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DISCUSSION PAPER SERIES

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ABSTRACT

How Stable Is Labour Market Dualism? Reforms of Employment Protection in Nine European Countries*

Labour market segmentation currently is at the forefront of national and European policy debates. While the European Commission and the OECD try to promote what they see as more inclusive policies, academic observers remain skeptical. Particularly the dualisation literature points to stable political economy equilibria that stack the cards against overcoming divisions between labour market insiders and outsiders. Other contributions point to a more dynamic political setting, in which negative feedback effects tend to challenge any 'dualisation consensus'. Against this background, this paper traces recent reform trajectories in a diverse group of European countries that are characterised by a high share of temporary employment: France, Germany, Italy, Netherlands, Poland, Portugal, Slovenia, Spain, and Sweden. Our case studies show that recent reforms of employment regulation are characterised by much more dynamism than one would expect based on the experiences of the two preceding decades - or based on dualisation or insider-outsider theory. The reform trajectories are characterised by rather contradictory approaches, sometimes in close succession. This even includes, in several cases, substantive deregulation of dismissal protection for open-ended contracts.

JEL Classification: J41, J42, J65

Keywords: fixed-term contracts, labour market dualism, segmentation, employment protection, labour market reforms

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Introduction

The segmentation of European labour markets into secure and insecure jobs is a pressing policy issue. Fixed-term employment in particular is seen as a problem for a range of individual and macro-economic outcomes. In addition, there is growing concern that segmentation and other forms of labour market inequality violate deep-seated fairness norms and thereby undermine the legitimacy of employment models. Against this background, the European Commission (Bekker, 2017) and the OECD (2014) both have emphasised the need for a number of member states to implement measure against segmentation. The key policy recommendation is narrowing the gap between regulation of temporary and open-ended employment contracts. Concretely, this means stricter regulation of temporary contracts, liberalization of open-ended contracts, or both (Eichhorst et al., 2018).

Whether governments have responded to such calls for a smaller regulatory gap is an important research question for scholars of labour market policy. But it also touches upon debates about the politics of labour market reform. Political economists depict the project of 'de-segmentation' as an uphill-battle. Particularly research in the dualisation or insider-outsider frameworks have emphasised that a durable and powerful coalition of actors benefits from segmentation (Emmenegger et al., 2012; Hassel, 2014; Palier and Thelen, 2010; Rueda, 2007; Thelen, 2014; Saint-Paul, 1996). This leads to a view in which the policies underlying segmentation are characterised by strong path dependence. However, this view has recently been challenged by arguments pointing to negative feedback effects of segmentation producing fault lines in insider coalitions (Baccaro and Benassi, 2017; Eichhorst and Marx, 2011; Marx and Starke, 2017, Keune, 2015). In this more dynamic perspective, the prospects for at least partial reversals of segmenting policies are much greater.

Against the background of these debates, the present article addresses the question to what extent European governments did implement labour market reforms to counter segmentation in recent years. Hence, our ambition here is primarily descriptive. We believe this is justified by the

fact that - with notable exceptions (Emmenegger, 2014) - comparative policy research pays relatively little attention to employment regulation. Recent comparative work treats it, at best, as one aspect of labour market policies (see edited volumes by Dølvik and Martin 2015; Eichhorst and Marx 2015; Theodoropoulou 2018). Because employment regulation and segmentation are often minor aspects in existing work, the case selection usually does not allow the systematic comparison of the EU's segmented labour markets that we provide here. Moreover, reforms of employment regulation often take the form of complex and even contradictory measures. Disentangling and assessing their components goes beyond what can be achieved with quantitative indicators provided by the OECD (2013) and others (e.g. Adascalitei and Pignatti Morano, 2016). Given the dynamism and complexity of recent reform activity in this field (OECD 2014), we believe it is an important contribution to describe and characterise reform trajectories. This can be the foundation for a comparative explanation of reforms (Gerring, 2012) and we will make a tentative step in this direction in the final section of this article.

We try to answer our research question through case studies of nine European countries that are characterised by high shares of fixed-term employment (the aspect of segmentation we are particularly interested in) and that at the same time reflect Europe's geographical and institutional variety: France, Germany, Italy, the Netherlands, Poland, Portugal, Slovenia, Spain, and Sweden. The case studies are based on secondary literature and in particular expert interviews. The latter helped us assessing the actual relevance of reform measure as well as a contextualised understanding of important nuances that cannot be easily gleaned from de jure changes.

Our results show that in all studied cases labour market segmentation is a salient policy issue and that there is remarkable reform activity with the goal of tackling it. This includes the deregulation of dismissal protection for workers on open-ended contracts, an institution that up until recently has been considered as extremely resilient to change (Emmenegger, 2014).

The article is structured as follows. We begin with a brief review of existing arguments about the stability of institutions underlying segmentation. We then explain our operationalization and method. The empirical section consists of case studies describing reform trajectories in the field

of employment protection legislation. In the concluding section, we derive implications for future work in labour market research and political economy.

How stable is segmentation?

