

Relied upon for the heavy lifting: can employment protection legislation reforms lead the EU out of the jobs crisis?

Jason Heyes and Paul Lewis

ABSTRACT

This article examines the current drive within the European Union to weaken employment protection legislation. It subjects the case for reform to critical scrutiny and argues that labour market deregulation and the erosion of employment and social protections are reducing workers' security while failing to stimulate economic recovery.

1 INTRODUCTION

The economic crisis that began in 2008 encouraged a lively debate about which policies are conducive to positive long-term economic performance and the economic theories on which those policies are founded. It appeared that the orthodoxies that had shaped economic policy during the preceding 30 years had been discredited while new life was being breathed into old ideas. Media and politicians of all political stripes proclaimed the death of neo-liberalism and argued that the dominant economic concepts of 'rational expectations' and 'efficient markets' should be consigned to the dustbin of history. The former French president Nicolas Sarkozy's claim that 'Laissez faire is finished' (Callinicos, 2010: 5) neatly captured what appeared to be the consensus view. By contrast, Keynesian ideas received a favourable hearing for the first time since the 1970s and there appeared to be a general acknowledgement of the disastrous consequences of the deregulation of the banking and finance sector. Markets, it seemed, did not necessarily 'know best'. Weakened faith in the merits of deregulation extended to the labour market. The OECD (2011) acknowledged that many countries with weak labour market institutions, such as the United States and UK, had experienced more substantial increases in unemployment than countries such as Austria and Germany, where institutions were more robust.

The return of Keynesianism to the policy spotlight proved to be short-lived, as did political enthusiasm for re-regulating the banking and finance sector. Many of the orthodoxies that appeared to have been swept away by the crisis made a remarkable

□ Jason Heyes is Professor of Employment Relations at the Work, Organisation and Employment Relations Research Centre, Sheffield University Management School, University of Sheffield and Paul Lewis is Lecturer in Political Economy at Birmingham Business School, University of Birmingham, UK. Correspondence should be addressed to Jason Heyes, Sheffield University Management School, Sheffield, S10 1FL; email: j.hey@sheffield.ac.uk

recovery as the economic crisis continued and governments began to pursue austerity measures. Clinging to failed ideas is hardly a new political phenomenon. As Quiggin (2010) has recently argued, many influential economic theories and assumptions have 'refused to die' despite repeated evidence that they are highly flawed. Examples include the claim that spending by the state 'crowds out' private investment and that policies that favour the well-off will in the long-run produce 'trickle down' effects that benefit the poor. The belief that employment protection legislation (EPL) causes unemployment and is bad for competitiveness can be added to this list. EPL regulates individual and collective dismissals and the use of temporary contracts by employers. It sets limits on employers' ability to dismiss their employees and provides workers with rights in respect of consultation and severance payments. The claim that EPL has harmful economic consequences gained in influence after the 1970s, as Keynesian prescriptions for reducing unemployment gave way to supply-side analyses and policy recommendations. Labour market flexibility was vigorously pursued by Conservative governments in the UK during the 1980s and 1990s. Although other European Union (EU) member states tended to proceed at a slower pace, reforms were nevertheless widespread during this period, particularly in relation to the weakening of restrictions on fixed-term employment, a policy reform that was encouraged by the European Commission. During the early 2000s the Commission began to call for reform of employment protection regulations relating to regular jobs, claiming that these were necessary in order to improve the ability of marginally employed workers to make transitions to more secure employment (Countouris and Freedland, 2013). EU member states were, however, encouraged to ensure that increases in labour market flexibility were accompanied by measures to provide workers with employment security, a policy combination referred to as 'flexicurity' (European Commission, 2007).

The crisis may be understood as a punctuation point, where for a short period the supply-side agenda was questioned, including the merits of de-regulating markets (OECD, 2011). However, once it became clear that inter-state fiscal stimulus could not be applied within the eurozone at the current level of political integration, and that the European Central Bank (ECB) would not loosen monetary policy or directly ease bond market tensions for the most vulnerable states, there came a turn to fiscal austerity, internal adjustment and a re-embracing of the supply-side paradigm with a vengeance. Since the start of the crisis, many EU national governments have eroded constraints on employers' ability to dismiss their employees. In several countries, the reform programmes have been undertaken at the behest of the Troika of the ECB, International Monetary Fund (IMF) and European Commission. In others, reforms have been adopted voluntarily in an attempt to stimulate employment and growth. Employment protection has become a target for reform by the European Commission and the ECB as it is held to affect the employment rate and competitiveness, which are core concerns of the Europe 2020 growth strategy. The dilution of EPL is regarded by policy makers as a solution to stubbornly high levels of unemployment in the EU, which particularly affect younger workers, and a means of achieving improved social inclusion. By making it easier for employers to dismiss employees, overall hiring activity by risk-averse employers should increase and divisions between labour market 'insiders' and 'outsiders' diminish. This article subjects these assumptions to critical scrutiny and argues that policy makers' faith in labour market deregulation as a path to labour market recovery is misplaced. The article begins by discussing the belief that EPL is harmful to employment, tracing the influence of this view on EU labour market policies. The article goes on to examine the ways in which governments

have reformed EPL since 2008. The evidence suggests that these reforms have, thus far, had little impact on long-term unemployment, which has continued to increase in many of those countries that have weakened their EPL. We follow this discussion by considering the implications of the dilution of EPL for the European Commission's flexicurity agenda, examining the extent to which changes to employment protections have coincided with changes in government support for social protections and active labour market measures. We argue that concerns relating to social justice and security have been marginalised as policy makers have further embraced labour market flexibility, hoping that this will do the heavy lifting in respect of stimulating employment and growth. Given the confluence of weak effective demand, high unemployment and poor productivity growth, this must be considered a forlorn hope. We also argue that the current drive to reform EPL indicates a shift in multi-scalar relations in the EU in the wake of the crisis, reflecting the increased concern and ability of the EU institutions to oblige member states to use social policy as a means of affecting economic adjustments, particularly in relation to those countries that have received financial assistance.

2 EPL AND THE LABOUR MARKET: THEORY AND EVIDENCE

The consequences of EPL for the labour market have long been debated by economists and policy makers. The relationship between EPL and unemployment has been of particular concern. Orthodox economists (e.g. Siebert, 1997; St Paul, 2004) tend to claim that restrictions on dismissal and requirements relating to severance payments contribute to unemployment by presenting firms with a disincentive to hire workers. Employers supposedly take into consideration potential future costs of dismissal, which leads them to recruit fewer workers than would otherwise be the case. A further twist on the argument is that employment protections in respect of regular jobs reduce both inflows and outflows from unemployment, enabling 'insiders' (i.e. workers in regular employment) to extract higher wages from employers while exacerbating long-term unemployment and disadvantaging so-called 'outsiders' (e.g. those in temporary or seasonal jobs or in the informal economy), a disproportionate number of whom are young workers (Blanchard and Portugal, 2001; Lindbeck and Snower, 1990). The policy prescriptions that flow from this analysis include a weakening of employment protections and a reduction (or elimination) of minimum wages, which are deemed harmful to the employment prospects of workers with few skills and little experience.

