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# Labour market segmentation and the EU reform agenda: developing alternatives to the mainstream

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**Working Paper 2016.10**



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## **Abstract**

European employment regulation has been repeatedly identified by policy-makers as too stringent, which has resulted in policy recommendations that have promoted more flexible labour markets. 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. In this paper 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. 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. We argue that regulation is an important mechanism for providing a more level playing field, both between capital and labour and between workforce groups.

**Keywords:** labour market segmentation, employment regulation, job quality, EU employment policy.

# 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 paper 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 working paper 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.

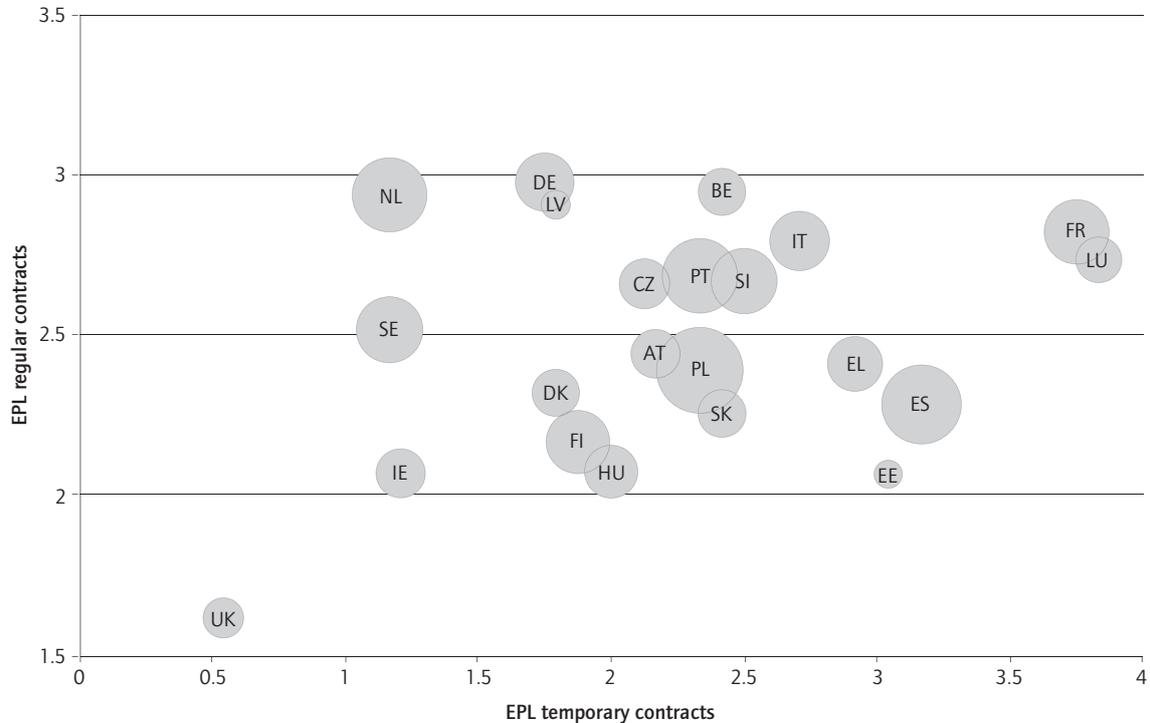
A particular point of disagreement between the mainstream view of labour markets and the institutionalist perspective is over the need for regulations to set minimum standards for employment conditions. In textbook labour economics, a freely operating labour market is held to be sufficient to establish 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, p.12). A high share of temporary contracts can be found both in countries with relatively less stringent rules regarding the use of such contracts (e.g. the Netherlands) and in countries with the strictest rules (e.g. France). Latvia, where a rather high level of protection of regular contracts coincides with a looser regulation of temporary work, has one of the lowest temporary employment rates in the EU. Spain and Poland, which top the rankings in terms of the incidence of temporary work, provide relatively low protection for regular work. This is the opposite of what would be expected from reading the mainstream economic view on the causes of labour market dualisation and suggests that in fact the whole set of institutional arrangements, including employer norms and practices, play a role. For these reasons, deregulation through the removal of employment protection cannot be expected to reduce segmentation in any predictable way.

