Working Paper 2017-07

Employment Protection Legislation and labour market dualism: France, Italy, Portugal and Spain, from 1975 to nowadays

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Employment Protection Legislation and labour market dualism: France, Italy, Portugal and Spain, from 1975 to nowadays*

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September 2016

Abstract

In this paper, I review the evolution of Employment Protection Legislation (EPL) strictness over time, for regular and temporary contracts, and the many reforms that have affected open-ended and atypical employment contracts since the late 1970s in France, Italy, Portugal and Spain. For this purpose, I use the OECD indicators of EPL strictness, the Fondazione Rodolfo DeBenedetti-IZA Social Reforms Database and the EU-LABREF. This historical perspective on EPL attempts to clarify which measures led to a segmented labour market. I then briefly review the recent labour market reforms and compare the current legislation affecting both permanent and fixed-term contracts in the four countries considered. At last, I explore the different proposals for future reforms that have been discussed amongst academics and policy makers alike.

I argue that successive measures have contributed for the segmentation of labour markets in France, Italy, Portugal and Spain, until the early 2000s. These measures consisted mostly in the introduction of new atypical forms of employment or the extension of motives to use fixed-term contracts. Such measures were especially directed towards young and inexperienced workers, or those further at risk of unemployment, and were unaccompanied by substantial reforms to EPL for permanent contracts. I find that there were some attempts at reverting the upward trend in temporary employment before the 2008 financial crisis, although it was not reflected significantly in the percentage of temporary contracts out of total dependent employment. Since 2008, significant changes were introduced in rules governing permanent contracts in Italy, Portugal and Spain. In Portugal and Spain, severance payments were considerably reduced and dismissal procedures were simplified. Nonetheless, special regimes for temporary and fixed-term contracts were approved to contend the growing youth unemployment rate after the crisis, therefore preserving the dual structure of the labour market. In Italy, major EPL reforms have been implemented since 2014, which should be carefully monitored. The Italian Jobs Act attempts to address one of the major concerns regarding EPL for permanent contracts: the large extent to which judges intervene and the high level of uncertainty associated with labour court processes. The evaluation of such reforms in the near future can inform policy makers in all countries about the direction to follow.

Keywords: Employment Protection Legislation; Temporary contract; Permanent contract; Labour market reform.

*I would like to thank Jean-Marc Robin and Jeremy Lise for their very helpful supervision and advices. I have also greatly benefited from discussions with Olivier Charlot, Pedro Martins, Franck Malherbert and Cristina Tealdi. I gratefully acknowledge the *Fundação para a Ciência e Tecnologia* and IFS/CeMMAP for funding my PhD studies. This research project received financial support from the *Chaire de recherche sur la sécurisation des parcours professionnels*.

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1 Introduction

France, Italy, Portugal and Spain are traditionally known for having a very strict legislation protecting employed workers. The strictness of the Employment Protection Legislation (thereafter, EPL) can be reflected in many institutional aspects. First of all, the value of severance payments. But the procedures that must be followed when dismissing a worker, individually or collectively, also constitute a significant cost. Such procedures may include advance notifications, mandatory consultations with workers' unions or workers' representatives, delays before the notice can start, mandatory plans to facilitate the re-integration of the dismissed workers into the labour force, restricted circumstances in which it is possible to lay-off workers, the cost and length of time that a process in the labour court could take, potential penalties if the dismissal is ruled to be unfair (fines or even the obligation to reinstate the worker), interim wages while the labour court process is on-going, amongst other rules. There is some anecdotical evidence suggesting that procedural costs and the uncertainty associated with labour court rulings represent an additional burden from an employers' perspective[1]. In fact, in 2001, according to the OECD (2004), 75% of the cases brought to the labour court in France were won by workers and 55% in Italy (where 25.3% of all layoffs were brought to court in France and 1.6% in Italy). This can substantially increase procedural costs, especially taking into account that according to the same source, the average duration of all types of disputes in court was about 1 year in France and 2 years in Italy[2]. Such strict EPL affecting open-ended or traditional employment relationships contrasts with lax rules governing the use of atypical employment contracts: apprenticeship and training contracts, temporary work agency contracts, fixed-term contracts, etc. Such temporary forms of employment are known for granting lower severance payments to workers, being easier to terminate and rarely leading to a process in labour courts. Consequently, in the countries considered, there are two classes of employment contracts coexisting in the labour market: one employment contract guaranteeing a very high degree of employment protection, and a second class of atypical contracts with a very low degree of protection. The existence of a dual regime in the labour market is generally referred to as labour market dualism or labour market segmentation[3].

The literature on Employment Protection Legislation and segmented labour market is extensive. There are many studies, for example, trying to understand whether Employment Protection Legislation has a positive

[1]For example, in the Netherlands, an employer could dismiss a worker either by requesting prior permission to the Centre for Work and Income (CWI) or by requesting a Civil Court to dissolve the contract. The difference was that if the Civil Court accepted to dissolve the contract, the worker could not appeal against such decision, but would receive a high severance pay. On the other hand, if the dismissal was authorised by the CWI, the dismissed employee could still take the firm to court for unfair dismissal and demand reinstatement, although no severance pay would be required in such cases. The statistics show that firms opted mostly for dismissal procedures via Civil Court (OECD, 2004).

[2]No information available for Portugal and Spain.

[3]The same expression is sometimes used to refer to segmentation between workers in the formal or informal sector, or even to the segmentation between low-skilled workers in low-paying jobs and high-skill workers in highly-paid jobs.

impact on workers' welfare and employment rates. Amongst them, one could cite Zylberberg and Cahuc (1999), Bertola (2004), Postel-Vinay and Turon (2014) and Lalé (2016), with mixed results. Another strand of the literature has focused on the consequences of temporary contracts and labour market dualism on job creation, job destruction and unemployment, such as Boeri (1999), Blanchard and Landier (2001), Cahuc and Postel-Vinay (2002) or Kahn (2010). In general, there seems to be a consensus that temporary contracts have increased the turnover rate in the labour market, without necessarily decreasing unemployment, nor increasing workers' welfare. But how did we arrive to the current situation and when did it all started? What are the factors that contributed for such a strongly segmented labour market? Are there similarities across countries? And if there are concerns about the ineffectiveness of temporary contracts to reduce unemployment, or the potential negative impact on workers who are precluded from job security, have recent reforms successfully addressed such issues?