Empirical evidence relating to the relationship between unemployment and EPL over time is extremely mixed. Some studies have found that unemployment (particularly long-term unemployment) is positively related to increases in the strictness of EPL (see, e.g., Bertola *et al.*, 2001; Botero *et al.*, 2004; Elmeskov and Scarpetta, 1998). However, Baker *et al.* (2005) have highlighted that the estimates contained in these studies vary considerably, are in some cases implausible and are highly sensitive to the measures, time periods and estimation methods on which they are based. Their own analysis, based on data from the 1960s to the 2000s, provided no support for the view that EPL is positively associated with unemployment. Other recent studies have produced similar results. Oesch (2010), for example, found that the employment prospects of low-skilled workers in OECD countries were unaffected by employment protections during the period 1991–2006, while Avdagic and Salardi's (2013: 750) analysis of 32 EU and OECD countries over a 30-year time period found that

‘[e]mployment protection legislation does not have any discernible impact on unemployment, regardless of the choice of estimators and specifications’ (also see Avdagic, 2014). Furthermore, a recent analysis by Cazes *et al.* (2012) has suggested that negative impacts of EPL on employment are observable only among countries with very high EPL index scores and that ‘at very low levels of employment protection, increases in EPL stringency are associated with a *higher* employment rate’ (Cazes *et al.*, 2012: 14; emphasis added).

Even if the impact of EPL is broadly neutral with respect to aggregate unemployment, it is possible that it might have a disproportionate impact on certain disadvantaged groups, such as the disabled and young people. Given the consequences of the Great Recession for young people, perhaps the most important question is whether a reduction in the stringency of EPL might improve their job prospects. Once again, however, the evidence relating to the consequences of EPL for employment is mixed. Some studies have found that stringent EPL has adverse effects on young people (e.g. Allard and Lindert, 2006; Bertola *et al.*, 2001) while others, such as Noelke (2011) and Avdagic (2014) have found that the strictness of EPL has no implications for youth unemployment.

The implications of weaker EPL for management–worker relations, innovation and productivity also need to be considered (Nolan, 1994). Evidence has been provided for a positive association between employment protections and productivity growth (Buchele and Christiansen, 1995; 1999; Storm and Naastepad, 2009), which might serve to offset any negative consequences of EPL for unemployment. Strong labour market institutions, including robust employment protections, also appear to favour skill development (Harcourt and Wood, 2007). Buchele and Christiansen (1999: 327) have further suggested that weaker employment protections are likely to undermine the cooperation and participation of workers that is needed for productivity-enhancing investments in skills and work organisation, an argument that is consistent with evidence showing that the use of non-standard contracts by firms is negatively associated with the probability of their making product or process innovations (Michie and Sheehan, 2003).

3 EPL POLICIES IN THE EU

Despite the lack of firm empirical support for the claim that labour market deregulation necessarily leads to improved economic performance, belief in the virtues of flexible labour markets has gained traction in the EU. The claim that EPL is damaging to the labour market became a persistent theme in policy debates in the 1980s, as the Keynesian preoccupation with the relationship between aggregate demand and unemployment came to be replaced with an emphasis on the importance of ‘supply-side’ phenomena. Drawing unfavourable comparisons between the supposedly over-regulated and sclerotic labour markets of Continental Europe and the flexible labour markets of the United States and the UK, the OECD and the IMF argued that European governments would need to reduce the strictness of EPL if they were to cut unemployment (e.g. OECD, 1994). This message found favour with an increasing number of EU national policy makers. During the 1980s and 1990s employment protections were weakened in some EU countries (Denmark, Finland, Germany, Greece, the Netherlands, Portugal, Spain, Sweden and the UK), although this is not to say that there was an untrammelled ‘race to the bottom’: employment protections were strengthened for some groups within some countries, for example Italy

(Michelotti and Nyland, 2008), while in the UK, a country with one of the most weakly regulated labour markets in the EU, there was a slight improvement following the election of a Labour government in 1997. In many European countries, labour market reforms were largely confined to measures to facilitate an extension of fixed-term employment (OECD, 2004). With the support of the European Commission, flexibility was sought ‘at the margin’ (Countouris and Freedland, 2013). In Germany, for example, the ‘Employment Promotion Act’ (Beschäftigungsförderungsgesetz) of 1985 reduced restrictions on the use of fixed-term contracts, a process that was furthered in the early 2000s by the implementation of the recommendations of the Hartz Committee (Eichhorst and Marx, 2011). Restrictions on employers’ freedom to make use of non-standard contracts were similarly loosened in Spain in 1984, in Belgium in 1991 and in France in 1993.

The emphasis placed on labour market flexibility in EU policy debates increased in the late 1990s and after the start of the new millennium. A number of EU member states, particularly the UK, Germany, Italy and Spain, began to push for labour market and welfare reforms that would place greater emphasis on the responsibility of individuals and encourage them to seek work (Schweiger, 2014). The development of the European Employment Strategy, which was launched following the adoption of the Treaty of Amsterdam in 1997 and given further impetus by the Lisbon Treaty of 2000, reflected the new emphasis on labour market flexibility and active labour market measures, an emphasis that was further underscored in 2005, when the focus of the Lisbon Agenda was placed firmly on jobs, growth and competitiveness (Tangian, 2010). Following the re-launch of the Lisbon Agenda, the European Commission began to encourage EU member states to pursue ‘flexicurity’, defined as an ‘integrated strategy to enhance, at the same time, flexibility and security in the labour market’ (European Commission, 2007: 10). According to the Commission, the introduction of greater contractual flexibility along with active labour market measures and increases in lifelong learning would promote employment, reduce the duration of unemployment and improve the prospects of labour market ‘outsiders’. The Commission adopted a sometimes ambiguous but, on balance, critical position in relation to EPL, arguing that achieving flexicurity would require policies that promoted ‘employment security’ rather than ‘job security’ (European Commission, 2007: 7). It also claimed that strict protections against economic dismissal perpetuated dualism in the labour market, encouraging ‘recourse to a range of temporary contracts with low protection—often held by women and young people—with limited progress into open-ended jobs’ (European Commission, 2007: 12). As Countouris and Freedland (2013) have noted, having promoted the idea of ‘flexibility at the margin’ during the 1990s, the EU subsequently argued that the consequences for ‘outsiders’ should be remedied by increasing ‘flexibility at the core’ (via reduced employment protection for workers on standard employment contracts).

In practice, efforts by European policy makers to secure support for a common set of flexicurity principles resulted in a de-emphasising of implied threats to employment protections and job security so as to appease flexicurity ‘sceptics’, including trade unions and some EU member states (Mailand, 2010). Since the start of the crisis, however, the European Commission has become more explicit in its call for greater labour market flexibility (EPSCO, 2011: 9; European Commission, 2012: 12; Schömann, 2014). Furthermore, the mutation of the banking crisis into a eurozone crisis in which concerns relating to public debt reduction have come to dominate has enabled the ECB, the Directorate General for Financial and Economic Affairs (DG

EcFin) and national economic and finance ministers to push for social policy to be used as an economic adjustment mechanism (Degryse *et al.*, 2013). This has been particularly the case in relation to those countries, such as Spain, Italy, Greece and Portugal, which have sought financial assistance in the form of bailouts or ECB intervention in the bond market. In each case, the ECB, European Commission and the IMF have insisted on structural reforms, including labour market reforms, as a condition of support (for a discussion of Spain and Italy, see Meardi, 2014). More generally, a set of instruments has been created to strengthen the power of the European Commission and ECB to influence the social and economic policies of EU member states. The Euro-plus pact and so-called 'six pack' have introduced more stringent rules and penalties in relation to fiscal governance while the introduction of the 'European Semester' has led to a more detailed and prescriptive approach towards social policy reform (Copeland and ter Haar, 2013; Laulom *et al.*, 2012). The European Semester involves an Annual Growth Survey, in which the EU's progress towards the achievement of key objective is assessed, leading to the development of 'country-specific recommendations' (CSRs) that member states are expected to act upon. The CSRs generally focus on measures related to growth and competitiveness, including the reform of EPL (Degryse *et al.*, 2013; Schömann, 2014).