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

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



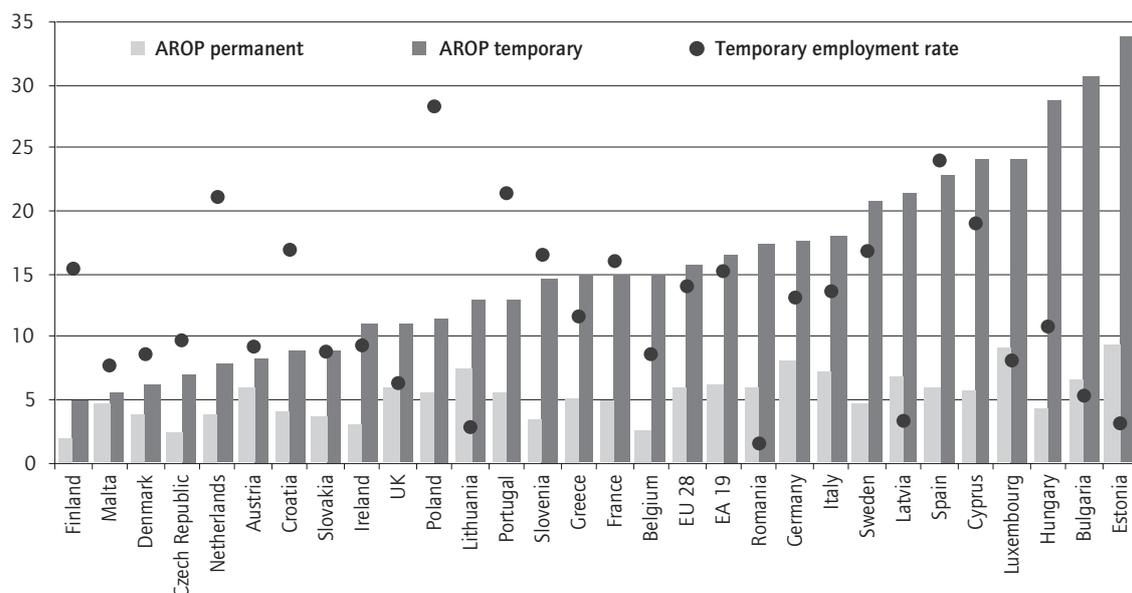
Notes: Bubble size corresponds to temporary employment rate (2014). EPL for 2013 (Version 3).  
Source: Eurostat (2016) and OECD (2016)

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

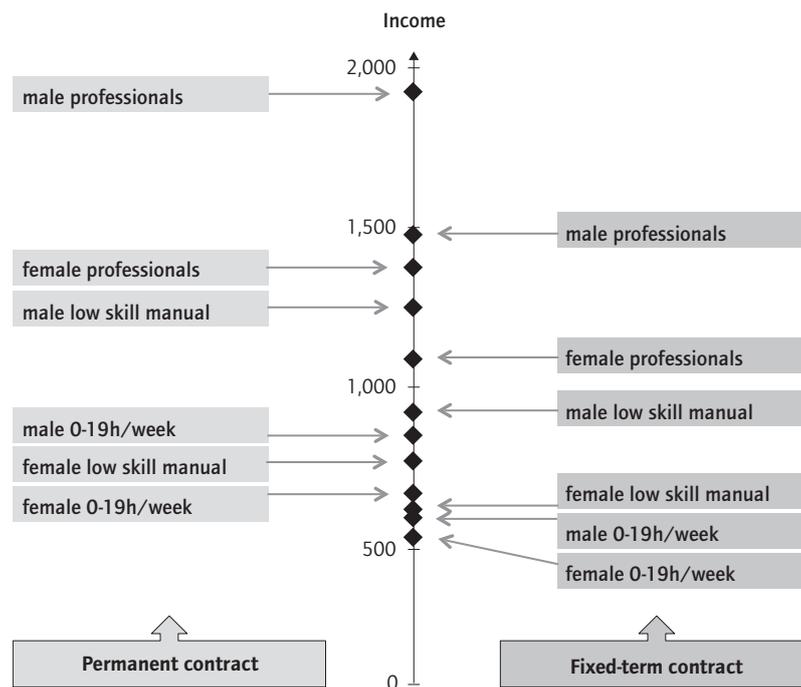


Notes: In-work at-risk-of-poverty rate refers to the percentage of employed persons with an equivalised disposable income below the risk-of-poverty threshold, which is set at 60% of the national median equivalised disposable income (after social transfers).  
Source: Eurostat

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 considerable heterogeneity found among workers with the same type of employment contract becomes apparent through the analysis of various aspects of job

