employers that regularly used agency workers ... had changed their practices by shortening assignment lengths to less than 12 weeks, by bringing in different workers each week and by using fixed-term contracts for longer term cover.’ (Jordan *et al.* 2013: ii)

It is nevertheless difficult to identify aggregate evidence of substitution effects between forms of temporary employment (casual, seasonal, fixed-term and agency) from the UK labour market data (Figure 5). Another factor, as with ZHC workers, concerns agency workers’ limited awareness of their rights. An analysis of calls to a helpline found that many were ‘unaware of their rights, particularly around holiday pay, notice periods and, critically, the “twelve week threshold”’ (ACAS 2015: 2). Forde and Slater (2016: 602) found workers had very little knowledge about the implications of the new regulations, concluding that ‘Despite the potential for abuse, many agency managers felt that the [Agency working] regulations had effectively helped to legitimise and embed the “pay between assignment” approach in the UK, providing new business opportunities for agencies’.

21. The term refers to a request by the Swedish government to enter the clause into the European regulations.

Figure 5 Trends in temporary forms of employment, 2005–2016



4.3 False self-employment

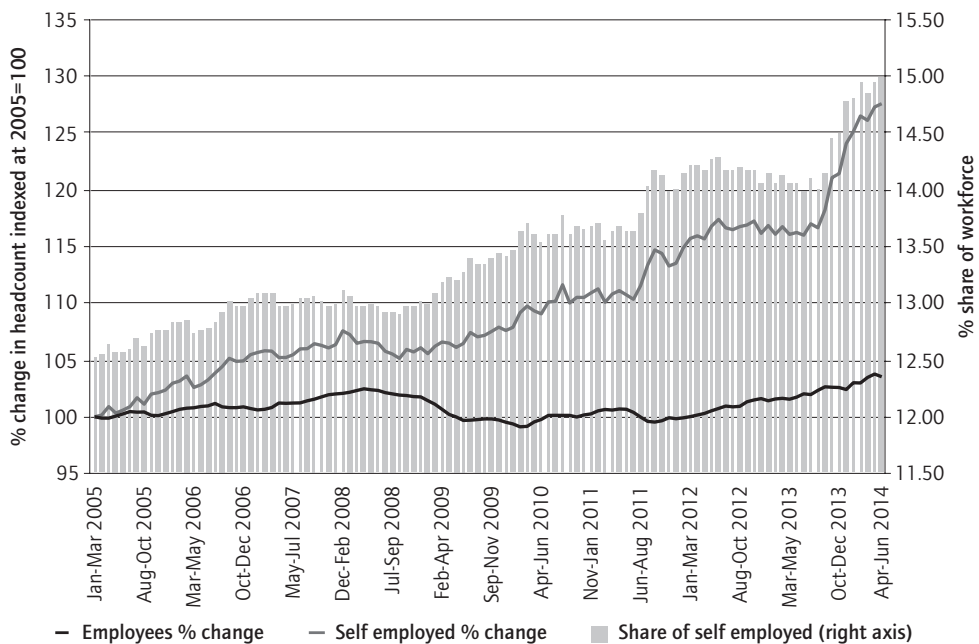
Subcontracted work and self-employment is not inherently precarious or poor quality work, but the conditions under which such forms of employment proliferate, and the complex and often opaque nature of the relationship between contracting organisations and individuals, can create serious issues in respect of low pay, limited legal rights and differential levels of bargaining power. One labour market trend that has facilitated the government's deregulatory agenda during the post-crisis jobs recovery is the large rise in the numbers of self-employed who only have very limited employment rights (Figure 6).

Self-employment may take various forms ranging from highly-paid specialist freelance contractors to false self-employment where the line dividing employee and self-employed status is blurred. In general, self-employed workers are covered by civil and commercial law, not labour law; they therefore do not enjoy employment rights, aside from protections covering discrimination, health and safety and low-level maternity allowance, nor – for the most part – social security protections. The removal in 2016 of tax relief on travel and subsistence payments for contractors engaged through umbrella firms may push more workers into self-employment. One of the major problems of allowing labour-only subcontracting to flourish in certain industries with limited employment rights is that it becomes associated with the most vulnerable workforce groups in society.

Estimates of the numbers of false self-employed are difficult to make with any confidence, as are estimates of the number of workers engaged through subcontracting arrangements. False self-employment is defined narrowly as 'subordinate employment disguised as autonomous work' (Frade and Darmon 2005: 111) and more widely as

persons who are ‘not in business on their own account, come under the control and supervision of their engagers, are paid wages rather than work for a client under contract, and in most cases, continue to work for the same engager of their labour...and for long periods of time’ (Harvey and Behling 2008). The assumption is that an employer deliberately classifies the person as self-employed and makes a sales transaction for work provided in order to save on social insurance costs and/or curtail labour rights. In the UK, such ‘labour-only subcontracting’ is highly used in the cultural sectors (actors, musicians, performing artists, journalists), construction, logistics and IT, as well as by temporary work agencies that supply workers to all sectors of the economy.