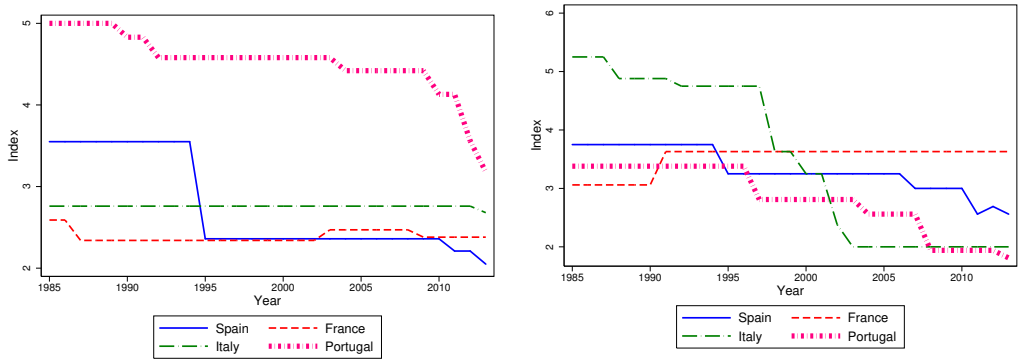
In this chapter, I review the evolution of EPL strictness over time, for regular and temporary contracts, and the many reforms that have affected open-ended and atypical employment contracts since the late 1970s in France, Italy, Portugal and Spain. For this purpose, I use the OECD indicators of EPL strictness, the Fondazione Rodolfo DeBenedetti-IZA Social Reforms Database and the EU-LABREF. This historical perspective on EPL attempts to clarify which measures led to a segmented labour market. I then briefly review the recent labour market reforms and compare the current legislation affecting both permanent and fixed-term contracts in the four countries considered. At last, I explore the different proposals for future reforms that have been discussed amongst academics and policy makers alike. I argue that successive measures have contributed for the segmentation of labour markets in France, Italy, Portugal and Spain, until the early 2000s. These measures consisted mostly in the introduction of new atypical forms of employment or the extension of motives to use fixed-term contracts. Such measures were especially directed towards young and inexperienced workers, or those further at risk of unemployment, and were unaccompanied by substantial reforms to EPL for permanent contracts. I find that there were some attempts at reverting the upward trend in temporary employment before the 2008 financial crisis, although it was not reflected significantly in the percentage of temporary contracts out of total dependent employment. Since 2008, significant changes were introduced in rules governing permanent contracts in Italy, Portugal and Spain. In Portugal and Spain, severance payments were considerably reduced and dismissal procedures were simplified. Nonetheless, special regimes for temporary and fixed-term contracts were approved to contend the growing youth unemployment rate after the crisis, therefore preserving the dual structure of the labour market. In Italy, major EPL reforms have been implemented since 2014, which should be carefully monitored. The Italian Jobs Act attempts to address one of the major concerns regarding EPL for permanent contracts: the large extent to which judges intervene and the high level of uncertainty associated

with labour court processes. The evaluation of such reforms in the near future can inform policy makers in all countries about the direction to follow.

2 Historical perspective of Employment Protection Legislation

For a first overview of EPL in the four countries considered, I use the OECD indicators of Employment Protection Legislation from 1985 to 2013. I use two indicators: (i) an indicator that measures the severance and procedural costs associated to individual dismissals in open-ended contracts, also called regular contracts (serie epr_v1); and (ii) an indicator that measures the strictness of regulation on the use of fixed-term contracts and temporary work agency contracts (serie ept_v1). The first indicator aggregates information about notification procedures, the delay involved before the notice can start, the length of the notice period at different tenure levels, the amount of severance payments at different tenure levels, the definition of fair and unfair dismissal, the length of the trial period, the compensation and the possibility of reinstatement following an unfair dismissal. On the other hand, the second indicator summarises information on the number of valid cases to use fixed-term contracts, the maximum number and cumulative duration of successive fixed-term contracts with the same firm, the types of works for which temporary work agency contracts (thereafter, TWA) are legal, the maximum number of renewals and cumulated duration of TWA assignments[4]. Both indicators are plotted in Figure 1.

Figure 1: Strictness of Employment Protection Legislation Indicators



(a) Individual dismissals in regular contracts

(b) Regulations on the use of fixed-term and TWA contracts

Source: OECD - `http://www.oecd.org/els/emp/oecdindicatorsofemploymentprotection.htm`. I used the series epr_v1 for the strictness of the legislation governing dismissals in permanent contracts and ept_v1 for the regulation on the use of temporary contracts.

According to such indicators, EPL strictness for open-ended contracts has barely changed in France and Italy over the last 25 years up to 2013, whereas it has decreased (i.e. it became easier to dismiss workers individually

[4]See Venn (2009) for further information about the computation of the indexes. Also, since 1998, new items have been considered to construct these indexes, generating new series.

in permanent contracts) in Portugal and Spain. While the reforms in Spain seem to have mainly taken place around 1995, in Portugal they occurred mostly since the financial crisis of 2008. According to the OECD index and over the period considered, the legislation on the use of fixed-term and TWA contracts has become less restrictive everywhere, except for France. The decrease in restrictions for the use of such atypical contracts was particularly significant in Italy until around 2003. In Portugal and Spain, the index kept on decreasing even in the most recent years. Although they summarise most relevant aspects of the EPL in permanent contracts and atypical ones, these indexes may not reflect other facets that are harder to measure quantitatively. For instance, according to Bentolila et al. (2012), it does not take into account the enforcement of rules regarding the use of temporary contracts, therefore ranking Spain with a higher index for atypical contracts than it should.

To obtain a better idea on the pace and extent of the many labor market reforms implemented in France, Italy, Portugal and Spain, affecting both permanent and atypical employment contracts, I complement the information from Figure 1 with two additional qualitative sources. First, I use the Fondazione Rodolfo DeBenedetti-IZA Social Reforms Database to obtain an overview of all core labour market reforms implemented from 1975 to 2007. Second, I use the LABour market REForms database (LABREF) managed by the Directorate-General of Employment, Social Affairs and Inclusion (DG EMPL) of the European Commission from 2000 to 2013 to obtain a summary of measures in the more recent years. Table 1 summarises the additional information obtained from these sources. The Fondazione Rodolfo DeBenedetti-IZA Social Reforms Database offers a classification of each reform or measure according to different criteria. The first column simply states the total number of reforms and measures taken each period (one reform may implement one or more measures). The second and third columns distinguish between measures that affected atypical and permanent employment contracts. In each case, the sign (positive or negative) indicates whether the measure contributed to increase or decrease labour market flexibility. For example, a measure that facilitates the use of atypical employment contracts (and would therefore decrease the OECD EPL strictness indicator from Figure 1 panel (b)) contributes to increase labour market flexibility. It will therefore be attributed a positive sign. Finally, the last column counts the number of measures that were directed at particular segments of the active population only, and hence considered "two-tier".

Overall, looking at the sign of the measures and if they increased or decreased flexibility, this database is quite consistent with the above OECD indexes, except for the temporary contracts in France[5]. From Table 1,

[5]The OECD indicator for regular contracts reveals a decrease in strictness of EPL around 1990. Table 1, on the other hand, shows that there were many more measures decreasing labour market flexibility. However, most of these measures affected collective dismissals, which are not included in the series plotted in Figure 1. The abolishment of the need to obtain an authorisation for individual economic dismissal in 1986 is clearly reflected in the series. Finally, the increases in severance payments in 2001 and 2002 explain the rise in the OECD indicator from Panel (a) in the early 2000s. Measures that increased labour market flexibility during that period in Table 1 are again mostly related to collective dismissals.

