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**An Analytical Overview of Labour Market Reforms  
Across the EU: Making Sense of the Variation**

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# An Analytical Overview of Labour Market Reforms Across the EU: Making Sense of the Variation\*

**ABSTRACT:** While there has been an increase in interest in employment protection, for example in the literature on labour market insiders and outsiders, there is a lack of cross-country comparative research on reforms of the employment protection legislation and the regulation of temporary work. This article provides such an overview for a wide set of countries including the EU-15 plus five Central and Eastern European countries: the Czech Republic, Hungary, Poland, Slovakia and Slovenia. It makes two contributions: first, it identifies a set of reform types. One major reform type, two-tier reform, and several minor types: deregulation of temporary employment in countries with low levels of job protection for regular work; reregulation in countries with high levels of temporary employment; reregulation in countries with low regulation of temporary work; and across-the-board concurrent deregulation. Second, the article highlights the difference in regulation that exists between fixed-term contracts concluded inside and outside temporary work agencies (TWAs). In identifying reform types, and the difference in the regulation of fixed-term contracts inside and outside TWAs, the article contributes to our understanding of the variation in labour market regulation and reform. In addition, the article points to different explanations for the reforms, in particular the influence of EC directives.

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In the 1970s, most European countries introduced or strengthened employment protection legislation (Emmenegger 2009). At nearly the same time, beginning in the mid-1970s European economies went into a protracted economic crisis which brought with it a sharp rise in unemployment. During the 1980s and 1990s, countries began to confront this problem by reforming the employment protection measures introduced in the previous decade. The article intends to shed light on the variation in labour market reform in Europe from the mid-1980s to the present by identifying major and minor reform types, by describing the difference in regulation that exists between fixed-term contracts inside and outside temporary work agencies (TWAs), and by analysing the regulatory and political context in which the reforms were made.

The article first seeks to map a set of reform types using the OECD index of employment protection legislation (see note 1 and 2). The aim is not to develop a typology, based on a specific theoretical framework. In addition, an analytical framework will be presented in which the regulatory and political context in which the labour market reforms were made is included and some tentative conclusions can be drawn about the variation in initial regulation leading to different types of reforms and the variation in reform pressure originating from domestic or EU policy arenas.

Most focus in the literature has been put on two-tier reforms, i.e. the combination of the deregulation of temporary work with no deregulation of the employment protection for regular work; when both temporary and regular work are deregulated it is termed across-the-board reforms (e.g. Saint-Paul et al. 1996; Ochel 2008).<sup>1</sup> The two-tier reform is the most common type of reform as we will see below, but it needs to be complemented by different and contrasting types of reforms which have also been present in the reform of European labour markets. Temporary employment, for example, has not been deregulated in all countries. Low-regulation countries such as Ireland and UK in Western Europe, and most countries in Central and Eastern Europe, have rather reregulated the employment protection for temporary workers on fixed-term contracts. This has also been the case in countries with very high levels of temporary employment such as Spain. There have also been instances of deregulation of temporary employment in low-regulation countries such as Italy, Belgium and Denmark, and instances of across-the-board reforms as in Slovakia.

Second, the article seeks to highlight the variation of regulation within temporary work. In the reform types described above the regulation of temporary work is used as an aggregate of both fixed-term contracts concluded inside and outside temporary work agencies (TWAs).<sup>2</sup> The differences that exist between the regulation of fixed-term contracts inside and outside

TWAs have not yet been systematically covered in the literature. The contribution here is two-fold. First, in describing the cases which serve to illustrate the reform types the distinction will be upheld between reforms relating to fixed-term contracts inside and outside TWAs. Second, the differences in regulation between fixed-term contracts inside and outside TWAs will be examined more in depth in a separate section using the Ecofin LABREF database.<sup>3</sup>

An important aspect with regard to the difference in regulation between fixed-term contracts inside and outside TWAs is the relevant EU legislation, especially the two EC directives on fixed-term work (1999/70/EC) and temporary agency work (2008/104/EC). It is interesting to note that the first explicitly excludes from its scope fixed-term contracts concluded within TWAs. These are then dealt with in the second directive, but the content of the regulation differs substantially.