We use the term 'segmentation' to describe the salient divide in many European labour markets between temporary and open-ended employment contracts. A labour market is segmented, if a group of workers is systematically excluded from long-term employment while others are shielded to some extent from the consequences of market fluctuation. Importantly, such segmentation may or may not be facilitated by institutions. Ultimately, it results from strategies of employers, who sometimes creatively bend existing rules (Eichhorst and Marx, 2011; 2015). That said, many observers agree that the asymmetric deregulation of temporary forms of employment since the 1980s have institutionalised segmentation (Boeri, 2011; OECD, 2014; Kahn, 2010). Such reforms have created an institutional dualism that incentivises employers to use temporary contracts as a flexible buffer that allows for responsiveness to market fluctuation.

The reason for this odd system is seen in the political economy of labour market reforms (Boeri, 2011; Eichhorst and Marx, 2011; Emmenegger, 2014; Rueda, 2005; Saint-Paul, 1996). Business attempts to lobby for liberalization of dismissal regulation have met a strong path dependence of this institution. Its general popularity and its importance for trade unions provide little incentives for governments to attack dismissal protection. The asymmetrical deregulation of temporary employment emerged as a second-best solution to provide employers with the flexibility they demanded (Emmenegger and Marx, 2011). Some observers concluded that institutional dualism is a stable equilibrium for three reasons: because labour market insiders who benefit from segmentation are in the majority (Emmenegger et al., 2012); because social democratic parties tend to side with these insiders (Rueda, 2005); and because segmentation is consistent with the production models in coordinated market economies (Thelen, 2012).

Recently, it has been questioned whether dualism and segmentation are as stable as they are depicted by dualisation and insider-outsider scholars. Eichhorst and Marx (2011) point to strong

variability in reform approaches over time. Accordingly, insiders grudgingly accept dualism in times of high unemployment to deflect pressure towards liberalization of dismissal regulation. However, in times of low unemployment there are demands towards re-regulation, not least because insiders realise that segmentation puts them into labour cost competition with outsiders (see also Baccaro and Benassi, 2017; Benassi and Dorigatti, 2015). Besides having a material interest in reducing dualism and segmentation, insiders might also simply be more solidaristic with outsiders than expected by political economists. This can be shown on the level of trade unions (Keune, 2015; Marx and Starke, 2017) and of individuals (Marx, 2015). Hence, the political economy literature is divided between a dualism-as-equilibrium view and a dualism-as-dynamic-back-and-forth view. If the former is correct, we should expect Europe's most segmented countries to embark on a persistent path towards dualism. If the latter has anything to add to our understanding of reform patterns, we should at least observe some form of 'counter-movement' in these countries, that is, institutional changes aiming at a reduction of segmentation.

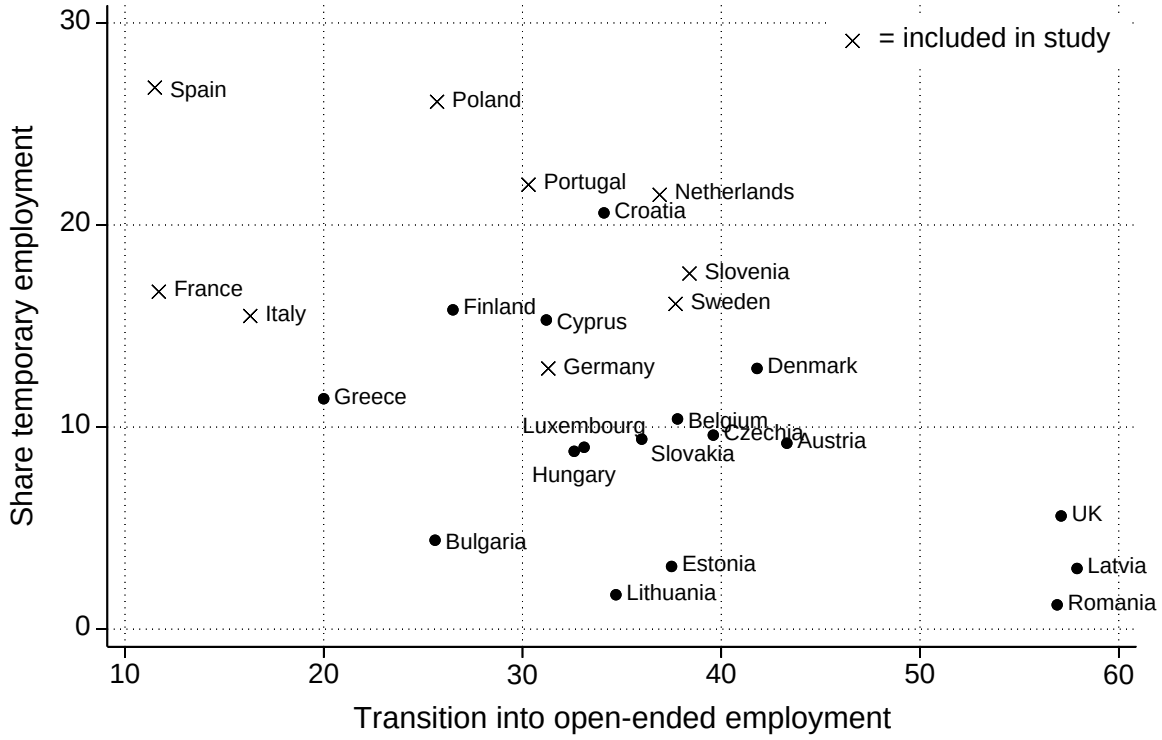
Our goal is not to directly test the validity of the two arguments. This would require tracing the political process leading to reforms (as in Marx and Starke, 2017). We believe an important first step is to describe and to better understand reform patterns. Employment regulation still receives limited attention in Comparative Public Policy. At the same time, the past ten or fifteen years have witnessed intense reform activity in this field (OECD, 2014). What makes an assessment of reform *trajectories* difficult, however, is that they often contain contradictory elements that have to be weighted and aggregated into an overall picture. Moreover, such an assessment should be derived in an explicitly comparative framework to make sure similar standards are applied.