Table 1: Reforms affecting labour market dualism - 1975 to 2013

		# Reforms / # Measures	Affecting atyp.		Affecting perm.		Two-tier measures
			- flexi.	+ flexi.	- flexi.	+ flexi.	
France	1982-1990	8/16	2	3	9	2	8
	1991-2000	2/2	0	0	2	0	0
	2001-2007	8/20	3	9	3	5	12
	2008-2013	4/11	1	1	5	4	0
Italy	1982-1990	3/5	0	2	3	0	4
	1991-2000	6/15	1	9	1	4	10
	2001-2007	3/5	3	2	0	0	5
	2008-2013	10/39	14	15	2	8	12
Portugal	1975-1990	4/6	1	1	1	3	2
	1991-2000	8/11	2	2	3	4	5
	2001-2007	3/5	2	2	0	1	4
	2008-2013	9/16	2	4	1	9	3
Spain	1980-1990	4/7	1	3	0	3	6
	1991-2000	7/14	5	4	0	5	11
	2001-2007	5/11	4	1	3	3	8
	2008-2013	11/29	6	4	2	17	4

Notes from 1975 to 2007: A reform is a collection of policy measures referring to a unique formally approved document. Each reform may therefore contain more or less measures. I only considered reforms affecting EPL and excluded reforms regarding non-employment benefits. I considered measures affecting the use of all atypical contracts (atyp.): apprenticeship, fixed-term contracts, new types of contracts, ATW and training contracts. I also looked at changes in individual procedures, notice periods or severance payments for dismissals in atypical contracts. For the permanent contracts (perm.), I considered measures affecting procedures in collective and individual dismissals, notice periods and severance payments. A positive (negative) sign indicates whether the measure aimed at increasing (decreasing) the labour market flexibility. Two-tier reforms are those directed towards only a fraction of the concerned population (e.g. long-term unemployed among all unemployed, temporary workers among all employed workers, etc.). See Boeri (2011) for further details in the definitions and classifications. Source: Fondazione Rodolfo DeBenedetti-IZA Social Reforms Database - `http://www.frdb.org/language/eng/topic/data-sources/doc_pk/9027`.
Notes from 2008 to 2013: I used a similar definition for reform and to classify each measure has having a positive or negative impact on labour market flexibility. However, here a measure is considered two-tier if it affects only new entrants or only incumbents. I focused only on the measures concerning Job Protection. Source: EU LABREF - `http://ec.europa.eu/social/main.jsp?catId=1143&intPageId=3193&`.

we see that France also experienced an overall increase in flexibility to use atypical employment contracts, from 1982 to 2007. In particular, the reforms in 1983 and 1986 (at the start of the period considered by the OECD EPL indicators, and therefore not reflected) introduced new forms of atypical employment and made fixed-term contracts available for all circumstances. Further reforms liberalising the use of atypical employment contracts occurred in 2004, 2005, and 2006. In fact, France was the country that introduced the highest number of new employment contracts, which consisted mainly of fixed-term contracts targeted at specific segments of the population, such as youth, long-term unemployed, senior workers or individuals with low social and professional integration. Their focus on specific groups or two-tier nature may explain why such reforms are not reflected in

a lower indicator in Figure 1, panel (b). Notwithstanding, these reforms had a significant impact in increasing dualism, in particular, since they were implemented together with measures decreasing the flexibility of dismissal in permanent contracts, at least up to 2003. Three reforms partially reverted the increased flexibility in atypical employment contracts: in 1990, 2002 and 2005. The first one, which seems to significantly impact the OECD EPL index, re-introduced limits in the circumstances under which fixed-term contracts could be used. The last two, however, affected the cooling off period, severance payments at the expiry of fixed-term contracts, and their maximum duration allowed, in an attempt to prevent the endless succession of fixed-term contracts at the same firm. However, the cooling-off period between successive fixed-term contracts at the same firm is particularly hard to enforce, especially if the same worker can be hired again without restrictions for different positions. Therefore, their impact might have been quite limited and is not reflected in the OECD indicator.

Besides France, it is evident that up to 2008, most reforms undertaken since the introduction of atypical employment contracts, contributed to increase the gap between the Employment Protection Legislation governing temporary contracts and permanent contracts. This is particularly the case in Italy and Spain.

In Italy, a wider use of fixed-term contracts and apprenticeships was permitted since 1987. Incentives for the use of atypical employment were introduced in 1997 by reducing the associated social security contributions and pension provisions. On top of this, rules regarding the automatic conversion to permanent at their expiry date were eased, allowing for some time after the deadline. Fixed-term contracts and other forms of temporary employment were also generalised to the public sector in 1998, and to the agriculture and construction sectors in 1999. New atypical contracts emerged again in 2003. Unlike for France, these were not particularly targeted at certain segments of the active population. They consisted in a menu of temporary contract options to cover all sort of situations: discontinuous and intermittent work, shared work, occasional work (known as the on-call employment contracts), freelancer projects, etc. Tealdi (2011) offers a detailed description of the several atypical employment contracts introduced in Italy over this period. Only between 2005 and 2007, given the increasing share of temporary workers in the economy, some incentives were progressively introduced for firms to hire individuals permanently. These consisted mostly of cuts in social security contributions.

In Spain, restrictions for the use of fixed-term contracts, apprenticeship and training contracts were substantially relaxed in the 1984 reform. Similarly, this reform extended their potential duration and removed the limits for successive fixed-term contracts between the same worker and firm. The same year, severance payments in fixed-term contracts were also reduced. This relative freedom in the use of fixed-term contracts persisted until at least 1994, when some types of fixed-term contract were extinguished. But the same year, temporary work agencies were legalised, further incentivising the use of atypical employment contracts. Facing growing concerns

about the large amount of atypical contracts in the overall employment level, the tendency was reverted, and limitations to the use of fixed-term and apprenticeship contracts were successively introduced in 1997, 2001 and 2006. These limitations consisted in a lower maximum duration, suppression of certain types of fixed-term contracts, higher minimum wage and further age restrictions in apprenticeship contracts, increasing severance payments in temporary contracts, increasing social security contributions for contracts shorter than 7 days, and finally, re-introducing limits to the successive use of fixed-term contracts between the same worker and the same firm[6]. At the same time, to favour permanent employment, the reasons for a justified economic dismissal were extended to include problems with future financial viability (as opposed to only current problems) in 1995[7]. This significantly reduced the cost of individual dismissals in permanent contracts. Furthermore, new employment contracts were introduced in 1997. Those were new permanent contracts with lower severance payments than the established regular permanent contract. Nevertheless, these new permanent contracts could only be used for a restricted group of individuals: young workers, long-term unemployed, older workers at any unemployment duration, and for the promotion of fixed-term and training contracts within the same firm. These contracts were further expended to new groups in 2001 and 2006, including a larger age group for youth, any unemployed for more than 6 months, women in jobs with low female representation, any worker older than 45, unemployed women who gave birth in the last 2 years, and to promote workers from all fixed-term contracts signed within a year[8]. Changes to the rules governing interim wages (wages that must be paid to the worker while a labour dispute goes on and before the court's ruling) were introduced in 2002 and 2006. Those changes aimed at offering firms the possibility of paying a higher severance payment upon dismissal rather than interim wages of an uncertain amount in case of a court litigation (this possibility would be eliminated in 2012). On top of these measures, from 2001 to 2007, successive rebates in social security contributions were offered to employers hiring individuals permanently.

Finally, according to Figure 1 panel (a), Portugal had the highest index of EPL strictness regarding permanent contracts in 1985 and remains at the top in 2013 despite successive decreases in the strictness indicator. Fixed-term contracts were introduced in 1976 and their maximum duration extended in 1996 and again in 2003. TWA contracts were particularly encouraged after the 1996 reform and the maximum duration of these assign-

[6]These measures consisted mostly of equalising rights between workers in temporary and permanent contracts. Moreover, some of them could be reverted by collective agreement at the sector level. Consequently, they are not reflected in the OECD index. Furthermore, changes in social security contributions are not accounted for by the OECD since it is not considered EPL policy (but rather taxation policy).

[7]Before 1995, Table 1 shows several measures affecting permanent contracts and increasing labour market flexibility, while the OECD index in Figure 1 panel (a) remains flat. This is because such measures affected mostly collective dismissals (not included in the series plotted) and probationary periods (not aggregated in the computation of the OECD indexes for not being directly related to dismissal procedures).