In analysing different reform types in Europe taken as a whole, it is of course necessary to paint with broad brush strokes. Not all countries will be covered and not all reforms can be described in detail.<sup>4</sup> However, the ambition is to provide sufficient detail in order to make it possible to distinguish between reform types and thus to assist other researchers in their interpretation of the reforms. The first part uses the OECD EPL-indicators (see note 1 and 2) to illustrate the major reform trends in Western Europe, between coordinated market economies/mixed market economies (CMEs/MMEs), liberal market economies (LMEs), and emerging market economies (EMEs) in Central and Eastern Europe.<sup>5</sup> The second part then identifies the major reform type (two-tier reforms) and introduces a number of additional minor reform types: deregulation of temporary employment in low-regulation countries, reregulation in countries with already high levels of temporary employment, reregulation of temporary employment in low-regulation countries, and across-the-board concurrent deregulation. The final part compares the regulation of fixed-term contracts inside and outside TWAs.

## **1. Broad reform trends**

The overarching labour market reform trends in Western and Central and Eastern Europe will be outlined in this section. First, there is in Western Europe a clear trend of two-tier reforms. We also show that this is typical for coordinated market economies (CMEs) and mixed market economies (MMEs), the Continental and Nordic countries, but not for the liberal market economies (LMEs), Ireland and the UK (Hall and Soskice 2001; Hall and Gingerich

2004). Second, there is in the emerging market economies (EMEs), Central and Eastern Europe (Hancké et al. 2007), a reform trend with a reregulation of the employment protection for temporary workers along with a slight deregulation of the employment protection for regular workers (Slovakia).

### **Reforms in the West, reforms in the East**

The common view among economists of developments on Western European labour markets has been to regard two groups of countries, the Continental and Nordic countries, on the one hand, and the Anglo-Saxon countries on the other, as being situated on opposite sides in the trade-off between unemployment and inequality (e.g. Blau and Kahn 2002); the former group of countries suffering from high unemployment due to over-regulated labour markets. There is, however, no consensus concerning the effects of labour market regulation on aggregated unemployment levels (OECD 2004). But since the mid-1980s, Western European labour markets have undergone significant reforms. A major part of those reforms has concerned the employment protection legislation. In this area, the employment protection for regular employment has remained more or less unchanged, whereas temporary work has to an important degree been deregulated. This trend of two-tier reforms has been followed in most of the CMEs/MMEs. In the LMEs, in contrast, there has rather been a slight reregulation of employment protection (see figure 1).<sup>6</sup>

*- Figure 1 about here -*

A set of different political explanations for two-tier reforms have emerged in the literature. The first set of explanations put the focus on the vote-maximising strategies of political parties in general using a median-voter argument (Saint-Paul et al. 1996), or social-democratic parties in particular using a core-constituency argument (Rueda 2005). Recently, an alternative explanation has been proposed which takes the social partners prominent position in the reforms process, in the area of labour market policy, as a starting point and which links the two-tier reforms with the organisational interest of unions (Davidsson 2011; Davidsson and Emmenegger 2011).

In Central and Eastern Europe, we can see a trend which resembles that of the LMEs (see figure 2).<sup>7</sup> There has been a slight reregulation from low levels of initial regulation of temporary work and a slight deregulation of employment protection for regular workers. This is mainly due to the across-the-board reforms that were made in Slovakia (see below). Thus,

low-regulation countries in respect of temporary work, both in LMEs and in Central and Eastern Europe, have seen a slight reregulation. As we will see below, this is mainly due to the transposition of the EC directive on fixed-term work.<sup>8</sup>

*- Figure 2 about here -*

## **2. Reform types**

Having outlined the major trends in labour market policy reform, the second part seeks to capture the underlying variation by identifying a set of additional reform types (see table 1). The reforms will be described and contextualised for a smaller number of countries, for each identified type. The prevalence of the reform types can be seen in the table below.

*- Table 1 about here -*

The first section discusses the typical two-tier reforms in Western Europe. In these countries, the employment protection for regular workers has remained more or less unchanged whereas there has been a substantial deregulation of temporary work. We can see this type of reform in France, Germany, Sweden, Portugal, Greece and the Netherlands. The next section focuses on a similar development of deregulation of temporary work in countries where there is a low regulation of regular employment, as in Italy, Belgium and Denmark. This is surprising since we should expect that there was less need for temporary employment in these countries. It seems like the deregulation was driven by strong reform pressure created by high unemployment rates, especially among the young cohort. In the next two sections, we will look at countries where there has, in contrast, been a reregulation of employment protection for temporary workers. First, using Spain as an example we look reregulation as a response to very high levels of temporary employment. Second, we discuss the reregulation in Central and Eastern Europe which primarily was a response to the accession to the EU in 2004 and the transposition of the EC directive on fixed-term work. Third, we will look at the across-the-board reform in Slovakia. This is explained by national political factors such as a radical government and weak unions. The last reform, deregulation of employment protection legislation for regular work, which can be seen in Austria and Finland, will not be covered apart from the information in table 1 above.