4 THE IMPACT OF EPL BEFORE AND DURING THE CRISIS

In the initial stages of the crisis, it appeared that dominant thinking in policy circles concerning the supposed negative consequences of EPL for the labour market might be successfully challenged. As shown in Figure 1, EU countries with relatively strong employment protections, for example Germany, tended to experience less severe job losses than those with weaker protections (e.g. the UK) during the early stages of the crisis (for a fuller discussion see Heyes and Lewis, 2014). It is likely that constraints on dismissals served to stem job losses in the initial period and encouraged employers to look for internal means of reducing labour costs. This was particularly the case in countries such as Germany, where short-time working was used extensively to reduce labour costs by reducing hours of work (Bosch, 2010). The OECD (2011) acknowledged that Germany and several other European economies with above average EPL scores experienced relatively fewer job losses during the first years of the crisis than countries with comparatively weak employment protections, such as the USA.

By 2010, however, it had become clear that there would not be a rapid return to growth within the EU (OECD, 2010: 12) and underlying structural weaknesses in the eurozone were being exposed. A renewed scepticism about the consequences of strong EPL emerged within the European Commission, as reflected the Commission's 2011 Joint Employment Report, which recommended 'removing institutional obstacles that prevent proper functioning of Members States' labour markets' (EPSCO, 2011: 9), taking measures to ensure that unemployment benefit schemes should 'provide the right incentives to work' and introducing greater sanctions for non-compliance. The Euro Plus Pact, initiated by Germany and France in an effort to stabilise the Euro and preserve the integrity of the eurozone, directed member countries to take steps to enhance competitiveness and boost employment, emphasising the importance of containing labour costs. Moreover, reform of EPL was made a requirement for most of those EU member states (Greece, Ireland, Spain, Portugal, Italy) that experienced greatest financial distress during the crisis and that consequently approached the European institutions and IMF for financial assistance. The position of the

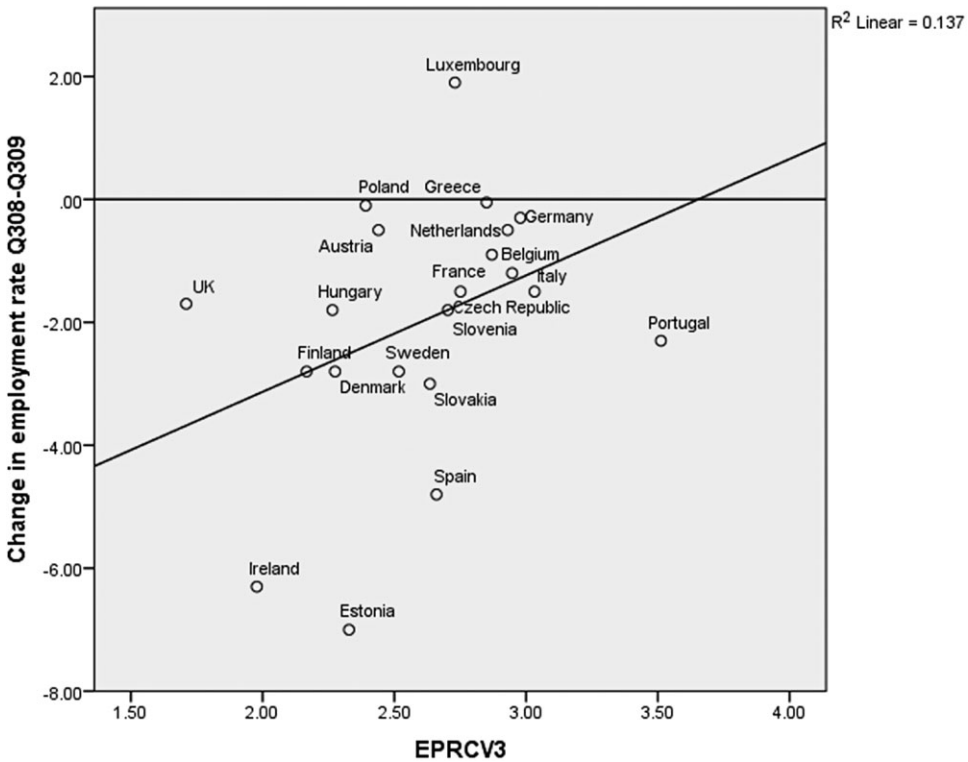


Figure 1: Employment rate changes in the EU, q32008-q3-2009

Source: Authors' calculation, based on Eurostat and OECD data. OECD EPL scores are not available for non-OECD countries, so Figure 1 includes only those EU countries that are also members of the OECD.

International Monetary Fund (2010) has been that reforms to EPL are essential in order to improve the responsiveness of unemployment to changes in output. The IMF has recommended that EPL in respect of open-ended contracts be reformed so as to ensure that dismissal costs increase only gradually and according to length of tenure, the assumption being that this will reduce incentives for employers to make use of temporary contracts, particularly in 'two-tier' labour markets. The OECD (2011b) has also argued in favour of reforming employment protections, on the basis that young workers' immediate and longer term employment prospects were being harmed by 'overly strict regulations on permanent employment contracts, [which] can mean that short-term entry jobs fail to act as a stepping stone to more stable jobs and become instead dead-ends' (OECD, 2011b: 13).

Table 1 compares EU member states according to one of the synthetic EPL measures developed by the OECD (Venn, 2009). The indicator, which is intended to measure the strength of protections in relation to individual and collective dismissals, facilitates cross-country benchmarking. Reductions in the strength of EPL since 2008 have been particularly apparent in those countries that have received financial support from the EU. These countries have been obliged by the 'Troika' of the European Commission, ECB and IMF to implement reforms in return for financial

Table 1: OECD measures of EPL, 2008–13 compared

	EPRC_V3		Increase in UNM since 2008*
	2008	2013	
Countries receiving financial assistance			
Hungary	2.265	2.074	3.3
Ireland	1.978	2.069	8.9
Italy	3.032	2.794	5.6
Greece	2.85	2.41	19.8
Portugal	3.512	2.685	9
Spain	2.66	2.284	14.9
Countries not receiving financial assistance			
Austria	2.442	2.442	1.1
Belgium	2.947	2.947	1.5
Czech Republic	2.751	2.66	3
Denmark	2.275	2.32	4.2
Estonia	2.328	2.066	8.3
Finland	2.167	2.167	2.1
France	2.87	2.823	2.5
Germany	2.978	2.978	0.3
The Netherlands	2.93	2.938	4
Luxembourg	2.725	2.735	0.8
Poland	2.391	2.391	3.3
Slovak Republic	2.635	2.256	4.9
Slovenia	2.703	2.387	5.8
Sweden	2.517	2.517	2.2
UK	1.713	1.546	2.5

EPRC_V3 is the weighted sum of sub-indicators concerning the regulations for individual dismissals and additional provisions for collective dismissals. It incorporates 13 data items. EPT_V3 measures the strictness of regulation on the use of fixed-term term and temporary work agency contracts and contains 8 items.

*Unemployment rate among those aged 15–64 years [lfsa_urn]. Increase is measured from 2008 to peak.

Non-OECD countries, for which there are no OECD EPL scores, are not included in the table.

assistance intended to ameliorate their debt crises and stabilise the eurozone. An initial Memorandum of Understanding established between Greece and the European Commission in 2010, for example, referred to the need for longer probationary periods, reforms to facilitate increases in part-time employment and changes to regulations relating to collective dismissals (European Commission, 2010: 68). Greece has since cut starting salaries for young people, increased employers' freedom to extend working time, established a 12-month probation period for new employees and made it possible for company-level collective agreements to take precedence over sectoral-level agreements.