[8]Such increases in the flexibility of the labour market are not reflected in the OECD indicator for regular employment contracts as these "new" permanent contracts may not be considered regular open-ended. In fact, they continue to co-exist with the "old" permanent contracts with higher severance payments.

ments was also extended in 2007. Such changes are well reflected in the OECD indicator regarding temporary employment contracts[9]. Overall, Portugal is the country that kept the simplest structure in terms of number of different types of atypical employment relationships. In Portugal, they consist mostly of regular fixed-term contracts and TWA. Apprenticeships can only be held in a limited number of establishments in the context of the National Education System.

Since 2008, more reforms have been undertaken in the four countries considered, that are no longer covered by the Fondazione Rodolfo DeBenedetti-IZA Social Reforms Database. In particular, with the Great Recession and the European sovereign debt crisis, substantial labor market reforms took place in Italy, Portugal and Spain. According to the OECD (2014), Portugal and Spain were amongst the top reformers between 2012 and 2013. Using the information obtained from the LABREF database from 2008 to 2013, I complement Table 1 for that period, attributing a sign to each measure[10].

In Portugal, the EPL rules governing dismissals in the public sector were adjusted in 2008 to make them closer to regulations governing the private sector. This consisted in redefining what would be considered a fair dismissal to include a wider number of cases. In 2009, a lot of the procedures for collective and individual dismissals were simplified. For example, notice periods were shortened, the number of necessary administrative steps was reduced, or procedural errors when dismissing could no longer lead to the workers' reinstatement as long as the cause for dismissal was justified. Under the European Union and International Monetary Fund financial assistance programme from May 2011 to June 2014, further significant EPL reforms were pushed forward. Severance payments in newly hired permanent contracts were first reduced in 2011 from 30 to 20 days per year of service. The previously existing rule of a minimum of 3 months severance payment was abolished and a maximum cap was introduced to 12 months or 20 times the national minimum wage. These changes were extended to all existing permanent contracts in 2012. Finally, a new reduction of severance payments in newly signed employment contracts was approved in 2013. For fixed-term contracts, it consists now of only 18 days per year of service. In permanent contracts, the compensation for dismissal is now of 18 days per year of service for the first 3 years and 12 days per year of service afterwards. However, under the pressure of a higher unemployment rate and in an attempt to prevent further job destruction, special regimes that extended the maximum duration of fixed-term contracts were successively approved.

Spain followed a similar direction with a series of measures easing dismissal rules in permanent contracts, while approving special regimes of temporary employment to contend the growing youth unemployment rate

[9]The measures that affected atypical contracts and decreased labour market flexibility in Table 1 were quite redundant. They consisted in clarifying the reasons for the use of temporary contracts with facts and preventing the use of temporary workers for hazardous tasks.

[10]Note that there is always some degree of subjectivity in assigning each measure a positive or negative sign.

after the crisis. In 2009, some procedures were introduced to facilitate temporary suspensions as alternatives to definitive collective lay-offs. In 2010, the causes for objective justified dismissals (compensated with 20 days of pay per year of service instead of 45 in the case of unfair dismissals) were clarified and broadened. The notification period for justified dismissals was also reduced from 30 to 15 days. The scope for objective collective redundancies was also enlarged while the administrative procedure was streamlined in 2011. 2012 saw a major reform still. To begin with, the conditions for a justified dismissal based on economic reasons, which previously only considered revenues, begin to also admit reductions in the level of sales. Individuals dismissals for absenteeism also became sufficient cause independently of the rate of absenteeism. Workers would no longer be entitled to interim wages for all the duration of a court process against an unfair dismissal, unless the worker's claim would be recognised and the court reordered his or her reinstatement. Finally, the severance payments for unfair dismissals was reduced from 45 to 33 days of salary per year of service with a maximum of 24 months of compensation (instead of 42 months). Concurrently, there were new social security rebates to promote permanent hires. On what concerns atypical employment contracts, some limitations to the use of fixed-term contracts were introduced in 2010, but temporarily suspended in 2011 in the face of the growth in unemployment. The number of sectors in which temporary agency could operate was increased in 2010 and the age limit for training contracts was increased to 30 in 2012. Lately, in 2013, a new scheme to temporarily employ young workers without work experience was created, even for position of a permanent nature. This measure was meant to hold until the unemployment rate would be above 15%.

The measures introduced in Italy between 2008 and 2013 affected mostly the many forms of atypical employment contracts. At this stage, very little measures reformed the EPL of permanent contracts. In 2008, access to apprenticeships was facilitated by removing the maximum duration of these contracts. Similarly, the possibility of using on-call contracts was reestablished, although it had been eliminated the previous year. The maximum duration of standard fixed-term contracts was also increased. From 2012 onwards, the use of standard fixed-term contracts no longer needed justification when established between a worker and a firm for the first time and if longer than 6 months. It also became possible to use temporary forms of employment without a specific organisation or technical reason for a maximum of one year, even between parties that have had previous employment relationships. The maximum duration allowed for fixed-term contracts in start-ups was increased and the period during which all fixed-term contracts can continue beyond their original deadline without being automatically converted into open-ended was also extended. Nonetheless, in 2010, an indemnity to the worker was introduced in cases where the fixed-term contract is declared null or void and the cooling off period between two successive fixed-term contracts involving the same worker and firm was increased in

2012. Finally, in 2013, some limitations were introduced to the use of on-call employment contracts, as well as additional social security contributions for workers employed in fixed-term contracts. On the other hand, the only significant change introduced that affected permanent contracts was in 2012. A new and faster judicial procedure was instituted for labour disputes. Alternatively, out-of-court settlement procedures at the local level were strongly encouraged.

In France, since 2008, a new way of terminating open-ended contract was institutionalised by mutual agreement between the worker and the employer[11]. Whenever both parties agree to terminate the employment relationship, they can sign a convention that sets the terms of the contract rupture, including the indemnity that the worker shall receive from the firm. The advantage from the employer's side is that by accepting the terms of the rupture and signing the convention, the worker abdicates from the right to process the firm in a labour court to claim that the dismissal was unfair. More recently, in 2013, owing to the increasing share of fixed-term contracts with duration inferior to one month, the employer's social security contributions of such short-term contracts were further increased.