Country experiences: Operationalising and measuring (de)dualisation

To assess the potential of labour market reforms in mitigating labour market dualism, the main body of our contribution provides a number of national case studies. This is important because

assessing the performance of countries requires a contextualised perspective as well as in-depth knowledge about the state of national policies and their evaluation. The section focuses on a sample of EU Member States with relatively intense dualism in their labour markets: France, Germany, Italy, the Netherlands, Poland, Portugal, Slovenia, Spain and Sweden. This country selection makes sure that we cover the experiences of some of the most segmented labour markets as measured by shares of temporary workers in total employment as well as transition rates from temporary to open-ended contracts (see figure 1). At the same time, our country sample covers considerable geographical and institutional diversity.

Figure 1: Share of temporary in total employment and transitions from temporary into open-ended employment in 2017



Source: Eurostat (2019). Note: Transition rates refer to year—to-year transition rates, three-year averages; data refer to 2016 in some cases.

We focus on changes in the regulation of dismissals of workers on open-ended contracts (OEC) and the regulation of hiring workers on fixed-term contracts (FTC) or in the form of temporary agency work (TAW). For the assessment of reforms we use the simple classification presented in Table 1. Countries and reforms can fall in one out of five categories. The absence of reform signals continued duality, because in all our cases the status quo is characterised by medium to high segmentation. Changes can take the form of liberalisation, that is, a reduction of regulation for both open-ended and temporary employment contracts. Further dualisation would take the form of asymmetric deregulation of temporary contracts while permanent contract regulation is maintained or even strengthened. De-dualisation, arguably the most interesting reform pattern, occurs if regulation of permanent contracts becomes more lenient *or* if regulation of temporary employment becomes stricter. Note that only one of the two has to be present in order to speak of de-dualisation. Hence, de-dualisation means the narrowing of the regulatory gap between contract types. Table 1 also lists the concrete regulatory aspects that we study to determine the reform direction.

To apply this coding scheme and to achieve a reliable assessment of national reform experiences, we combine a review of the most recent research into this topic with semi-structured interviews of two to three independent experts in each country. We ask them to identify the most relevant reforms over the last 15 years or so and to elaborate their most important features. Given the space constraints of this article, the case studies are inevitably selective and focus on what the experts identified as the most important regulatory changes.

Table 1: Reform directions in employment protection legislation

	Regulation in dismissal protection (OEC)	**Regulation of FTCs and TAW**
Continued duality	*Stable*	*Stable*
Liberalisation	*Declining*	*Declining*
Regulation	*Increasing*	*Increasing*
Dualisation	*Stable / increasing*	*Declining*
De-dualisation	*Declining*	*Increasing*
Main regulatory options	• Reinstatement • Severance pay • Notice periods • Procedural requirements • Definition of justified dismissals • Subsidies to convert temporary into open-ended contracts	• Valid reasons for FTCs/TAW • Maximum renewals and cumulative duration FTCs • Severance pay when FTC expires • Financial disincentives to use FTCs/TAW • Other restrictions TAW

France

France exhibits a moderate to high share of temporary employment in a European comparison (Figure 1). Interestingly, temporary employment has never been deregulated to the same extent as in many other segmented countries (Marx, 2012). In fact, in 2013 France had one of the strictest regulation of FTCs in the OECD, particularly regarding valid reasons for using such contracts (OECD 2013: 88). The reason why they are used anyway is probably related to the fact that the protection of OECs against individual and collective dismissal is above the OECD average (OECD 2013: 78-85).

While in the early 2000s, the Socialist Jospin government implemented some reforms to restrict the use of (repeated) FTCs and collective dismissals (Emmenegger 2014), deregulating dismissal protection has been on the French political agenda for some time. At least since the 2000s, there seems to be a widespread perception among political elites that it would improve the labour market situation in terms of unemployment and segmentation. In the mid-2000s, there were

serious attempts of the centre-right government to implement a version of the single employment contract, by replacing FTCs with an extended trial period. This provoked mass protests and was only partly introduced for hirings in small companies by way of the "contrat nouvelle embauche" in 2005. In 2007, this solution was found to violate an ILO convention and therefore abolished in the following year. Instead, the possibility of contract termination by mutual consent was introduced in 2008. This reform created stronger incentives not to involve labour courts. In this procedure, the employee is entitled to a severance payment of a fifth of a monthly wage per year of service and to the immediate receipt of unemployment insurance benefits if entitlement criteria are met. Agreed terminations have to be registered with the public authorities, effectively also transferring potential lawsuits from labour courts to administrative courts. Since then, termination by mutual consent has become an important tool in practice (Askénazy and Erhel, 2016; Caune and Theodoropoulou, 2018) and we consider it a tentative step towards de-dualisation.