Spain and Portugal, which like Greece have entered into Memoranda of Understanding with the Troika, have increased employers' freedom to make use of fixed-

term contracts and made it easier for employers to dismiss workers. Spain has ended administrative authorisation for large-scale redundancies and cut the basis for calculating compensation for unfair dismissals, while Portugal has cut overtime payments, reduced the number of bank holidays, increased employers' freedom to select workers for dismissal and cut severance payments. By comparison, reforms in Ireland, which in 2010 received a 'bailout' of 85 billion euros from the IMF and ECB, have been more limited. The country is something of an exception among the financially distressed EU member states in that its EPL scores for regular and temporary contracts have increased since 2008, albeit from a very low base. The main improvements have been the transposition of the European directive on temporary agency work into Ireland's national legislation, which has strengthened rights for this group of workers, greater protection for whistleblowers and efforts to improve compliance.

Reforms have been also been widespread among the central and eastern European (CEE) economies. Some improvements in employment rights have taken place, mostly as a consequence of the transposition of EU Directives into national legislation (e.g. in 2009 Slovakia implemented the EU Directives on part-time and fixed-term workers). Other measures, however, have been directed at weakening protections. Slovakia has made notice and probation periods more flexible, Slovenia has cut severance payments and increased employers' freedom to dismiss workers, while Lithuania has extended working time and also relaxed constraints on lay-offs. Several countries, including Lithuania and Romania, have weakened restrictions on the use of fixed-term contracts (Clauwaert and Schömann, 2012: 11). With the exceptions of Romania, Latvia and Hungary, which have requested substantial EU financial support since the start of the crisis, the CEE economies have not been subject to direct demands from the Troika. However, their reforms have been heavily influenced by CSRs, issued by the European Commission since 2011 and based on annual reviews of the economic performance of each EU member state. Member states are expected to implement the recommendations of the Commission via their individual National Reform Programmes. Several countries, including France, the Netherlands, Sweden, Lithuania and Slovenia, have received specific recommendations aimed at increasing labour market flexibility (Schömann, 2014).

The UK government has also implemented cuts to employment protections. Its employment law reforms have formed part of a wider set of measures aimed at removing regulations that are deemed to be detrimental to business. The regulatory reform agenda in respect of employment rights has had two main components: firstly, a weakening of constraints on employers' ability to dismiss employees; and secondly, the introduction of new restrictions on workers' ability to access justice. The attack on employment protections, which was presaged by a report commissioned by the government from the venture capitalist Adrian Beecroft (Beecroft, 2011), commenced in April 2012 when the minimum period of employment service for unfair dismissal claims was increased from one to two years. In April 2013 the government reduced the minimum consultation period required in respect of large-scale collective redundancies involving more than 100 workers from 90 to 45 days. The following month, measures were introduced that permitted private sector employers to offer prospective employees a financial stake in their business, on the condition that key employment rights were foregone (the so-called 'employee ownership' scheme). The government has also made it easier for employers to dismiss staff who are deemed to be 'under-performing' by introducing measures to facilitate 'consensual termination' of the

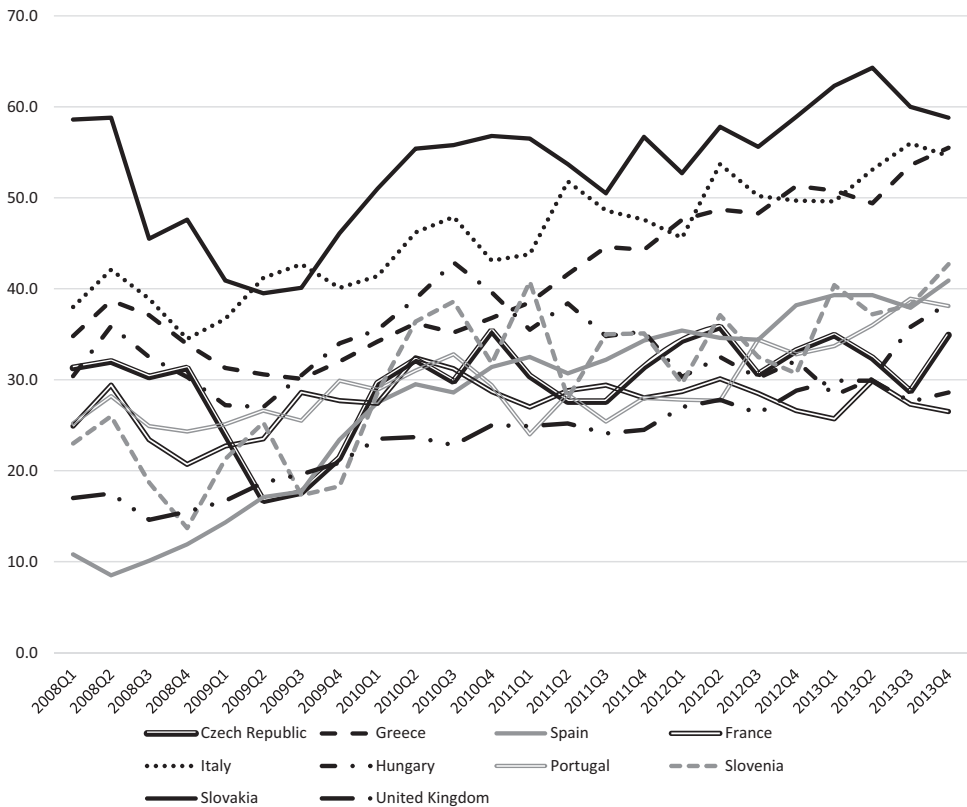


Figure 2: Quarterly changes in long-term youth unemployment, 2008–13

Source: Eurostat [lfsq_upgal].

employment relationship through conciliation, settlement agreements and ‘protected conversations’ between employees and employers.

To date, the reforms implemented by EU government appear to have had little positive impact on national labour markets. Figures 2 and 3 include those countries that have relaxed EPL for regular contracts (based on measure EPRC_V3). The evidence suggests that long-term unemployment for young workers (aged 15–24 years) and older workers (aged 25–64 years) remains well above pre-crisis levels in most of these countries and has generally continued to increase, despite reforms to EPL (Estonia is an exception, at least as far as adult workers are concerned).¹ Other evidence similarly suggests that once gross domestic product (GDP) changes are controlled for, national experiences of youth unemployment since the start of the Great Recession have been unrelated to differences in EPL strictness (Cazes *et al.*, 2012).

In theory, a weakening of EPL for regular contracts relative to temporary and fixed-term contracts will reduce the incentives for employers to make use of the latter, thereby reducing the divide between ‘insiders’ and ‘outsiders’ (Bassanini and Duval, 2006; Layard *et al.*, 2005; OECD, 2004). With the exception of Spain, however, the

¹ Estonia is excluded from Figure 2 because of gaps in the quarterly data.