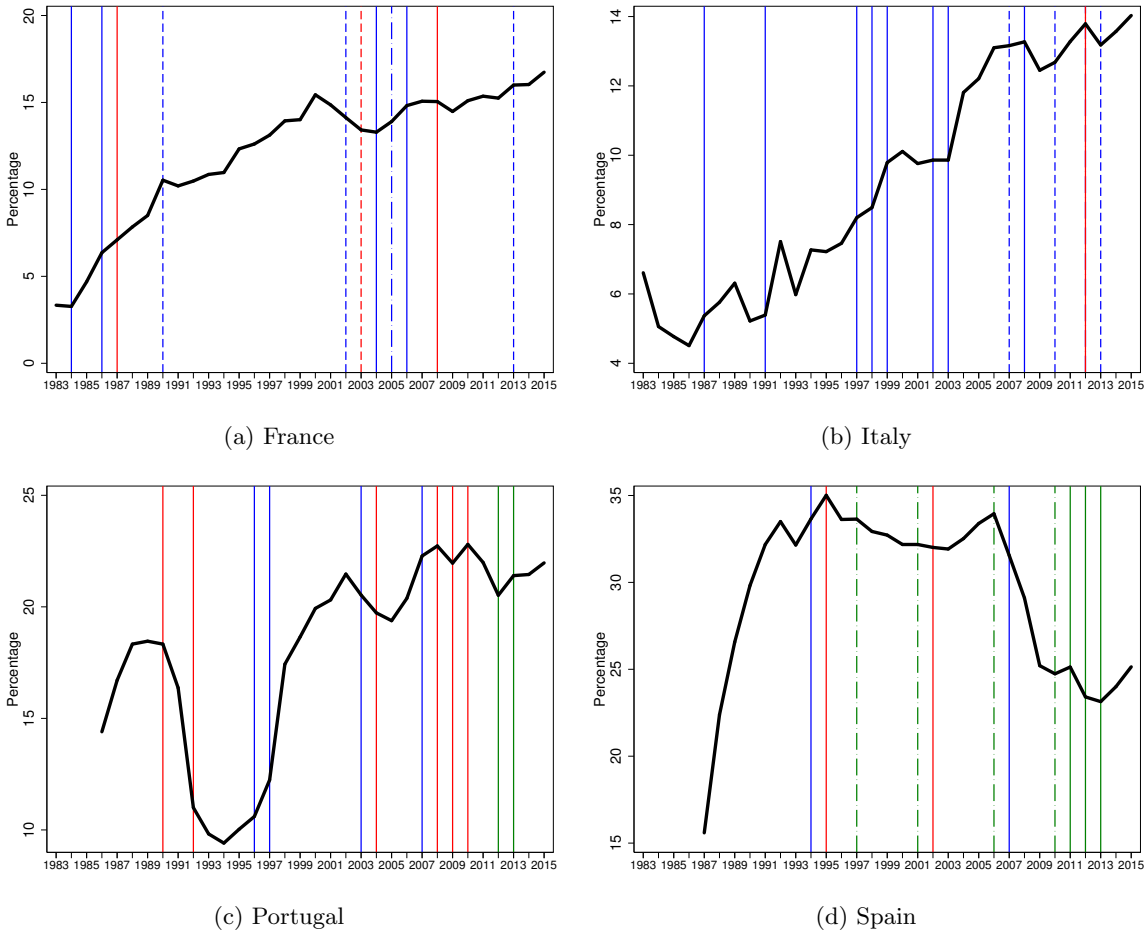
3 The share of atypical employment over time

After so many legislation changes, what happened to the share of temporary forms of employment out of dependent employment in each country over time? Figure 2 depicts the percentage of temporary employment out of the total stock of employment from 1983 to 2013, along with the major EPL changes that occurred during that period. There are many factors that can influence the share of fixed-term contracts in the economy, such as macroeconomic conditions for example. Nevertheless, it can be interesting to see how changes in the legislation interact with the percentage of temporary employment, without making any claims of causality.

From the inspection of panels (a) and (b), it is clear that there is an upward trend in the share of temporary workers in the economy for France and Italy. In France, panel (a), it is difficult to see any correlation between EPL changes and the percentage of temporary contracts. The restrictions on the use of fixed-term contracts introduced in 1990 could have had a short-term impact on the percentage of temporary workers. Measures taken in 2002 to decrease the flexibility of the law regarding the use of fixed-term contracts, on the other hand, coincide with a fall in the percentage of temporary workers. Finally, the introduction of new fixed-term contracts for certain groups of the population in 2004 could have contributed for a new increase in the share of temporary contracts in the economy. In Italy, most EPL changes consisted in further liberalising the use of temporary forms of employment. Hence, these reforms obviously coincided with the observed upward trend in

[11] Know as "*Rupture conventionnelle*": `http://travail-emploi.gouv.fr/droit-du-travail/rupture-de-contrats/article/la-rupture-conventionnelle-du-contrat-de-travail-a-duree-indeterminee`.

Figure 2: Share of temporary employment in the stock of dependent employment



(a) France

(b) Italy

(c) Portugal

(d) Spain

Notes: Each vertical line represents a significant change in EPL. Blue lines correspond to changes in EPL concerning temporary employment. Red lines correspond to changes in EPL concerning permanent employment. Whenever measures concerning both types of contracts were approved, the line is green. Solid lines represent increases in flexibility and dashed lines increases in strictness. Whenever measures with opposite directions were taken, the line is dot-dashed. Source: Fondazione Rodolfo DeBenedetti-IZA Social Reforms Database, LABREF, OECD EPL strictness indicators and OECD Stat.

the percentage of temporary workers. The restrictions introduced in 2007 may have slowed down the rising share of temporary workers, but it is not clear enough from a mere visual inspection of Figure 2. For Portugal, on the other hand, there seem to be a clearer relationship between EPL reforms and the percentage of temporary workers in the economy. In fact, the fall in strictness of EPL associated to permanent contracts in the early 90s is associated with a significant drop in the percentage of temporary contracts. Similarly, the fall in strictness of EPL over fixed-term contracts in the mid 90s coincides with a sharp rise in the percentage of temporary workers. Finally, reforms to make dismissals in permanent contracts less difficult since 2008 could have contributed to slowdown the percentage of temporary workers in the economy, although it could simply be the result of an

increase in job destruction affecting mostly temporary workers following the recession and numerous austerity measures. In Spain, after a huge rise in the share of temporary workers in the economy from 1987 to 1995, the successive measures to relax the EPL over permanent contracts and increase the strictness of regulations over the use of temporary contracts in 1995, 1997, 2001, 2002 and 2006, coincided with a slight decrease in the percentage of temporary workers. After a further decrease in the percentage of temporary contracts between 2007 and 2009, coinciding with the financial crisis and burst in the Spanish real estate market, new measures increasing both the flexibility of temporary and permanent contracts seem to be associated with a new increase in the percentage of temporary workers.

4 Reforms in labour market dualism since 2013

Since 2013, Italy has been the major reformer of Employment Protection Legislation out of the the four countries considered, with the approval of the Jobs Act at the end of 2014 and early 2015. This reform specifically had the objective of reducing the level of segmentation between temporary and permanent workers in the Italian labour market. The major change consisted in the introduction of a new employment contract with a level of protection that would progressively increase with job tenure: "*Contratto a tutele crescenti*". In the long term, the idea would be that this new employment contract progressively substitutes both fixed-term and open-ended contracts, known for having very different degrees of EPL and for the sharp discontinuity that exists on the passage from one contract to the other. One major characteristic of this new employment contract is that courts can no longer force employers to reinstate workers who have been dismissed for objective reasons (reinstatement can only occur if it is proved that the layoff has discriminatory grounds or if it is disciplinary and based on facts that did not occur). It also removes the judge's discretion to set the amount of compensation that must be paid if the dismissal is judged unfair: it becomes determined purely based on tenure. The Jobs Act also introduced a new form of out-of-court procedure in which the employer can pay the worker a monetary sum that, if accepted, prevents any future claim or dispute by the worker that the dismissal was unfair ("*conciliazione facoltativa*"). Both parties have a strong incentive to settle disputes through this procedure since the sum paid is exempted from social security contributions. At the present moment, the new contract still co-exists with the previous open-ended contracts and the remaining forms of atypical employment. The new EPL rules only apply to the newly formed employment relationships. In fact, the Job Acts also facilitated the use of temporary employment contracts by eliminating previous restrictions stating that firms were only allowed up to 20% of temporary workers over their total workforce.