This trend was continued under the socialist Hollande government. In a context of deteriorating employment conditions and strong segmentation, it shared its predecessor's emphasis on the need to overcome 'rigidities' in the labour market. In 2013, after pre-negotiations of social partners and consent of part of the unions, the procedures for collective dismissals were simplified along the lines of mutually agreed individual dismissals. This fits the de-dualisation pattern. In 2017, Macron got elected as an outspoken liberal reformer. In the same year, his government took more decided steps towards simplified dismissal procedures. The central change was to limit compensation to one monthly salary if a dismissal is declared null and void because of procedural mistakes. In such cases, which are frequent in France, the compensation now is much lower (expert interview). In addition, to limit uncertainty about appeals in labour courts, judges' discretion in deciding on compensations for unfair dismissals was limited through fixed schedule specifying upper and lower limits based on seniority.

The reforms since the 2000s add up to a significant flexibilisation of dismissal protection. Hence, one can reasonably claim that France has made at least tentative de-dualising steps (Caune and Theodoropoulou, 2018), particularly if one considers that FTCs remain strictly regulated.

Germany

Arguably because of its decent labour market performance, Germany has shown little reform activity in recent years. The reform period in Germany begins with the widely discussed 'Hartz reforms' (2001-2005) that are generally seen as a dualising reform package. As a response to persistent mass unemployment, the Red-Green Schröder coalition deregulated several forms of non-standard employment, including FTCs (2001) and TAW (2003). However, it should be noted that dismissal protection was moderately deregulated as well (by raising the firm-size threshold for the application of dismissal protection to ten employees and by relaxing restrictions on the selection of employees to be dismissed first). Hence, the Hartz reforms fall somewhere between a dualising and a liberalising approach (Eichhorst and Marx, 2011).

In the context of rapidly improving labour market conditions, the public's and policy-makers' attention in subsequent years shifted from creating jobs to reducing labour market inequality and segmentation (Marx and Starke, 2017). The main focus has been on TAW (although it never exceeded three percent of the workforce). Besides various attempts to limit it through collective agreements (including a sectoral minimum wage), a legislative step from April 2017 introduced mandatory equal treatment after nine months of employment in a user company. Moreover, a maximum duration of assignments was re-introduced (18 months) with some room for deviation by collective agreements. Recently, the German Social Democrats and Christian Democrats agreed in their 2018 coalition agreement to restrict the use of FTCs without valid reason (Hohendanner, 2018). However, this has not yet been implemented. Hence, for the time being, Germany can be considered a case of continued duality, although de-dualising tendencies have become visible in recent years.

Italy

If there is a case that demonstrates how contentious and unstable labour market dualisation can be, it is Italy. In the early 2000s, Italy embarked on a typical dualizing reform parth. The main reform relaxing regulation on temporary contracts occurred in 2003 (Pinelli et al., 2017; Emmenegger 2014), followed by a wave of re- and degulation of FTCs and TAW between 2007

and 2010. The 2010s have also been a decade of almost constant and contradictory reforms. This began under the technocratic Monti government, which was highly responsive to signals from financial markets and government bond spreads (expert interview). The 2012 Fornero Act tried to reduce the cost of dismissing workers on OECs by curtailing what had for years been a bone of contention: the right to reinstatement after unfair dismissals. This right was limited to cases of discrimination and replaced for remaining dismissals with monetary compensation. However, labour courts continued to interpret the law in such a way that reinstatement was still possible unless valid economic reasons could be documented.

A more effective attack on the right to reinstatement occurred under Renzi who was keen to project the image of a radical reformer. In the highly controversial 2015 Jobs Act (Pinelli et al., 2017; Vesan and Pavolini, 2018), a fixed schedule for compensation depending on tenure was introduced. This schedule applies even if dismissal is considered unfair and hence eliminates uncertainty regarding court interpretations. Unions saw this as a major assault on dismissal protection and mobilised mass protests without being able to stop it (possibly it helped that the law included a godfather clause that restricted its application to newly recruited workers). A second element of the Jobs Act was that dismissal protection in open-ended contracts is now phased-in with tenure, which lowered firing costs for employment relationships lasting up to 12 years.

However, the reforms under Renzi were an across-the-board liberalization rather than an attempt at de-dualisation. This is clearly demonstrated by the 2014 Poletti decree, which allowed FTCs without valid reason to be renewed eight times up to a maximum duration of 36 months (Pinelli et al., 2017). By comparative standards, this is exceptionally lenient regulation. However, it should also be mentioned that the Jobs Act tried to limit some forms of freelance work that had been perceived as being frequently abused by employers as quasi-dependent temporary employment. It abrogated specific project-related collaboration contracts (‘co.co.pro’) that had grown in importance over the 2000s. Only existing co.co.pro contracts were allowed to continue. The so-called ‘co.co.co’ are still available, but these received better access to different types of social protection and protection against unilateral termination of contracts by clients.