### **Typical reforms in the West: two-tier reforms**

The rise in unemployment in the 1970s did not abate but instead continued throughout the 1980s leading policy makers to begin searching for more radical solutions. It was in this context that discussions began about the need for making labour markets more flexible. In most countries, the reforms that were introduced in the following decades, however, focused only on deregulating temporary work while keeping more or less unchanged the legislation on regular work. This type of reform was prevalent, as mentioned in the previous section, in the majority of Western European countries.

In France there was a large public debate about flexibility in 1984 as well as negotiations between the social partners about labour market reform. After negotiations between the social partners had failed, the social-democratic government decided to legislate on the issue of fixed-term contracts (outside TWAs): limiting restrictions on use and extending duration to 24 months (otherwise 6/12 months) with administrative authorisation. The conservative government that took over in 1986 went further deregulating the employment protection for both regular and temporary workers. The part of the reform that concerned fixed-term contracts removed all restrictions on use and went from one to two renewals, making it in practice possible to conclude such contracts for 24 months. With regard to regular employment, the deregulation entailed the abolishment of the administrative authorisation of dismissal, but it is important to note that this did not remove the employment protection for regular workers but rather transformed the existing administrative regulation into judicial regulation.<sup>9</sup> Thereafter, no major reforms were concluded except in 1990 when fixed-term contracts were reregulated: restrictions on use were reintroduced and maximum duration was shortened from 24 months to 18 months. The negotiations between the social partners, which began in 2008, made little progress both with regard to employment protection for regular and temporary workers (Cahuc and Zylberberg 2009). On the whole, the reforms in France have been focused on deregulating fixed-term contracts (Davidsson 2011; Davidsson and Emmenegger 2011).

In Sweden, the discussions about the need for increased labour market flexibility coincided with the sharp rise in unemployment, an effect of the financial and economic crisis in the early 1990s. The major reforms have also here primarily concerned the regulation of temporary work. In 1993, TWAs were legalised. Concerning fixed-term contracts outside TWAs, as was the case in France, the social-democratic government stepped in after negotiations had failed between the social partners and introduced legislation in 1997. The

reform entailed an increase in the maximum duration from 6 to 12 months (18 months for first-time hires), and made it possible for the first time for collective agreements at the firm-level to derogate from legislation with regard to fixed-term contracts. The next major reform was introduced by the conservative government in 2006/07. The reform extended the maximum duration for fixed-term contracts to 24 months and removed all restrictions on use. In addition, as was the case in the 1990s, the issue of a deregulation of the employment protection for regular workers was discussed between the social partners in 2008, but no headway was made (Davidsson 2011; Davidsson and Emmenegger 2011).

In Germany, the major deregulation of temporary work took place in 1985, 1994, 1997, 2002 and 2004 (see also Ebbinghaus and Eichorst 2006). The first deregulation efforts in 1985 included the extension of the maximum duration for fixed-term contracts inside TWAs from three to six months. The reform in 1994 extended it to nine months. The regulation of TWAs was also loosened. In 1997, more renewals were allowed for fixed-term contracts outside TWAs. Renewals and duration was extended further for the long-term unemployed. In 2002, fixed-term contracts outside TWAs were made more flexible for older workers and the maximum duration for fixed-term contracts inside TWAs was extended to 24 months. In 2004, fixed-term contracts outside TWAs were extended to four years for start-up companies. In 2000, there was a reregulation of temporary employment. In response to the EC directive, restrictions on use were introduced for the use of fixed-term contracts outside TWAs.

In Portugal, the deregulation of temporary employment was made in 1995, 2003 and 2007. In 1995, the social partners agreed to wide-ranging reforms which included a liberalisation of TWAs and an extension of the maximum duration for fixed-term contracts. In response to the EC directive, duration was then reduced to three years in 2001. In 2003, the maximum duration was extended again for certain types of contracts to six years. The maximum duration for fixed-term contracts inside TWAs was extended in 2007 from 12 months to 24 months. While the employment protection legislation for regular work has also been deregulated during the period, Portugal still score the highest in Europe in this dimension and it is difficult, therefore, to describe the reform trend as a gradual across-the-board reform.

In Greece, the legalisation of TWAs takes place in 1998 and 2001 and the regulation was further liberalised in the 2003 reforms. Fixed-term contracts outside TWAs were allowed for hikes in demand in 1990 and was further liberalised in 2003.