Two further reforms were implemented in France. In 2015, the economic plan to boost productivity that

would be known as "*loi Macron*" included some measures to cut on the red-tape cost associated to lay-offs. It aimed at simplifying the judicial procedures to reduce the time taken by the labour court to rule over a contested dismissal. In 2016, a new pack of measures was approved specifically to reform the French labour market. This reform, known as "*loi travail*" and heavily contested by the public and social partners, originally included two measures affecting EPL: (i) the introduction of a cap in the amount of indemnities that the labour court could attribute to workers in case of unfair dismissal; (ii) the inclusion of a precise definition for economic dismissal so as to leave less ambiguity in the law and reduce the uncertainty associated to labour court rulings. Nevertheless, following all the social protests, the first of these two measures was removed from the project finally approved. Instead, judges from the labour court can decide to follow an optional indemnity chart.

In Spain, no major changes were introduced regarding atypical employment contracts and EPL since 2013. Nevertheless, due to the many different types of employment contracts (temporary and permanent), the Spanish Government started to publish synthetic documentation describing all existing contracts, their procedural rules and associated benefits, to facilitate the choice among them. Administrative forms to be filled upon hiring were also simplified and the Government continued to provide fiscal benefits to permanent hirings. Similarly, in Portugal, although there was some debate in 2015 over the implementation of a new dismissal regime by mutual agreement along the lines of what was put into practice in France, such reform was not pushed forward. One of the reasons that may explain the lack of recent reforms is that both countries held legislative elections in 2015. The elections were inconclusive in Spain and a new vote was organised in 2016. In Portugal, the elected minority government fell after 11 days and a new government was formed shortly after.

5 Current legislation and institutional setting

Temporary contracts are often described as being more flexible compared to open-ended contracts, since separation costs are typically lower. However, there are also constraints on the use of temporary contracts and some costs compared to an open-ended contract. In this part of the paper, I focus on the main atypical employment contract in all countries considered: the fixed-term contract. In Table 2, I compare the main characteristics of the latest legislation regulating the use of fixed-term contracts, after decades of labour market reforms. Table 3 establishes the same comparison for legislation affecting open-ended contracts. There many more aspects of the Employment Protection Legislation over permanent contracts that could be considered. Since it is often argued that fixed-term contracts are preferred by firms facing uncertain and volatile demand, I focused on the strictness of the legislation regarding individual dismissals for economic reasons.

Table 2: Current legislation on fixed-term contracts

	France	Italy	Portugal	Spain
Cases where accepted	Replacement of a worker; Temporary increases in workload; Seasonal work; In particular sectors: hotels, restaurants, entertainment, etc; To hire older long-term unemployed.	For any technical, production or organisational reason; First contract does not need justification within 1 year.	Substitution of a worker; Seasonal activity; Exceptional increases in the firms' activity; Occasional task project; New activity within existing firm, new firm or new estab. within small firm; To hire workers looking for their first job or long-term unemployed.	For a specific project, task or service; Replacement of another worker; Due to the accumulation of tasks, increase in the activity or demand.
Termination before expiry date	Only by mutual agreement, if the worker is considered unapt, for unforeseen events or for disciplinary reasons. Economic of financial difficulties cannot justify.	Under the same conditions than permanent contracts.	Under the same conditions than permanent contracts.	Not possible. Only at the expiry date.
Max. # of renewals and cumulative duration	No minimum. 1 renewal within cumulative duration that depends on motive: between 9 and 24 months. Most common case has maximum duration of 18 months.	No minimum. In general, 1 renewal within cumulative duration of 36 months. No renewal allowed when contract was not justified and maximum 1 year. A delay is allowed after the expiry date before contract is automatically converted to permanent: between 30 an 50 days depending on contract length.	If the term is known and written in contract, cannot be less than 6 months. 3 renewals allowed within cumulative duration that depends on motive: between 18 months and 6 years. Most common case has maximum duration of 3 years.	No minimum. For replacement: no maximum. For a specific task: no limits on renewal as long as within 3 years (4 by collective agreement). For increases in workload: 1 renewal with a maximum duration of 6 months within a year or 12 months within 18 months.
Severance payment	10% of the gross wage bill over the duration of the contract. 6% if worker benefited from particular training.	Same as open-ended contracts. There is an end of contract indemnity: approx. 7.4% of annual gross salary.	18 days of salary per year of service.	12 days of salary per year of service.
Alternatives to fixed-term	TWA and apprenticeship contracts.	TWA, agency contracts, on-call contracts, ancillary work contracts.	TWA, collaborative contracts.	TWA, apprenticeship contracts, internship contracts and many subsidised contracts.

Sources: OECD Employment database - `http://www.oecd.org/els/emp/onlineoecdemploymentdatabase.htm`; International Labour Organization (ILO) Employment Protection Legislation database (EPLex) - `http://www.ilo.org/dyn/eplex/termmain.home`; "*Ministère du Travail, de l'Emploi, de la Formation professionnelle et du Dialogue Social*" - `http://travail-emploi.gouv.fr/droit-du-travail`; "*Código do Trabalho*"; "*Estatuto de los trabajadores*".

The legislation regulating the use of fixed-term contracts in France and Spain looks quite restrictive. In fact, only a few particular cases are admitted by law. The large share of fixed-term contracts in employment may suggest that this legislation is not always strictly enforced. The regulation seems more flexible in Portugal with the admission of fixed-term contracts in new firms or to launch new activities within an already existing firm. It is even more flexible in Italy, where the first contract between a worker and a firm do not even need to be justified, even if this fixed-term contract cannot last longer than 1 year. Furthermore, one important particularity of fixed-term contracts in France and Spain is that it is very difficult to terminate such contracts before the stipulated expiry date. In fact, in France, terminating a fixed-term contracts for economical reasons before the originally stipulated date, for example, is not possible. In Spain, it is not possible to terminate the contract earlier under any circumstance. This means that if the firm would like to terminate the employment relationship earlier

than the expiry date, it should still pay the fixed-term worker's salary until the end. Curiously, the duration of fixed-term contracts in France and Spain has been reportedly very short, with many contracts below 1 month. When focusing on the maximum number of renewals and cumulative duration allowed, Portugal appears to be the country with the most flexible legislation, allowing in certain cases up to 6 years. In all countries, after such limit is reached, if the employment continues it is automatically considered as being open-ended. However, in Italy, a delay is permitted beyond the duration limit before the open-ended EPL applied. This delay can go up to 50 days and the firm is supposed to pay a higher salary during that period. Finally, there seem to be many alternatives to fixed-term contracts in Italy and Spain.