Figure 6 Trends in self-employment – headcount and as a share of UK workforce, 2005-14



Source: ONS data available at www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-371749; authors' compilation

The construction sector is well-known for its fragmentation and displacement of employer responsibilities such that main contractors manage the project and finances but pass employer responsibilities down the chain to gangmasters, agencies and the false self-employed (Harvey 2001). Behling and Harvey (2015: table 4) estimate that, among self-employed workers – approximately one in four construction workers – half are falsely self-employed. Construction firms make widespread use of two strategies: first, hundreds of ‘payroll companies’ assist businesses in switching their workforce from employee to self-employed status; and second, specific tax rules for the construction industry allow firms to make a flat-rate income tax deduction from the pay of self-employed contractors. During 2016, high profile protests and legal cases by workers have centered on IT platform technology companies providing delivery services (e.g. Uber, Hermes, Deliveroo). Rather than directly employ drivers, these companies require

individuals to subscribe and seek job tasks from one day to the next as self employed. In 2016 the court ruled such practices illegal in the case of Uber and granted ‘worker’ status to Uber drivers. Further legal cases are expected.

Overall, the limited rights of self-employed workers are certainly magnified by the spread of false self-employment where individual workers are almost wholly dependent on contracts (formal or informal) with one firm or client but have no entitlement to the same terms and conditions of employment as directly employed, or even temporary agency, staff.

5. Conclusion: the need for a new labour market governance approach

The challenges of advancing employment protection standards in the UK are related to its peculiar model of labour market governance, described by a combined influence of market logic, strong employers, low-level statutory rules and limited coverage of either inclusive industry-level or organisation-level collective bargaining. For many workers, the statutory rules fix a ceiling rather than a floor for their employment standards since employers often limit provision to what is required by law (Dickens and Hall 2010), either because they are unwilling to raise standards for their workforce (with weak or absent pressures from trade unions) or are unable to do so due to pressures on margins in highly cost-competitive markets. This makes the debate about what is the appropriate level of employment protection standards set by law particularly important in the UK, and demands a clearer understanding of how employers respond to legal reforms in practice, what is the awareness of legal rights among employers and workers, and how gaps in protections potentially encourage employers to evade their social responsibilities.

The low standards of employment protection mean that UK workers suffered high levels of redundancies during the crisis: some 200-300 000 each quarter during the peak 2008-09 period. Also while the deregulatory model predicts easy hiring, the data suggest re-employment rates are taking a long time to return to pre-crisis levels. Moreover, despite permanent workers having some of the lowest protections in Europe, the post-crisis jobs recovery has been remarkable in the significant shift to non-standard employment forms: of the 2.07 million rise in employment during 2008-2016, self-employment has accounted for almost half (around 900 000) and zero hours contracts for more than one-third (around 760 000).²² The UK’s deregulated labour market, with employers in the driving seat and the government looking sideways, has spawned a worrying development that does not support protected and decent employment standards for all.

A recurring issue in this chapter concerns the statutory definitions of employee, worker and self-employed in the UK and the wide inequality in employment protections afforded to each group. Supiot’s (2001) proposal to extend protections to the

²². Published ONS data, Q1 2008 to Q2 2016.

proliferation of employment categories that do not fit clearly into traditional employee and self-employed statuses has not been effectively addressed. The entitlements granted to workers are inferior to those enjoyed by employees and court cases are said to be 'haphazard' in their assigning of ZHC, agency and self-employed to worker status (Adams and Deakin 2014). The TUC has repeatedly called for legal clarification and for a review to close the inequality in protections, including specific recognition of the exploitation caused by false self-employment (TUC 2008). With employers increasingly likely to use zero hours contracts and labour-only subcontracting since the crisis, we are witnessing a growing pool of workers with employment protections that are ambiguous at worst and sub-standard at best.

Statutory protections in the UK are pitched at a low level compared to other European countries, but the problem is exacerbated by significant enforcement gaps in the form of awareness and power gaps. Research reveals a real lack of worker knowledge about statutory rights, especially concerning non-standard forms of employment. Unions are often weak or absent and therefore need to be supported and given stronger powers and resources so that they can monitor, advise or take action where rules are ignored, or lend support to individuals who are often in highly disadvantaged positions and fearful of complaining (Pollert and Charlwood 2009). Added to this, the new financial costs for taking an employer to court are a real knock-out blow against workplace justice. Civil society organisations (e.g. Citizens Advice, London Citizens, Oxfam UK) are playing an increasingly important role in addressing employment problems, but again require resources and a formal role in shaping policy. Overall, therefore, while no-one doubts the UK labour market's continued capacity to generate jobs, there is a major disconnect with the rights of people to enjoy decent employment standards and an increasingly pressing need to question who pays for employment flexibility when government reforms are relieving employer duties at the same time as relieving the state's welfare responsibilities.

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