The liberalising approach was contradicted by the populist coalition that entered office in 2018. Particularly the Five Star Movement, whose leader Di Maio, occupied the Ministry of Labour, tried to capitalise on the discontent with the Jobs Act and labour market segmentation (expert interview). An important correction of Renzi's reform, implemented in the 2018 'Dignity Decree', was adjusting the fixed compensation schedule, so that unfairly dismissed workers receive three monthly salaries per year of employment. Also the minimum and maximum compensation were raised to 6 and 36 monthly wages. Hence, while the right to reinstatement was not brought back, the potential costs of dismissals were raised considerably (however, shortly after the fixed compensation schedule was declared unconstitutional anyway so that judges now have more discretion again in setting compensations). The reform did not only push back against liberalisation of dismissal protection (which would mean more dualisation), but also restricted FTCs. Specifically, employers are now only allowed to use FTCs without valid reason for one instead of three years, with a maximum duration of two years in case of a valid reason.

In sum, Italy has shown within few years more reform activity in the field of employment regulation than other countries in decades (something the financial crisis certainly contributed to). Interestingly, the reforms did not follow an insider-outsider logic (in passing, it should be mentioned that the Renzi government actually extended social protection to workers with short employment spells). Rather, the divide seems to be between proponents and opponents of overall labour market flexibility. In any case, Italy seems to be far away from anything resembling a 'dualisation consensus'.

Netherlands

The Netherlands are among the EU Member States in which FTCs increased most strongly. In the Netherlands the number of FTCs, especially those with a duration of more than one year, increased significantly from 6.0 percent of total employment in 2003 to 8.4 percent in 2017 while the transitions into OECs declined significantly during the crisis (de Beer and Verhulp, 2017).

After considerable reform activity in the late 1990s (in the much debated 1999 Flexibility and Security Act), the 2000s saw some steps towards easier procedures in case of dismissals for

economic reasons as well as lower maximum severance pay (Emmenegger 2014). After a long discussion, the social partners reached an agreement on EPL reform in April 2013. This happened after the recession year of 2012 produced rapidly rising unemployment. The agreement was transposed into law (Work and Security Act, WWZ) by a government formed by VVD and PvdA and became effective in 2015. The reform included a reduction of the maximum duration of consecutive FTCs from three to two years. It also introduced a new formula for severance pay of one third of a month's salary for each year of service (and half a month after 10 years of service), starting after two years of service. This typically means lower compensation than the previous severance payment assigned by the courts. It also brought a radical change of the legal procedures for the dismissal of staff on OECs as permission from the PES became the only option in the case of dismissal due to economic and business reasons while dismissals on personal grounds has to go to the court.

More recently, the coalition agreement between VVD, CDA and liberal D66, announced a number of reforms of the 2015 WWZ (Baker and Gielens, 2018). This includes raising the maximum cumulative duration of FTCs to three years. The accrual of the right to severance pay will start from the first day of employment and will also apply to FTCs. The probationary period for OECs will be prolonged from two to six months. Moreover, it will become easier to dismiss a worker based on a combination of various grounds. Finally, unemployment insurance contributions will be lowered if an employee is hired on an open-ended contract. However, the changes have not yet been passed in parliament. If they will, they would continue the direction of the 2013 reform to move towards a cautious de-dualisation of Dutch labour law.

Poland

Segmentation emerged comparatively late in Poland. While the share of FTCs was still low in the late 1990s, it skyrocketed in the 2000s and now is one of the highest in the EU (Figure 1). This dramatic increase cannot be explained by legislative changes. In 2002, in a context of mass unemployment and employer demands for more flexibility, FTCs were strongly deregulated (the maximum number of renewals was abolished entirely). The changes were effectively revoked

almost immediately to comply with EU regulation. From 2004 onwards, only two consecutive FTCs were permitted, although their duration was not limited (Czarzasty, 2002; 2003; Guardiancich, 2012; Lewandowski et al., 2017). According to the OECD EPL indicator (2014), the two reforms amounted to stricter regulation of FTCs. The fact FTCs grew so strongly anyway can be explained by weak enforcement of labour law so that de facto flexibility has been rather high (Guardiancich, 2012; Lewandowski et al., 2017). Another noteworthy feature of the Polish labour market is the widespread use of *Civil Law Contracts* for temporary employment. Workers on such contracts are formally self-employed and hence outside labour and social security regulation, which makes them relatively flexible *and* cheap for employers. Practically, they are used for quasi-dependent jobs and, according to an interviewed expert, they are often included as temporary employees in the Labour Force Survey.

In 2015, regulation of FTCs was tightened (in the last months of the Liberal-Conservative Kopacz Government). This took place in a situation of declining unemployment, but persistently deep segmentation. Since 2016, there is a maximum duration for FTCs of 36 months, while now three consecutive FTCs are permitted. Unlike in many other countries, temporary workers can be dismissed in Poland before the end of their contract. Based on a ruling by the European Court of Justice, the notice periods for such cases were aligned with those of OECs, which implied an extension of notice periods for FTCs with longer duration (Czarzasty, 2015).