Table 3: Current legislation on open-ended contracts

	France	Italy	Portugal	Spain
Types of individual dismissals	For disciplinary reasons, worker's ineptitude or economical reasons	For the worker's non-compliance with contractual obligations or for economic redundancy	For disciplinary reasons, worker's ineptitude or for the extinction of the work position	For disciplinary reasons or objective reasons (worker's ineptitude, worker's in adaptability to new conditions, lack of assiduity, economic reasons)
Definition of economic dismissal	Fall in demand, sales or revenues for 4 consecutive quarters compared to same period the previous year (may be 2 quarters by collective agreement); or fall in profits for 1 semester (may be 1 quarter by collective agreement); or liquidity problems; or technological changes, reorganisation of firm	Reorganisation of the production activity	Reduced economic activity due to falling demand or impossibility to access markets; or unbalanced economic or financial situation; or change of activity, restructuring of organisation or substitution of main products; or changes in the production process, automation of production, transportation, logistic, services, etc.	Changes in the production process, in the methods used, organisation or changes in demand; or when the employer faces current or expected losses; or when the firm faces a persistent reduction in sales for two consecutive quarters compared to same period the previous year
Further restrictions to economic dismissal	Efforts should be made to retrain the worker and reassign within the firm or group	Transfer of the redundant worker to other functions within the firm or group must be attempted	There must be no fixed-term contract at the firm with tasks similar to those of the extincted job and it must be impossible to keep the worker for another position	None
Severance payments	Only if tenure $>$ 1 year. $1/5th$ of monthly salary per year of service and an additional $2/15th$ after 10 years of tenure.	**Before "*Contratto a tutele crescenti*"**: Indemnity for the end of all contracts of approx. 7.4% of annual gross salary. **After "*Contratto a tutele crescenti*"**: 2 months salary per year of service with a minimum 4 months and maximum 24 months.	**Before 1/11/2012**: 30 days of salary per year of service; **Between 1/11/2012 and 1/10/2013**: 20 days of salary per year of service with a maximum of 12 months or 20 times the minimum wage. **After the 1/10/2013**: 18 days of salary per year of service for the first 3 years of tenure and 12 additional days of salary per each year of service beyond that, with a maximum of 12 months or 20 times the minimum wage.	20 days of salary per year of service (2/3 of a month's pay) with a maximum of 12 months
Who gets severance payments?	All but individuals dismissed for disciplinary reasons with a fault considered serious	All dismissed individuals (even if disciplinary)	All but individuals dismissed for disciplinary reasons	All but individuals dismissed for disciplinary reasons
Potential labour court outcomes	Irregular: if there was a fault in the procedure but justified; Unjustified: if no serious or real grounds; Void: in cases of discrimination or harassment	Irregular: if there was a fault in the procedure but justified; Unjustified: if no serious or real grounds; Void: in cases of discrimination or harassment	Irregular: if there was a fault in the procedure but justified; Unjustified: if no serious or real grounds or in cases of discrimination.	Unjustified: includes discrimination, irregularities in the procedure and lack of cause.

What happens if dismissal is considered unfair in court?	Irregular: No reinstatement. Indemnity depends on judge. Generally, it cannot exceed 1 month of salary; Unjustified: Judge may decide for reinstatement if tenure > 2 years and firm has 11+ employees. If worker refuses reinstatement, an indemnity is fixed by the judge. Generally, it must be minimum 6 months of salary; Void: Reinstatement. If worker refuses then the judge can fix an indemnity. Depending on cases, the indemnity may be a minimum of 6 or 12 months of salary. Interim wages are paid when the dismissal is declared void or unjustified.	**Before "*Contratto a tutele crescenti*" - Large firms**: Irregular: No reinstatement. Indemnity from 6 to 12 months of salary; Unjustified and Void: Firm can choose between reinstatement or indemnity from 12 to 24 months. If worker refuses the reinstatement choose by the firm, the worker receives an indemnity of 15 months salary. Interim wages should always be paid. **Small firms**: can choose between re-employment (no interim wages) or an indemnity between 2.5 and 6 months of salary. **After "*Contratto a tutele crescenti*"** - Void: Reinstatement. Employer can choose not to do so and pay a 15 months salary indemnity instead; Irregular: No reinstatement. Indemnity is 1 month of salary per year of service with a minimum of 2 months and a maximum of 12. Unjustified: No reinstatement. Indemnity is 2 months of salary per year of service with a minimum of 4 months in total and a maximum of 24.	Unjustified: Employer must reinstate the worker. Worker can refuse and choose an indemnity between 15 and 45 days of salary per year of service depending on the judge, which are paid on top of the regular severance payments. Indemnity must be a minimum of 3 months salary. The firm can only oppose reinstatement if it is a micro-firm or worker had a management position. But then, indemnity must be 30 to 60 days of salary per year of service with a minimum of 6 months; Irregular: No reinstatement. Indemnity is half the value of what it would be if dismissal is ruled unjustified. Interim wages are paid in all cases.	**Before 12/02/2012**: Firm can choose between reinstatement or 45 days of salary per year of service before the 12/02/2012 and 33 days of salary per year of service that comes after that date. Total cannot be more than 720 days (2 years). This is an alternative severance payment, instead of the regular ones paid for a justified dismissal. **After 12/02/2012**: Firm can choose between reinstatement or 33 days of salary per year of service with a maximum of 24 months. Interim wages are only paid when the reinstatement takes place. Except if the worker was a union representative: they receive interim wages in any case.

Sources: OECD Employment database - `http://www.oecd.org/els/emp/onlineoecdemploymentdatabase.htm`; International Labour Organization (ILO) Employment Protection Legislation database (EPLex) - `http://www.ilo.org/dyn/eplex/termmain.home`; "*Ministère du Travail, de l'Emploi, de la Formation professionnelle et du Dialogue Social*" - `http://travail-emploi.gouv.fr/droit-du-travail`; "*Código do Trabalho*"; "*Estatuto de los trabajadores*".

From Table 2 and Table 3, it is possible to compare the amount of severance payments in fixed-term and open-ended contracts. Severance payments in fixed-term contracts tend to be lower in Italy with the new "*Contratto a tutele crescenti*", in Portugal and also in Spain, especially since severance payment in open-ended contracts are quite high. In France, for low tenure workers, the severance payment in fixed-term contracts (or "precarity prime" as it is actually called) can be much higher than in permanent contracts. This is particularly the case the higher the annual salary in a fixed-term contract and compared to a worker in his first year of permanent contract. In the later case, there is no severance payment at all. For the French case, at least, the major constraint of open-ended contracts will therefore come from other aspects of EPL. For example, the definition of a justified individual dismissal for economic reasons can be quite strict. If an employer wants to dismiss a worker based on a fall in demand, it is required to prove that it experienced a fall in sales or revenues for 4 consecutive quarters, compared to only 2 in Spain. The definition of an acceptable dismissal based on economic motives is much more vague in Italy and Portugal, which may also increase the uncertainty associated to a process in the labour court. Curiously, in Portugal, the legislation gives particular attention to the possibility that firms may substitute permanent workers by fixed-term workers. It therefore restricts firms

from dismissing workers under the justification that the job is being extinguished if there is another worker under a fixed-term contract at the firm with similar functions. In case the worker takes the dismissal to court, the regulations in France and Portugal seem to be stricter than in Italy and Spain, to the extent that judges can order the employer to reinstate the worker and the employer cannot refuse. Instead, in Italy and Spain, the employer can alternatively pay a higher indemnity or severance payment. One aspect which is particular to the French legislation is that there is no maximum amount for the indemnity in case of unjustified, irregular or void layoff. The law only specifies a minimum amount in certain cases. This surely adds to the uncertainty of a labour court process, on top of the unknown duration of the process and potential interim wages. On the other extreme, the legislation in Spain specifies a higher, but fixed, amount of severance payment in cases where the dismissal is ruled unjustified. Furthermore, firms no longer have to pay interim wages when they refuse the worker's reinstatement.

6 Proposals for future reforms

Many economists have argued that further reforms are needed in order to avoid trapping the same group of workers (young, inexperienced, less educated, females, etc.) into temporary jobs, with recurrent episodes of unemployment, but without depriving firms from the possibility of adjusting their labor force more easily.