In Netherlands, the major reform deregulating temporary employment was made in 1999. The regulation on maximum duration of fixed-term contracts was lifted and TWAs



were liberalised. In 2002, in response to the EC directive, maximum duration was cut again to three years.

### **Deregulation of temporary work in countries with low-regulation of regular work**

This section looks at some counter-intuitive reforms. In three low-regulation countries in relation to employment protection for regular workers, there has also been a deregulation of temporary work: in Denmark 1995, Belgium 1997 and Italy 1997 and 2001. The major justification for the reforms seems to have been the high levels of youth unemployment, focusing the reform of facilitating labour market entry. In Denmark, the reform concerned the legalisation of TWAs, in Belgium it concerned primarily the deregulation of the use of fixed-term contracts, by decreasing restrictions on use and by allowing renewals, and in Italy it concerned both the legislation on fixed-term contracts and TWAs. Another important aspect is that the regulation on temporary work was relatively strict in relation to other Western European countries prior to the reforms.

The explanation for these counter-intuitive reforms is partly a question of reform pressure and partly due to initial regulation. In Denmark, the regulation of employment protection is flexible since no legislation was introduced in the 1970s in contrast to the development in most other European countries (Emmenegger 2009). In contrast, hiring workers through temporary work agencies was highly restricted. In other words, this was the only area that a deregulation of employment protection could target. In Belgium, employment protection legislation regarding fixed-term contracts was comparatively much more strictly regulated than regular contracts (Ochel 2008). In both of these countries, the reason seems to have been increasing reform pressure in the form of high (youth) unemployment which was channelled towards existing areas of strong regulation. In Italy, there were political voices who wanted to deregulate the employment protection also for regular workers (Art. 18),<sup>10</sup> but the legislation was defended by the unions via mass strikes. In that sense, the Italian reforms are more akin to the two-tier reform type described in the previous section. Below follows a more detailed description of the Danish and Italian reforms.

In Denmark, the unemployment rate had continuously risen from 2 per cent in the early 1970s to 12 per cent in 1994. In response, successive left-coalitions carried out a broad reform of labour market policy, in particular cuts in the duration of passive unemployment benefits and increased focus on activation (EIRR 1997a; Kvist 2003; Andersen and Svarer 2007; Ochel 2008). The reduction of restrictions regarding temporary work agencies should be seen as part of these efforts to address the issue of high and persistent unemployment. The

first reform took place already in 1990. More importantly, the reform in 1995 involved an increase in the scope of activities of temporary work agencies and their recognition by the social partners.

In Italy, there have been consistent high rates of unemployment oscillating between 9-12 per cent and very high youth unemployment rates at around 30 per cent. Italy has also stood out in respect of their very low employment rates (OECD 2009). In response, there have been a larger number of reforms particularly focused on labour market entry. In 1987, a wider use of fixed-term contracts was made possible, but which were regulated by collective agreements in terms of restrictions of use and maximum allowed share in firms. The next reform, the so-called Treu reform in 1997, had its background in the 1993 pact with the social partners in which they had agreed to a deregulation of temporary work put under pressure from the economic crisis. The 1997 reform, introduced by the left-coalition, included the legalisation of temporary work agencies and easing of regulations of apprenticeships and an end to the automatic conversion of fixed-term into regular contracts at the end of their duration. From 1998, fixed-term contracts are also allowed in the public sector. In 2001, the EC Directive on fixed-term work was transposed into Italian law. It had two consequences. The restrictions on use were eased, but at the same time the maximum cumulated duration was limited to three years for fixed-term contracts. The Biagi reforms by the conservative coalition in 2003 extended the use of temporary work agencies and introduced new types of fixed-term contracts, including on-call contracts.

Below, the focus shifts from the deregulation of temporary work to two opposite reform types: reregulation in the context of high levels of temporary employment and in the context of initial low levels of regulation.

### **Reregulation in countries with high levels of temporary employment**

While in most countries, as described above, the rise in unemployment led to a deregulation of temporary work, in Spain we can see the opposite trend of reregulation. While unemployment was rising, the sheer amount of people in temporary employment created a strong pressure for the reregulation. This has also been described as a situation where the median voter can be found among those in non-standard forms of employment, i.e. temporary or part-time employment (e.g. Ochel 2008). We should note that a reregulation, however, did not take place in the case of Greece which also had very high levels of temporary employment in the 1980s, or in Portugal and Poland in the 2000s apart from the transposition of the EC directive (see below).