The populist right-wing government that took office in 2015 implemented further changes to limit what they called the 'abuse' of Civil Law Contracts. Employers are now liable to pay social security contributions for contracts of mandate. These are, however, only calculated in relation to the minimum wage irrespective of the actual remuneration. The minimum (hourly) wage applies to such contracts since mid-2016 (Lewandowski et al., 2017).

We consider the 2015 reform of FTCs a mild form of de-dualisation, because of the introduction of a maximum duration and longer notice periods. The same is true for the reform of Civil Law Contracts, which at least in a de jure perspective should have made them less attractive to employers. However, based on strong problems in Poland with monitoring and enforcing labour law it is doubtful if moderate adjustments such as these will have a significant impact on segmentation.

Portugal

In our sample, Portugal is the country hit hardest by the 2008 crisis. This had a direct impact on the present topic, because the bailout by EU, ECB and IMF included conditionality aimed at liberalising employment protection. Before the crisis, Portugal had comparative strict regulation of individual dismissals and mostly followed an institutional path towards duality. However, also here we observe some contradictory reforms. In 2003, the maximum cumulative FTC duration was extended to six years, a very long period by comparative standards. However, in 2009 the socialist government took measures to counter dualism. While some aspects of dismissal protection were eased, FTC duration was reduced again to three years and it was forbidden to hire on FTCs for jobs that had been previously filled by short-term workers. It is worth stressing, again, that the steps leading to this reform were initiated before the crisis (Cardoso and Branco, 2018).

In the course of the crisis, the reform approach shifted towards far-reaching liberalising measures (imposed by the 'Memorandum of Understanding' with the creditors in the bailout program). In several steps between 2011 and 2013, the following changes were made for OECs: severance payment was lowered from 30 days per year of tenure to 12 days for collective and 12-18 days for individual dismissals. In addition, the minimum severance pay of three monthly salaries was abolished. Moreover, valid reasons for justified dismissals were extended (for details see OECD 2017; Távora and González, 2016). These measures add up to a significant deregulation of the protection for OECs. In addition, employers were obliged to contribute to a dismissal fund that covers up to half of severance payments. The idea was to reduce the short-term cost of dismissals and to ensure payments also in cases of bankruptcy.

It should be noted that the liberalising agenda did not only impact OECs. In 2011, severance pay for newly hired fixed-term workers was reduced from 24-36 days to 20 and later 18 days per year of service. The reform also included a temporary extension of the possibility to renew FTCs.

Overall, Portugal is the clearest example of a liberalization approach in our sample. It is an exceptional case in so far as the formal conditionality of the bailout programme mandated this

liberalization. However, it should be noted that just before the crisis, an attempt at de-dualising labour law was made that resulted from endogenous political dynamics.

Slovenia

Slovenia shows clear signs of segmentation and – until recently – a strongly dualised labour law. Moreover, unemployment rose dramatically during the economic crisis (which affected the Slovenian banking sector) and peaked in 2013 with around 10 percent. In this context, labour market policy ranked high on the political agenda. The main reform was the 2013 *Employment Relations Act*. It was negotiated during turbulent political times characterised by government instability, management of the debt crisis and large protests against corruption and austerity measures (Fink-Hafner and Krašovec, 2014). It might be related to this problem pressure that the reform found the consent of social partners (after months of negotiation) and almost unanimous support in parliament (Skledar, 2013)

The reform's explicit goal was to reduce segmentation through closing the regulatory gap between temporary and open-ended employment and through increasing overall flexibility (see OECD 2014 and Vodopivec et al., 2016 for a description of the reform elements). OEC were deregulated by considerably shortening notice periods and lowering severance pay. Moreover, procedural requirements were simplified (e.g. by allowing to choose between reinstatement of unfairly dismissed workers and monetary compensation and by removing the obligation to document attempted redeployment). According to the interviewed experts, these relaxations are crucial steps, because labour courts' interpretation of the old rules created considerable uncertainty.

What makes the *Employment Relations Act* a clear case of de-dualisation is that deregulation of dismissal protection was complemented with re-regulation of temporary employment. The maximum cumulative duration of FTCs was limited to two years. Crucially, severance pay was introduced for temporary workers, which – with few exceptions – is the same as for OECs (however, because it is tied to seniority and because seniority is usually low for temporary workers, this does not necessarily produce substantive entitlements). In addition, open-ended

hiring was incentivised by a) imposing higher unemployment insurance contributions on FTCs and b) exempting employers from contributions for up to two years if FTCs are made permanent. Finally, the share of TAW in user companies was capped to 25 percent in 2013.

In sum, *Employment Relations Act* constitutes an ambitious reform package including de jure convergence in dismissal costs as well as fiscal disincentives to use FTCs. While a preliminary evaluation by Vodopivec et al (2016) has been rather positive, the long-term effects of the reform can, of course, not yet be assessed. However, it has to be noted that – so far - the reform did not translate into a marked reduction of FTCs. Be that as it may, on the institutional level – the main interest of this article - Slovenia has taken a clear step away from labour market dualism (see also Ignjatovic and Hrast, 2018).