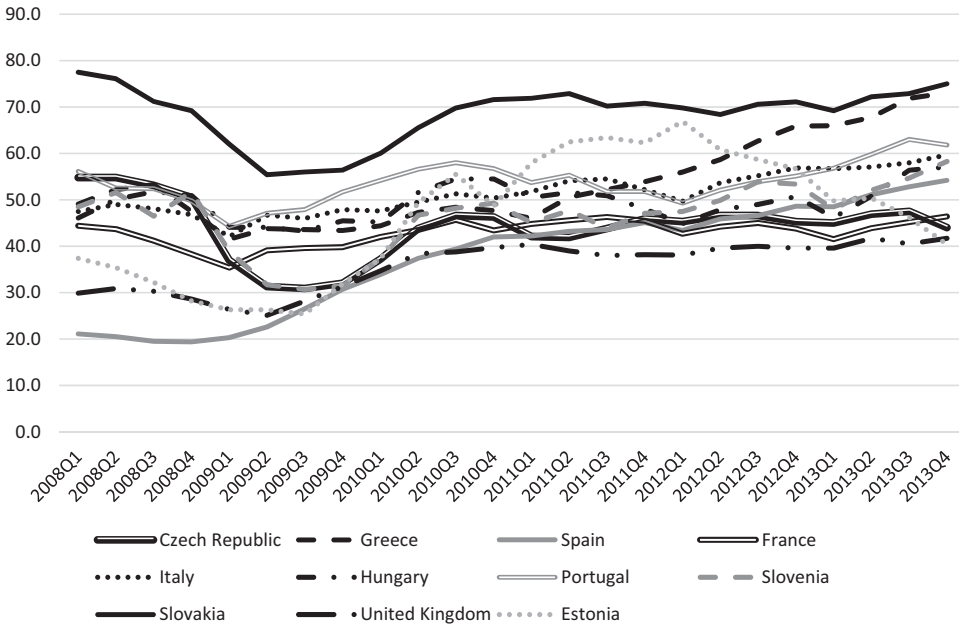


Figure 3: Quarterly changes in long-term unemployment for workers aged 25–64 years, 2008–13

Source: Eurostat [lfsq_upgal].

proportion of workers in temporary employment in those countries that have reformed EPL has not fallen below pre-crisis levels. The proportion of workers employed on temporary contracts has long been exceptionally large in Spain and temporary employment accounted for 90 percent of all job losses in that country during the 12 months to June 2009 (OECD, 2009). As shown in Figure 4, among the other EPL reformers, temporary employment as a proportion of total employment has remained relatively stable during the crisis.

5 FROM JOB SECURITY TO EMPLOYMENT SECURITY?

For the European Commission, employment protection reform is but one facet of its broader flexicurity agenda, which is supposed to promote ‘employment security’ rather than ‘job security’ (European Commission, 2007: 7) and protect people rather than jobs. EU member states have therefore been advised to increase labour market flexibility while simultaneously improving workers’ ability to make labour market transitions through active labour market policies and lifelong learning measures that increase workers’ *employability*. The envisaged protections consist of support (opportunities to enhance ‘employability’ through education, assistance with ‘job search’) and incentives for workers’ to make smooth transitions between jobs, thereby ensuring that ‘EU citizens can enjoy [. . .] the possibility to easily find a job at every stage of active life’ (European Commission, 2007: 10). However, the extent to which such ‘protections’ offer workers ‘security’ depends on whether aggregate demand for labour power is stable and strong, which it is clearly not in those countries that have

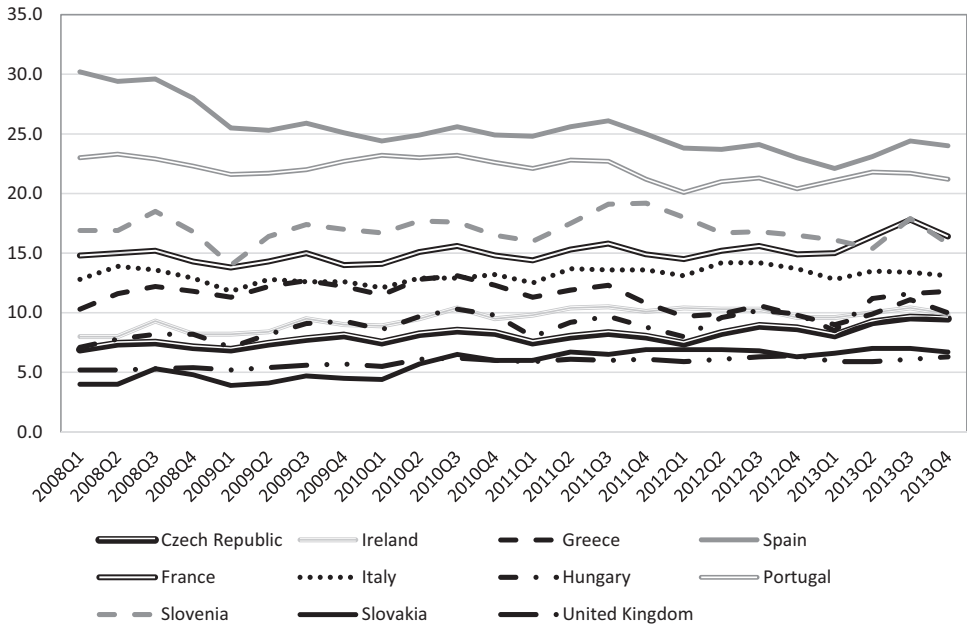


Figure 4: Temporary employment as a proportion of total employment

Source: Eurostat [lfsq_etpga]. Complete time series data for Estonia are not available.

been diluting their EPL provisions. Furthermore, the austerity programmes being pursued in these countries have led to reductions in spending on social protections. ‘Flexibility’ is being increased as ‘security’ is decreased. Cuts and greater restrictions in respect of unemployment benefits have been implemented in Greece, Spain, Slovenia, Hungary and the Czech Republic, and in many of these countries other benefits, such as family allowances and sickness benefits, have also been reduced (Heyes, 2013a; Laulom *et al.*, 2012). Steps have also been taken to link entitlement to benefits more closely to workers’ willingness to accept a job, regardless of its quality. As can be seen from Figure 5, net replacement rates have fallen below pre-crisis levels in several of those countries (notably Greece, Portugal and Hungary) that have weakened their EPL.

In general, levels of government spending on active labour market programmes (ALMPs) tend to be positively correlated with levels of spending on passive labour market measures, partly because the cost to the state and perceived risk of benefit dependency create added incentives for governments to attempt to affect speedy transitions from unemployment to employment (Grubb, 2007: 9). Spending on ALMPs tends to be considerably lower in the southern and CEE economies that have been worst hit by the crisis than in northern European and (in particular) Scandinavian economies (Auer *et al.*, 2008: 24). While many southern and CEE economies (Slovenia, Slovakia, Portugal, Spain and Greece) increased their expenditure on ALMPs after 2008 (measured in terms of percentage of GDP), the increases were small, from a low base and in several cases not sustained (as shown in Figure 6). Spending in Italy, on the other hand, fell after 2008 and has remained below pre-crisis levels.