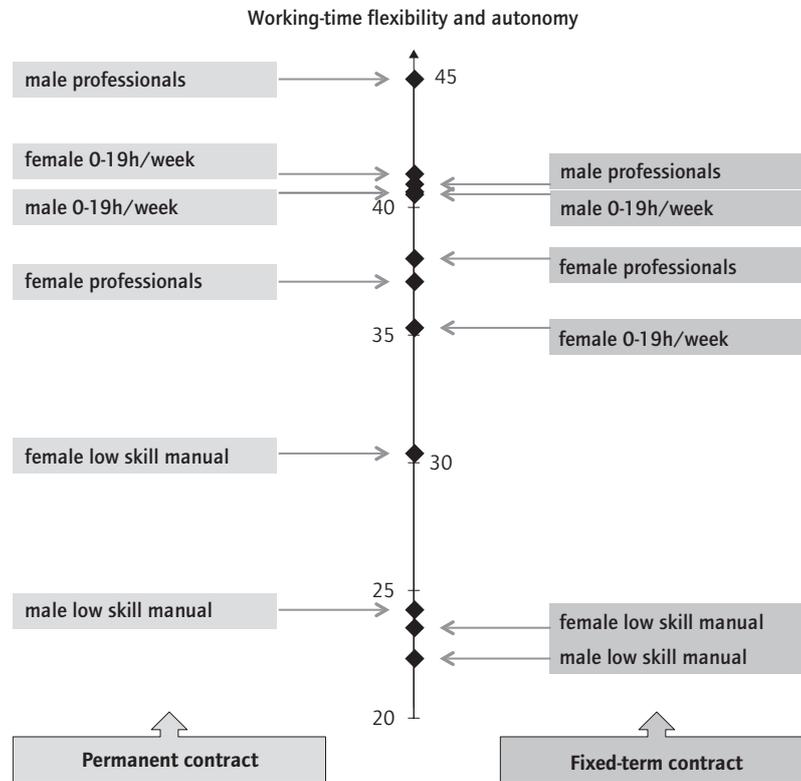
quality. A simple comparison of average levels of monthly income between several groups of workers in the EU, as shown in Figure 3, reveals huge diversity that is as much linked to skill level, occupational rank, gender or marginal part-time work hours, as to the type of employment contract. A very similar picture emerges when other aspects of job quality are taken into account, for instance the quality of working time (measured by employee-led flexibility and autonomy in scheduling work), as shown in Figure 4. Not all permanent jobs are of good quality, just as not all fixed-term workers are precarious (for a discussion about the uncertainty of permanent employment in Spain see Banyuls and Recio 2015). The quality of jobs is strongly related to the bargaining power of workers who fill particular jobs, and there is little reason to expect that particularly disadvantaged and vulnerable workers currently in atypical employment would gain access to ‘good jobs’ if protection of permanent work was to be reduced.

Figure 3 Average monthly income for various groups of workers and by type of employment contract, EU27 (2010)



Notes: Weighted means. Income corresponds to net monthly earnings from the main paid job and is adjusted for the Purchasing Power Parity (PPP) index.  
Source: own analysis from EWCS (2010)

Figure 4 Working time flexibility and autonomy for various groups of workers and by type of employment contract, EU27 (2010)

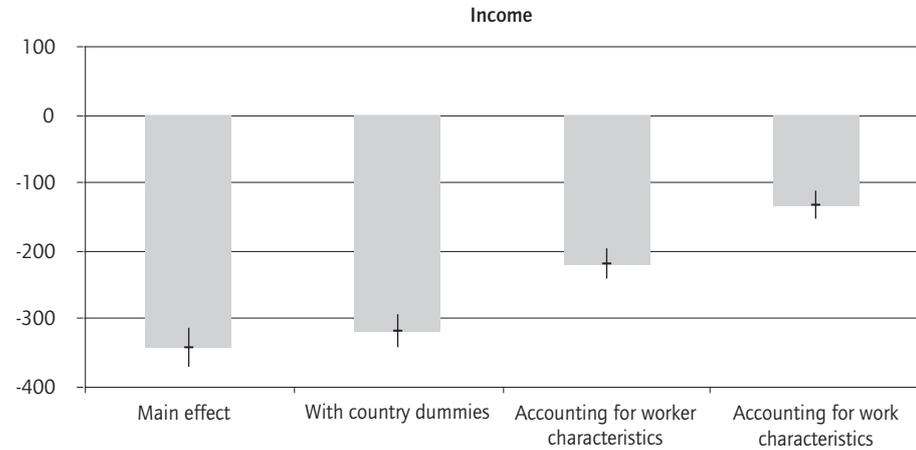


Notes: Weighted means. Working time flexibility and autonomy includes such variables as changes in working hours and workers' scope for control over flexible working time. It is measured on a scale of 0-100, with higher values indicating better job quality.