Spain

Spain is well known for its labour market problems, both in terms of segmentation and unemployment. The dramatic increase of FTCs since the 1908s was initially triggered by deregulation in combination with adverse economic and demographic conditions (Polavieja, 2006). FTCs became a popular source of flexibility in an otherwise strictly regulated labour market. Their strong growth was met with criticism and soon produced demands in the population to limit dualism (Dolado et al., 2002; Bentolila et al., 2012). Several reforms in this direction were implemented in the 1990s and the 2000s, notably the creation and expansion of a less regulated OEC between 1997 and 2006 combined with some restrictions on FTCs. A particularly intense debate emerged in the aftermath of the 2008/09 economic crisis, which prepared the ground for deregulation of dismissal regulation. The most important structural reforms were implemented in 2010 and 2012 in a context of high unemployment and strong concerns about financial markets' assessment of the Spanish economy. The clear goal was to increase overall flexibility in the labour market.

The 2010 reform eased individual dismissals by extending and clarifying the reasons for justified separations with the goal to lower judges' discretion in court procedures and, thereby, legal uncertainty. In 2012, the compensation for unfair dismissal was lowered from 45 to 33 days per

year of tenure (up to a limit of 24 instead of previously 42 months). Moreover, workers' entitlement to back pay for the period of dismissal-related court proceedings was abolished. This was a key liberalizing element (expert interview), because such back payments could be high and therefore constituted a major source of legal uncertainty. Moreover, the burden for employers was eased to document dismissals as *ultima ratio*, the probationary period in small companies was extended to one year, and the need for an administrative authorisation of collective dismissals was abolished. At the same time, FTCs became more stringent through financial disincentives. Temporary workers are now entitled to receive severance pay at the end of their contract amounting to the salary for twelve work days per year of employment with the firm.

Taken together, the Spanish reforms during the peak of the financial crisis are clearly de-dualising. Although the reforms appear ambitious in comparative and historical perspective, their effectiveness in tackling segmentation could not be documented. Open-ended hirings remain a rare phenomenon in Spain (Eurofound, 2015; García Pérez and Jansen, 2015). Possibly, the reforms ultimately did not produce enough of a convergence of dismissal costs (as assessment shared by the OECD 2014). This could partly be explained by implementation issues. In particular, labour courts have been quite restrictive in acknowledging the justification of fair dismissals even after the reforms, which continues to produce uncertainty about dismissal costs (Jimeno et al., 2018).

Sweden

Sweden has one of the highest shares of FTCs in Europe (Figure 1), which is usually attributed to its strict dismissal regulation. The main policy debate for decades has been the 'last-in-first-out principle', according to which workers to be dismissed have to be selected based on seniority (expert interview). Unions strongly defend this principle, because the possibility to negotiate deviations on the firm-level is important for their bargaining power. Union interests, in turn, have made deregulation politically difficult, except for an adjustment in 2001 (Davidsson, 2018; Emmenegger, 2014). In a typical dualising logic, these political hurdles were avoided by de-regulating FTCs and TAW. After a first reform wave in the late 1990s, the conservative-liberal

government entering office in 2006 allowed FTCs without valid reason (through a new "general temporary employment contract") for 24 instead of 12 months. The Social Democrats had actually prepared a similar but less far-reaching reform just before losing the election (Emmenegger, 2014), which indicates that the decision was not very controversial. In the following years, the issue of segmentation and FTC regulation had remarkably little salience in Swedish politics, considering the high share in the workforce. A reason could be that such contracts are much less of a problem in terms of transition prospects than in other countries (expert interviews). There was, however, some debate about employers' excessive reliance on temporary contracts by exploiting legal loopholes. In 2016, a reform initiated by a government led by the Social Democrats limited the cumulative use of temporary employment contracts to counter such 'abuses' (Davidsson, 2018). This should be seen as a minor correction, however (expert interviews).

Overall Sweden appears as a case of 'continued duality', in which a political insider-outsider logic is actually more entrenched than in most other observed cases. That said, the recently formed government has included in its coalition agreement the deregulation of the controversial last-in-first-out principle (pushed through by the Centre Party against the will of the Social Democrats). Whether it will materialise is too early to tell.

Comparative assessment and conclusion

If we try to classify the observed reform trajectories, arguably only two countries in our sample fall in the category of continued duality: Sweden and Germany, two cases in which segmentation is far less severe than in the other countries and where de-dualising reforms are currently debated. It is remarkable that none of the studied countries has become more dualised in the past 10 to 15 years. One case can be classified as an unambiguous example of liberalisation, namely Portugal under the influence of the 'Troika'. Italy followed a liberalizing approach only during the first crisis years and recently moved back to stricter regulation of open-ended and temporary contracts. The remaining countries actually exhibit different forms of de-dualising patterns, although the scope varies greatly.