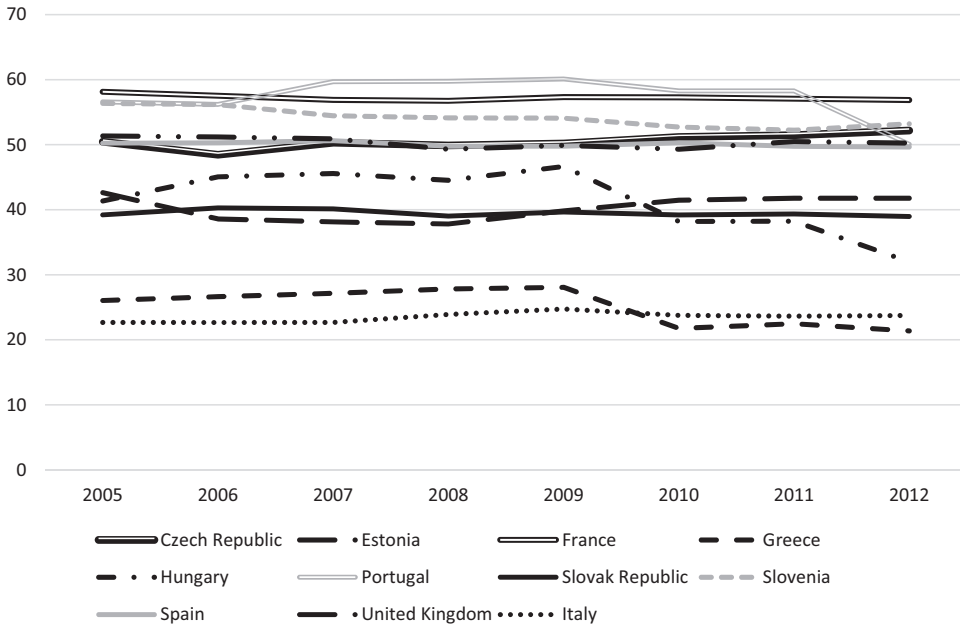


Figure 5: Net replacement rates, including housing benefit and social assistance

Source: OECD. The NRR summary measure is defined as the average of the net unemployment benefit (including SA and cash housing assistance) replacement rates for two earnings levels, three family situations and 60 months of unemployment.

Lifelong learning, the remaining core component of flexicurity, has fared little better. In considering how Europe should respond to mounting job losses in the early stages of the crisis, the European Commission (2009: 9) advocated that ‘[f]or men and women facing difficulties in gaining new employment, the “training first approach” should be considered. For the entire workforce, upskilling and re-skilling is crucial to ensure adaptability and employability in uncertain times’. There is little evidence to suggest a widespread move to act on this recommendation. Across the EU, the rate of participation of employed persons in education and training peaked in 2005 and fell thereafter (CEDEFOP, 2013), although participation continued to increase in a number of EU member states, including Denmark, Estonia and Sweden. By contrast the participation rate of unemployed workers across the EU has increased since the start of the crisis, although participation rates in most countries have changed relatively little (Heyes, 2013b). Participation rates in training-related ALMPs in the southern European and CEE economies that have fared worst since the start of the crisis have long been the lowest in the EU (typically representing less than 10 per cent of those seeking work) and the position has not improved since 2008 (Heyes, 2013b).

Those economies that are weakening employment protections and thereby making it easier for employers to dismiss workers are therefore failing to attempt to compensate by substantially enhancing funding for measures that might connect unemployed workers to jobs. It should be noted, however, that the evidence concerning the effectiveness of ALMPs is mixed and, as Auer *et al.* (2008) emphasise, expenditure levels reveal nothing about the duration or quality of programmes or their associated

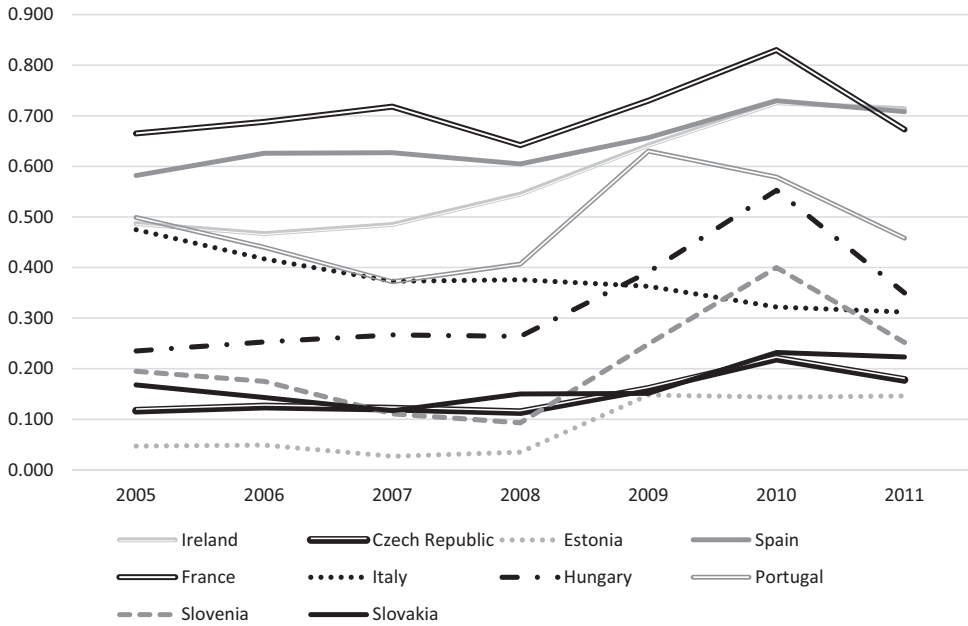


Figure 6: Expenditure on active labour market measures

Source: Eurostat [Imp_expsumm]. Includes categories 2–7. Expenditure is measured in terms of percentage of GDP. Complete time series data for the UK and Greece are unavailable and they are therefore excluded.

outcomes. Moreover, the forms of support associated with ALMPs reflect a supply-side focus in employment policy, in which the root causes of unemployment are ‘conceived of in individualistic and behavioural terms’ (Peck and Theodore, 2000: 729). Engagement with the demand side of the labour market has increasingly become limited to attempts to involve employers more closely in local labour market schemes and efforts to identify their current and future skill requirements so as to improve the match between the supply of and demand for skills, most recently exemplified by the European Commission’s *New Skills for New Jobs* initiative.

6 CONCLUSION

European policy makers appear to be convinced that weaker EPL is required in order to stimulate economic growth and job creation. Some national governments have been obliged by the Troika to implement substantial reforms. Others, such as the UK’s Conservative–Liberal Democrat coalition, have voluntarily stripped away employment protections. The renewed attack on employment protections represents the labour market face of austerity, implemented in the belief that economic growth will ensue as businesses are freed from shackles that stymie their efforts to improve efficiency and expand the scale of production. It is further assumed that workers will benefit as cuts to EPL stimulate employers to hire additional workers, thereby reducing unemployment.

The empirical evidence, however, suggests that there is no clear-cut relationship between employment protections and aggregate unemployment that holds across all economies at all times. As far as the consequences for employment are concerned 'time spent worrying about strict labour market regulations, employment protection and minimum wages is probably time largely wasted' (Nickell and Layard, 1999: 3209). Nevertheless, the belief that weaker EPL is necessary for employment growth and high employment levels continues to hold an appeal for governments. As a number of recent studies have discussed (Blyth, 2013; Peck, 2010; Quiggin, 2010), a lack of robust evidence in support of a theory is no guarantee that the theory will be abandoned by policy makers or academics. Established orthodoxies can serve the interests of those with political and economic power and also shape their view of the world. The economic and political architecture of the EU also encourages policy makers to think in terms of relatively orthodox supply-side solutions to economic problems. Shackled to a common interest rate, the ailing countries of the eurozone have been driven to seek 'internal devaluations' in order to boost their economies, attempting to drive down labour costs and EPL (which can be viewed as an additional cost of employing workers). There is as yet little sign that this will produce a substantial decrease in unemployment. It is more likely that the recalibration of employment rights will produce a shift in the balance of power at the workplace in favour of employers, emboldening the worst employers and increasing the vulnerability and insecurity of those they employ.

The enforcement of employment protections, an issue which is not captured by the OECD's EPL measures but which is clearly important in assessing the effectiveness of EPL, has also become more problematic as a consequence of the diminished ability of trade unions to act as joint regulators of the employment relationship alongside management and the increasing complexity of supply chains (Vega, 2013). In some countries labour courts, or their functional equivalent, have been reformed in ways that have impeded access to justice, notably in the UK where the imposition of a new fees regime for Employment Tribunals has resulted in a substantial decline in the number of cases being brought by workers. The UK's pre-crisis weaknesses in relation to enforcement and compliance (see Dickens, 2012) have been substantially magnified.