Blanchard and Tirole (2003) suggested a joint reform of unemployment benefits and employment protection legislation. They defended that unemployment insurance should be financed by layoff taxes instead of payroll taxes. They argue that payroll taxes, by increasing labour costs, constitute a perverse financial incentive to dismiss workers, while layoff taxes would force firms to internalise the cost of dismissing workers for the overall economy. According to these two authors, less judicial intervention to determine whether a layoff is justified or not would be beneficial to the economy. Firms, once accounting for the social cost of dismissal, are in a better position to assess whether layoffs are economically justified, leading to a better allocation of workers across firms and industries. Judges should only be responsible for verifying if a dismissal was motivated by illegal or discriminatory reasons.

Other economists and legal scholars have advocated a more radical reform of Employment Protection Legislation with the creation of a unified employment contract, sometimes referred to as the single open-ended contract. As described in Lepage-Saucier et al. (2013), there are different ways of evolving from the current dual labour market system to an economy with a single employment contract: (i) removing all forms of temporary employment and keeping the traditional open-ended contract only; (ii) replacing all existing contracts (atypical and permanent) by one single contract that would be somewhere between the traditional permanent

contract and the common fixed-term contract; or (iii) replacing the most common forms of temporary employment (mostly, fixed-term contracts) and the traditional permanent contract by a single contract that lies in between in terms of EPL, but leaving Temporary Work Agencies and training contracts available to firms. The idea of a single open-ended contract has received a lot of attention amongst academics, policy makers, social partners and the medias. Some argue that the single open-ended contract could have an extended trial period initially, while others believe it should have lower requirements to dismiss workers than the current typical permanent contract.

In a report to the French Ministry of Labour and Ministry of Economics, Finance and Industry, Cahuc and Kramarz (2004) recommended the suppression of the fixed-term contract ("*Contrat à durée déterminé*") and the creation of a single employment contract that would also substitute the current permanent contract ("*Contrat à durée indéterminé*"). The proposed single employment contract would be open-ended, it would be associated with severance payments increasing with tenure and with a layoff tax paid by the firm. The severance payment increasing with tenure would remove the discontinuity in dismissal cost generated by the current system at the 18^{th} month. The authors believe it would stabilise employment and end the excessive turnover at the expiry date of the fixed-term contracts that are generally not converted into permanent. They suggest the severance payment should be proportional to the total remuneration received from the signing date of the contract to the moment of layoff (10% of the total remuneration). In return, firms would be released of any obligation to reinstate the worker. The layoff tax, on the other hand, would align private and social interests, as suggested by Blanchard and Tirole (2003). In this report, Cahuc and Kramarz also suggest that the single open-ended contract could co-exist with Temporary Agency Work. Temporary agencies would hire the individuals they let on missions with the single open-ended contract. Finally, they also defend that the motives for terminating the single open-ended contract should incorporate the possibility that the relationship was of a fixed-term nature. In that sense, the single open-ended contract would assimilate both fixed-term and permanent contracts of the current dual system and still provide enough flexibility for firms to manage their workforce. Cahuc (2012) clarifies that the obstacles to economic dismissals, such as requiring firms to find another position for the worker within the company or group, should be relaxed. According to the author, firms should not be legally responsible for re-employing dismissed workers. Instead, this should be handled by a public employment agency financed by the taxation of dismissals.

A group of 100 economists signed a document suggesting a similar reform to the Spanish labour market shortly after the financial crisis (Abadie et al., 2009). They urged the Government to redesign labour market institutions so as to improve the reallocation of workers from stagnant to growing sectors. They argued that the

duality of the Spanish labour market provides an incentive for job creation in low productivity sectors and for firms to face economic downturns with significant labour turnover instead of changing the firm's organisation or productive process. Instead, they also suggested the implementation of a unique employment contract to replace the currently existing temporary and open-ended contracts. This unique employment contract would be open-ended and associated with severance payments increasing with tenure. The authors defended this would end with the discontinuity in dismissal costs between fixed-term and permanent contracts.

In Italy, the idea of a single open-ended contract was also widely discussed, in particular with the publication of the book by Boeri and Garibaldi (2008). In 2014, with the approbation of the Jobs Act, a new open-ended contract with severance payments increasing with tenure was finally introduced, although coexisting with the fixed-term contract and other forms of atypical employment initially. In the long term, this new open-ended contract should progressively replace all permanent employment contracts, as well as the temporary forms of employment. With this new contract, judges can no longer order the worker's reinstatement when the dismissal was unjustified and they also no longer set the amount of the indemnity to be paid.

Not everyone agrees with the idea of a single open-ended contract. Lepage-Saucier et al. (2013) argue that the replacement of permanent and temporary contracts by a new single open-ended contract may eliminate some costs of dualism, but not all. For instance, they claim that a single open-ended contract with an extended trial period will not eliminate the current discontinuity between fixed-term and permanent contract, nor the coexistence of workers with high protection and others with low protection. Similarly, while on the trial period, workers will not benefit from further training than workers currently on temporary employment contracts, nor will they more easily gain access to credit and housing as banks and landlords may still discriminate. Even in a single open-ended contract with increasing severance payments and where new legal motives to terminate the contract are considered that would correspond to the current motives to use a fixed-term contract (as suggested by Cahuc and Kramarz, 2004), the authors argue that not much change would be induced compared to the current situation. Employers would have one tool instead of two, but the duality of the labour market would most likely persist. The authors also rise the point that a single open-ended contract coexisting with TWA or training contracts could lead to a surge in the latest forms of temporary employment and a shift from one specific type of dual market to another type of dualism. Overall, they advocate that the existing permanent contracts could be adapted to the logic of increasing severance payments with tenure and that further incentives to hire permanently should be provided. They finally defend the idea that seniority-based rights also contribute to reduce professional mobility and that it might be preferable to increase severance payments with career seniority rather than tenure within firms.

7 Concluding remarks

Fixed-term contracts were liberalised in 1983 in France, 1987 in Italy, 1976 in Portugal and 1984 in Spain. It consisted in the first atypical employment contract, although other alternative forms of temporary employment were introduced since then, namely temporary work agencies. The introduction of new atypical forms of employment and the extension of motives to use fixed-term contracts, together with very strict rules governing dismissals in permanent contracts, led to the current situation of segmented labour markets.

Growing concerns about the rising share of temporary employment meant that some measures were taken between the mid 1990s and 2000s to provide further incentives for permanent hirings. This was particularly evident in Spain. However, the percentage of atypical employment contracts out of the total of dependent employment remained relatively high.

Since 2008, significant changes were introduced in rules governing permanent contracts in Portugal and Spain. Severance payments were considerably reduced and dismissal procedures were simplified. Nonetheless, special regimes for temporary and fixed-term contracts were approved to contend the growing youth unemployment rate after the crisis, therefore preserving the dual structure of the labour market. In Italy, major EPL reforms have been implemented since 2014. The Italian Jobs Act, by introducing a single open-ended contract, attempts to address one of the major concerns regarding EPL for permanent contracts: the large extent to which judges intervene and the high level of uncertainty associated with labour court processes. However, as of now, the fixed-term and other temporary contracts continue to exist and the single open-ended contract only applies to new hirings. Less radical measures were also taken in France to limit the ambiguity in the law and judges' discretion in setting compensations. Nonetheless, economic layoffs are very hard to justify and difficult to operate, with the obligation to integrate workers in other positions. This remains one of the main obstacles to permanent hiring. Monitoring and carefully evaluating the recent reforms could be informative for policy makers in all countries about the direction to follow in future labour market reforms.

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