In sum, our comparative analysis shows that recent reforms of employment protection legislation are characterised by much more dynamism than one would expect based on the experiences of the two preceding decades - or based theoretical frameworks from the dualisation and insider-outsider literatures. The stylised story (which admittedly captured many countries rather well) used to be one of stable dismissal protection coupled with the incremental deregulation of FTCs. Many of the reform trajectories we observe, particularly post-2008, are more incoherent than this stylised story. Instead, they are characterised by rather contradictory approaches, sometimes in close succession.

A particularly surprising finding consists in the frequency of reforms deregulating dismissal protection for insiders. In this respect, it is important to acknowledge that the countries which took such steps are far from fitting into a uniform explanation. In some cases, there is an undeniable crisis effect. This is true most clearly for Portugal, but also Italy, Slovenia, and Spain reformed their labour markets in a context of vulnerability from crisis exposure (although in Spain, first reforms occurred before the crisis). In France and the Netherlands, were deregulation was more modest, domestic politics were clearly more important than the expectations of financial markets or international lenders.

A second surprising finding consists in widespread attempts to re-regulate FTCs, the other side of the de-dualisation coin. Actually, most countries in our sample have introduced at least one reform in this direction, even if some of them are too modest to be considered a full-blown reversal of dualisation. Again, it is doubtful if there is a uniform explanation. A few examples can illustrate the diversity. In Slovenia, re-regulation occurred with the explicit goal to lower the regulatory gap between open-ended and temporary contracts. In Poland, re-regulation became necessary because of EU law. In Italy, it appeared to be part of a broader populist backlash against neoliberal labour market policy. And in Sweden, it was more of an attempt to defend the status quo by making it harder for employers to creatively circumvent the rules.

To explain the (variation in) reform dynamism we have uncovered in this paper is an important task for future research. We believe it will be particularly important to tease apart external influences, such as financial markets and international organizations, from endogenous dynamics. Regarding the latter, it would be interesting to what extent the negative feedback

effects of dualization discussed in previous contributions (Marx and Starke, 2017) mattered in the field of employment protection legislation – and, if yes, why they are stronger in some cases than in others. Such studies should ideally combine the micro-level of political preferences and the meso-level of organizational strategies. In this respect, it remains a problem that comparative surveys rarely include items tapping citizens' preferences regarding labour market regulation.

Another important question will be to what extent and how the described policy changes actually translate into labour market outcomes. Although we could not cover this aspect in the constraints of the present paper, we would globally assess the success in lowering segmentation as very limited, at best. Against the promise of widespread policy advice, it does not look like a smaller regulatory gap between open-ended and temporary contracts does translate directly into less segmentation. This calls for further empirical investigation in particular into employer practices and employment patterns at firm level. One could assume that in some cases employers might be discouraged from open-ended hirings due to uncertainty about the interpretation of labour courts or persistent differentials in the perceived costs of contract types even after the reforms. Hence, hiring patterns might be harder to change than expected. If we assume that politicians and the public care more about outcomes than de jure changes, this observation leads us to expect that the search for a fair distribution of employment flexibility and security will continue.

Table 2: Overview table of employment protection reforms

Country	Year	Reform	Direction
France	2002	Re-regulation of FTCs	**De-dualisation**
	2005	Less regulated new OEC	**De-dualisation**
	2008	Dismissal by consent	**De-dualisation**
	2013	Simplification of dismissal procedures	**De-dualisation**
	2017	Simplification of dismissal procedures	**De-dualisation**
Germany	2003	Deregulation of TAW (and dismissal protection)	**Dualisation**
	2017	Re-regulation of TAW	**De-dualisation**
Italy	2003	Deregulation of TAW	**Dualisation**
	2007-10	Re-regulation of FTCs and TWA	**De-dualisation**
	2008	Deregulation of FTCs and TWA	**Dualisation**
	2012	Deregulation of dismissal protection	**De-dualisation**
	2013	Deregulation of FTCs	**Liberalisation**
	2015	Further deregulation of dismissal protection and hiring incentives, but re-regulation of contract work	
	2018	Re-regulation of dismissal protection and FTCs	**Regulation**
Netherlands	2005/08	Deregulation of dismissal protection	**De-dualisation**
	2015	Re-regulation of FTCs, deregulation of dismissals	**De-dualisation**
Poland	2002	Deregulation of FTCs	**Dualisation**
	2003	Re-regulation of FTCs	**De-dualisation**
	2015	Re-regulation of FTCs	**De-dualisation**
	2016	Re-regulation of civil law contracts	**De-dualisation**
Portugal	2003	Deregulation of FTCs	**Dualisation**
	2009	Re-regulation of FTCs	**De-dualisation**
	2011	Deregulation of FTCs	**Liberalisation**
	2011-12	Deregulation of dismissal protection	
Slovenia	2013	Deregulation of dismissal protection and re-regulation of TAW and FTCs	**De-dualisation**
Spain	2006	Deregulation of dismissal protection, restrictions on FTCs	**De-dualisation**
	2010-12	Deregulation of dismissal protection	**De-dualisation**
	2011-15	Re-regulation of FTCs	**De-dualisation**
Sweden	2008	Deregulation of FTCs	**Dualisation**
	2016	Re-regulation of FTCs	**De-dualisation**

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