Within the framework of flexicurity, weaker EPL is regarded as part of a package of supply-side policy measures aimed at balancing support for skill adaptation and development with incentives to work. As with all supply-side policies, however, active labour market measures pre-suppose a benign, if not thriving, macro-economic environment. Further research is required to examine the consequences for employment of government actions to weaken EPL in an environment of weak demand while simultaneously reducing unemployment benefit and other forms of income maintenance, tightening conditionality rules and failing to increase spending on ALMPs. Given the recent increases in involuntary non-standard employment in many EU member states (Heyes and Lewis, 2014) it is likely that this particular mix of policies in post-crisis economic circumstances is acting to increase the proportion of workers in low-paid, precarious employment. In addition to the associated social costs, including increased insecurity, inequality and levels of in-work poverty (Heyes and Lewis, 2014), there are likely to be longer-term negative consequences for the composition of economies, their skills-bases and potential for future growth. Further comparative research is required on variations in the effects of different policy mixes in particular macro-economic circumstances and the long-term consequences of policy mixes as economic conditions change over time.

The erosion of protections for workers represents a further subordination of social justice considerations to the (supposed) needs of the economy, a tendency that has strengthened in the Western economies since the 1970s (Supiot, 2012). Policy makers have placed undue emphasis on the potential for employment law to act as an instrument for stimulating economic growth. The emphasis placed on its role in ‘protecting the dignity and working conditions of workers’ has, by contrast, diminished (Countouris and Freedland, 2013: 93). In the wake of the most serious economic crisis in 80 years, there is a need to reframe the EPL and broader flexicurity debates in a way that gives proper consideration to the potential contribution that employment regulations and social protections might make to rebuilding security in the labour market and wider society. Academic critics of the flexicurity agenda (see various contributions to Keune and Serrano, 2014) have suggested alternative approaches to labour market and social policy that would involve providing workers with new social rights and increasing their voice in the identification of social objectives and the means of achieving them. These ambitions resonate with the content of the ‘Athens Manifesto’, agreed by the European trade union movement in 2011 [European Trade Union Confederation (ETUC), 2011], which includes a demand that social rights ‘should take precedence over economic freedoms’ and calls for new constraints on market forces. This clearly requires that the European Commission and ECB cease to treat social policy as a means of achieving structural economic adjustments. There are signs of an increased awareness on the part of EU policy makers of the potential social damage resulting from the demands that have been made of those member states that have requested financial assistance, as reflected in the priorities outlined by the recently-appointed Commission President, Jean-Claude Juncker.² However, the prospect of a substantial change of policy emphasis in relation to EPL and flexicurity currently seems unlikely, given the economic fragility of the EU, the weakness of Europe’s trade unions, and political and economic constraints that strongly pre-dispose policy makers to focus on supply-side reforms.

Acknowledgements

The research for this article was supported by the British Academy /Leverhulme Trust, grant SG120966, ‘Employment protection, job quality and the distribution of earnings’. We would like to express our gratitude to the journal’s referees for providing extremely constructive comments on an earlier version of this article. We are responsible for any errors that remain.

References

- Allard, G. and P. Lindert (2006), ‘Euro-Productivity and Euro-Jobs Since the 1960s: Which Institutions Really Mattered?’, *National Bureau of Economic Research*, Working Paper 12460. Retrieved from <http://www.nber.org/papers/w12460>.
- Auer, P., Ü. Efendioğlu and J. Leschke (2008), *Active Labour Market Policies Around the World: Coping with the Consequences of Globalization* (Geneva, ILO).
- Avdagic, S. (2014), ‘Does Deregulation Work? Reassessing the Unemployment Effects of Employment Protection’, *British Journal of Industrial Relations*, Published online (early view), August 2014.

² <http://juncker.epp.eu/my-priorities>.

- Avdagic, S. and P. Salardi (2013), 'Tenuous Link: Labour Market Institutions and Unemployment in Advanced and New Market Economies', *Socio-Economic Review*, **11**, 4, 739–770.
- Baker, D., A. Glyn, D. R. Howell and J. Schmitt (2005), 'Labour Market Institutions and Unemployment: A Critical Assessment of the Cross-Country Evidence', in D. R. Howell (ed.), *Fighting Unemployment: The Limits of Free Market Orthodoxy* (Oxford, OUP) pp. 72–118.
- Bassanini, A. and R. Duval (2006), *Employment Patterns in OECD Countries: Reassessing the Role of Policies and Institutions*, OECD Economics Department Working Papers 486 (Paris, OECD Publishing).
- Beecroft, A. (2011), *Report on Employment Law*. Department for Business, Innovation and Skills. Retrieved from <http://news.bis.gov.uk/imagelibrary/downloadmedia.ashx?MediaDetailsID=5551>
- Bertola, G. M., F. D. Blau and L. M. Kahn (2001), *Comparative Analysis of Labor Market Outcomes: Lessons for the United States from International Long-Run Evidence*, in National Bureau of Economic Research Working Paper, no. W8526, October.
- Blanchard, O. and P. Portugal (2001), 'What Hides Behind an Unemployment Rate: Comparing Portuguese and US Labour Markets', *The American Economic Review*, **91**, 1, 187–207.
- Blyth, M. (2013), *Austerity: The History of a Dangerous Idea* (Oxford, OUP).
- Bosch, G. (2010), 'Dismissing Hours not Workers: Work-Sharing in the Economic Crisis', *Principios: Estudios De Economía Política*, **17**, 29–51.
- Botero, J. C., S. Djankov, R. La Porta, F. Lopez-de-Sin角度 and A. Shleifer (2004), 'The Regulation of Labor', *Quarterly Journal of Economics*, **119**, 1339–1382.
- Buchele, R. and J. Christiansen (1995), 'Productivity, Real Wages and Worker Rights: A Cross-National Comparison', *Labour (Committee on Canadian Labour History)*, **9**, 3, 405–422.
- Buchele, R. and J. Christiansen (1999), 'Employment and Productivity Growth in Europe and North America: The Impact of Labour Market Institutions', *International Review of Applied Economics*, **13**, 3, 313–332.
- Callinicos, A. (2010), *Bonfire of Illusions: The Twin Crises of the Liberal World* (Cambridge, Polity Press).
- Cazes, S., S. Khatiwada and M. Malo (2012), *Employment Protection and Collective Bargaining: Beyond the Deregulation Agenda*, Employment Sector Employment Working Paper No. 133 (Geneva, ILO).
- CEDEFOP (2013), *On the Way to 2020: Data for Vocational Education and Training Policies* (Luxembourg, Publications Office of the European Union).
- Clauwaert, S. and I. Schömann (2012), *The Crisis And National Labour Law Reforms: A Mapping Exercise*. European Trade Union Institute. Working Paper 2012.04 (Brussels, ETUI).
- Copeland, P. and B. ter Haar (2013), 'A Toothless Bite? The Effectiveness of the European Employment Strategy as a Governance Tool', *Journal of European Social Policy*, **23**, 1, 21–36.
- Countouris, N. and M. Freedland (2013), 'Labour Regulation and the Economic Crisis in Europe: Challenges, Responses and Prospects', in J. Heyes and L. Rychly (eds), *Labour Administration in Uncertain Times: Policy, Practice and Institutions* (Cheltenham, Edward Elgar/ILO) pp. 66–94.
- Degryse, C., M. Jepsen and P. Pochet (2013), *The Euro Crisis and its Impact on National and European Social Policies*, European Trade Union Institute Working Paper 2013.05 (Brussels: ETUI).
- Dickens, L. (ed.) (2012), *Making Employment Rights Effective: Issue of Enforcement and Compliance* (Oxford, Hart).
- Eichhorst, W. and P. Marx (2011), 'Reforming German Labour Market Institutions: A Dual Path to Flexibility', *Journal of European Social Policy*, **21**, 1, 73–87.