Source: own analysis from EWCS (2010)

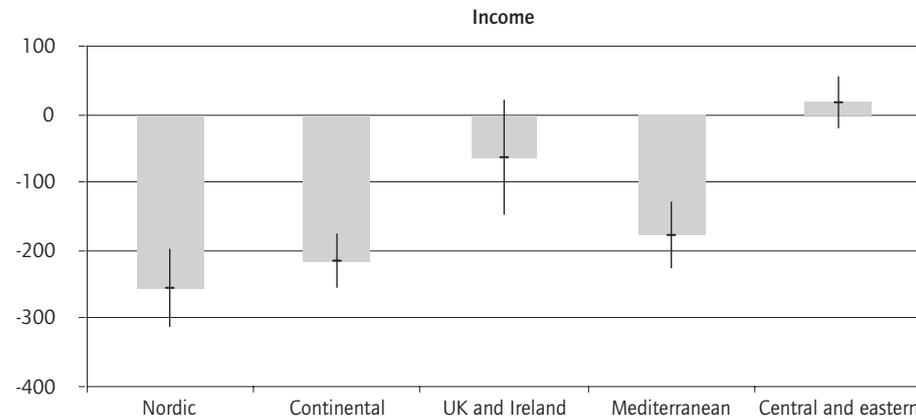
Segmentation occurs along different lines, between firms, occupations, contract types and pay levels, and the intensity of divisions varies between employment regimes. Results of a more rigorous empirical investigation are illustrated in Figures 5 and 6 that compare average levels of income, accounting for a comprehensive set of worker and work characteristics. To begin with, Figure 5 compares net monthly income for workers with fixed-term and permanent contracts across the EU27 countries. Workers with fixed-term contracts earn on average significantly lower wages than those with permanent contracts. This difference is considerably reduced when individual characteristics of workers (including age, gender and educational attainment) and types of work are accounted for. Nevertheless fixed-term work carries a significant income penalty when we compare similar workers in similar jobs and in aggregate this penalty is further aggravated by a concentration of fixed-term work among more vulnerable groups of workers and in low-paid segments of the labour market.

Figure 5 **Income penalty for fixed-term contracts (compared to permanent contracts), EU27 (2010)**



Notes: Regression results, estimates for fixed-term contracts (reference: permanent contract), nested models. Bars show 95% confidence intervals. Income corresponds to net monthly earnings from the main paid job and is adjusted for the Purchasing Power Parity (PPP) index. Worker characteristics: age, gender, education level. Work characteristics: occupation, sector, firm size, and weekly work hours. Sample size = 35,372. Source: own analysis from EWCS (2010)

Figure 6 **Cross-country differences in income penalty for fixed-term contracts (compared to permanent contracts), EU27 (2010)**



Notes: Regression results, worker and work characteristics are included as control variables (see Figure 3); estimates for fixed-term contracts (reference: permanent contract), nested models. Bars show 95% confidence intervals. Income corresponds to net monthly earnings from the main paid job and is adjusted for the Purchasing Power Parity (PPP) index. Source: own analysis from EWCS (2010)

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). Figure 6 shows the different extent of income penalty associated with fixed-term work across country clusters in the EU. Holding worker and work characteristics constant across countries, we observe that the income penalty is most significant in Nordic and Continental countries, somewhat less so in Mediterranean countries, while in the UK, Ireland and Central and Eastern European countries it is not statistically significant. The effects on other aspects of job quality are also not uniform and differ across countries (results not shown). This differentiation suggests that employers have different strategies in using non-standard forms of work depending on the institutional and policy framework, thus precluding any one-size-fits-all policy solutions to labour market segmentation.

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.

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

	Stability	Productivity	Income security	Opportunity	Fairness
<b>Macro economy</b>	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.
<b>Micro economy</b>	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 and higher levels of trust/fairness at work and protection for vulnerable groups.

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 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).

The second reason is that policies need to be targeted to meet the specific causes and outcomes of segmentation processes. 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.

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: 62), based on ETUI own research, covering the period 2010-2014

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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