- Elmeskov, M. J. and S. Scarpetta (1998), 'Key Lessons for Labor Market Reforms: Evidence from OECD Countries Experience', *Swedish Economic Policy Review*, **5**, 2, 205–252.
- EPSCO (2011), *Joint Employment Report*. Retrieved from :<http://register.consilium.europa.eu/pdf/en/11/st07/st07396.en11.pdf>
- European Commission (2007), *Towards Common Principles of Flexicurity: More and Better Jobs Through Flexibility and Security* (Luxembourg, Office for Official Publications of the European Communities).
- European Commission (2009), *The Employment Crisis, Trends, Policy Responses and Key Actions*. Commission Working Document: European Commissions Background Paper to the EPSCO Council. (Brussels, EC).
- European Commission (2010), 'The Economic Adjustment Programme for Greece', Occasional Papers, 61, (Brussels, Directorate-General for Economic and Financial Affairs).
- European Commission (2012), *Labour Market Developments in Europe 2012*, European Economy 5/2012 (Luxembourg, Publications Office of the European Union).
- European Trade Union Confederation (ETUC) (2011), *The Athens Manifesto*. Retrieved from <http://www.etuc.org/a/8747>
- Grubb, D. (2007), *Labour Market Policies at Different Benefit Replacement Rates*, (Paris, OECD).
- Harcourt, M. and G. Wood (2007), 'The Importance of Employment Protection for Skill Development in Coordinated Market Economies', *European Journal of Industrial Relations*, **13**, 2, 141–159.
- Heyes, J. (2013a), 'Flexicurity in Crisis: European Labour Market Policies in a Time of Austerity', *European Journal of Industrial Relations*, **19**, 3, 71–86.
- Heyes, J. (2013b), 'Vocational Training, Employability and the Post-2008 Jobs Crisis: Responses in the European Union', *Economic and Industrial Democracy*, **34**, 2, 291–311.
- Heyes, J. and P. Lewis (2014), 'Employment Protection Under Fire: Labour Market Deregulation and Employment in the European Union', *Economic and Industrial Democracy*, **35**, 4, 587–607.
- International Monetary Fund (2010), *World Economic Outlook (WEO): Rebalancing Growth* (Washington DC, IMF).
- Keune, M. and A. Serrano (2014), *Deconstructing Flexicurity and Developing Alternative Approaches: Towards New Concepts and Approaches for Employment and Social Policy* (London, Routledge).
- Laulom, S., E. Mazuyer, C. Teissier, C. M. Triomphe and P. Vielle (2012), *How Has the Crisis Affected Social Legislation in Europe?*, ETUI Policy Brief, No.2/2012 (Brussels: European Trade Union Institute).
- Layard, R., S. Nickell and R. Jackman (2005), *Unemployment: Macroeconomic Performance and the Labour Market*, Second edn (Oxford, Oxford University Press).
- Lindbeck, A. and D. J. Snower (1990), 'Demand and Supply-Side Policies and Unemployment: Policy Implications of the Insider-Outsider Approach', *The Scandinavian Journal of Economics*, **92**, 2, 279–305.
- Mailand, M. (2010), 'The Common European Flexicurity Principles: How a Fragile Consensus was Reached', *European Journal of Industrial Relations*, **16**, 3, 1–16.
- Meardi, G. (2014), 'Italian and Spanish Employment Reforms in the Great Recession', in M. Hauptmeier and M. Vidal (eds), *Comparative Political Economy of Work* (Basingstoke, Palgrave Macmillan) pp. 332–350.
- Michelotti, M. and C. Nyland (2008) 'Varieties of Capitalism and Diversity in Labour Standards Regulation: The Case of Italy', *European Journal of Industrial Relations*, **14**, 2, 177–195.
- Michie, J. and M. Sheehan (2003), 'Labour Market Deregulation, "Flexibility" and Innovation', *Cambridge Journal of Economics*, **27**, 123–143.
- Nickell, S. and R. Layard (1999), 'Labour Market Institutions and Economic Performance', in O. Ashenfelter and D. Card (eds), *Handbook of Labour Economics*, Vol. **3**, 3 (Amsterdam, North-Holland) pp. 3029–3084.

- Noelke, C. (2011), *The Consequences of Employment Protection Legislation for the Youth Labour Market*, Working Paper 144 (Mannheimer Zentrum für Europäische Sozialforschung, University of Mannheim).
- Nolan, P. (1994), 'Labour Market Institutions, Industrial Restructuring and Unemployment in Europe', in J. Grieve-Smith and J. Michie (eds), *Unemployment in Europe: Policies for Growth* (London, Academic Press) pp. 61–71.
- Oesch, D. (2010), 'What Explains High Unemployment Among Low-Skilled Workers? Evidence from 21 OECD Countries', *European Journal of Industrial Relations*, **16**, 1, 39–55.
- OECD (1994), *Job Study: Facts, Analysis, Strategies* (Paris, OECD).
- OECD (2004), *Employment Outlook 2004*, (Paris, OECD).
- OECD (2010), *Economic Outlook 2010*, Vol. **2010/2**, (Paris, OECD).
- OECD (2011), *Economic Outlook 2011*, Vol. **2011/2**, (Paris, OECD).
- OECD (2011b), *Employment Outlook 2011* (Paris, OECD).
- Peck, J. (2010), *Constructions of Neo-Liberal Reason* (Oxford, OUP).
- Peck, J. and N. Theodore (2000), 'Beyond "Employability"', *Cambridge Journal of Economics*, **24**, 729–749.
- Quiggin, J. (2010), *Zombie Economics: How Dead Ideas Still Walk Among Us* (Princeton, Princeton University Press).
- Schömann, I. (2014), *Labour Law Reforms in Europe: Adjusting Employment Protection Legislation for the Worse*, Working Paper 2014.02 (Brussels, European Trade Union Institute).
- Schweiger, C. (2014), *The EU and the Global Financial Crisis* (Cheltenham, Edward Elgar).
- Siebert, H. (1997), 'Labour Market Rigidities: At the Root of Unemployment in Europe', *Journal of Economic Perspectives*, **11**, 3, 37–55.
- St Paul, G. (2004), 'Why are European Countries Diverging in their Unemployment Experience?', *Journal of Economic Perspectives*, **18**, 4, 49–68.
- Storm, S. and C. W. M. Naastepad (2009), 'Labour Market Regulation and Productivity Growth: Evidence for Twenty OECD countries (1984–2004)', *Industrial Relations*, **48**, 4, 629–654.
- Suptot, A. (2012), *The Spirit of Philadelphia: Social Justice vs. the Total Market* (London, Verso).
- Tangian, A. (2010), *Not for Bad Weather: Macroanalysis of Flexicurity with Regard to the Crisis*. ETUI Working Paper 2010/06 (Brussels: ETUI).
- Vega, M.-L. (2013), 'Labour Inspection Systems: Strengthening Enforcement in Times of Crisis', in J. Heyes and L. Rychly (eds), *Labour Administration in Uncertain Times* (Edward, Elgar/ILO) pp. 222–244.
- Venn, D. (2009), *Legislation, Collective Bargaining and Enforcement : Updating the OECD Employment Protection Indicators*. Retrieved from www.oecd.org/els/workingpapers