The first democratic governments in the late 1970s and early 1980s took over the strict employment protection legislation from the Franco dictatorship with the exception of overturning the ban on unions and giving them a significant position in the collective bargaining system and in the administration of dismissals. The strict legislation meant that regular contracts at the time represented more than 90 per cent of all employment contracts (Bentolila et al. 2008). In 1984, the government introduced a new contract, a temporary employment promotion contract (*contrato temporal de fomento del empleo*), which in practice removed most restrictions on the use of fixed-term contracts. The maximum duration was expanded to three years, with a minimum limit of six months. In addition, the severance payments associated with fixed-term contracts were much lower than for regular contracts. The effect was dramatic. Temporary employment rose from 8 per cent in 1984 to 34 per cent in 1992 (OECD 2009).

In response, a series of reforms were introduced in the 1990s and 2000s that had the aim of limiting the use of fixed-term contracts. In 1992, the minimum duration was extended to one year. In 1993, the maximum duration of training contracts was reduced from three years to two years. In 1994, the temporary employment promotion contract was abolished except for certain categories of workers (e.g. the disabled). The remaining contract-types had restrictions on use. On the other hand, fixed-term contracts were allowed for three years for start-up firms and temporary work agencies were legalised. In 1997, the fixed-term contract for start-up firms was abolished and for some contracts restrictions on use were tightened: temporary contracts concluded to respond to production needs was reduced to six months (within twelve months). However, they could be extended to 18 months through collective bargaining. The number of training contracts should be set by collective bargaining (EIRR 1997b). In 1999, equal pay was introduced for those employed by temporary work agencies. In 2001, restrictions on use were further tightened and provisions regarding equal pay and working conditions were introduced. In 2006, workers who had more than 24 months of employment in the same firm within a 30 month period became entitled to a regular contract. The government also offered a three-year annual subsidy of EUR 800 for all temporary contracts converted into regular contracts (OECD 2009).

During this period, the promotion of regular employment also included the lowering of dismissal costs for regular contracts by extending the acceptable reasons for dismissals in 1994 and by introducing in 1997 a new type of regular contract for vulnerable groups on the labour market, in particular the temporary employed, which have lower severance payments. As in the case of Portugal it is, however, difficult to argue that these reforms would add up to

a gradual across-the-board reform since the employment protection legislation for regular work still is substantial.

### **The reregulation of temporary work in countries with low initial regulation**

From figures 1 and 2 above, it is clear that the regulation of temporary employment was much softer in the LMEs, Ireland and the UK, and in the EMEs, the Central and Eastern European countries. One could assume therefore, that it would generate a push towards re-regulation. However, many of the reforms have been associated with the transposition of the EC directive (1999/70/EC) on fixed-term work (outside TWAs) into national law which took place in Ireland and the UK in 2003 and 2002 respectively and in the Central and Eastern European countries just prior to or upon accession to the European Union on 1 May 2004.<sup>11</sup> Second, fixed-term contracts inside TWAs were first regulated in the early 2000s in the EMEs, which shows up as a reregulation.<sup>12</sup> This section will focus on the development in the EMEs, illustrated by the case of Poland, which is an example of both of these two developments.

In the Polish Labour Code, which was put into place during the first years of transition, there were no limitations on the renewal of fixed-term contracts (outside TWAs).<sup>13</sup> In 1996 a restriction was introduced regarding the number of allowed renewals (Surdej 2004). The new provision stated that two renewals were allowed for fixed-term contracts, but that a third renewal automatically transformed it into a regular contract. The new wave of deregulation in the 2002 reforms then repealed this provision (Spieser 2009, 195). The transposition of the EC directive into national law reintroduced in 2004 the restrictions on renewals that was in place before the 2002 reforms, but included a list of exceptions (see table below). Nonetheless, Poland is the only country which does not have legislation on the maximum cumulated duration of fixed-term contracts (outside TWAs). In addition, the law only regulates one type of fixed-term contracts and excludes contracts for trial periods and contracts for specific work (Hajn 2005). In reference to the EC directive, however, the Polish Supreme Court has ruled that these contracts should not be excessive in length (Spieser 2009, 195). Considering that they very high levels of temporary contracts in Poland did not decrease after 2004, it is questionable whether these rulings have had any real effects.

The EC directive (1999/70/EC) on fixed-term work puts its focus on two issues: the application of the principle of non-discrimination between fixed-term and regular work, and the prevention of abuse arising from the use of successive fixed-term contracts. The European Parliament called for the Council to approve the agreement but remained critical, it "... re-

gretted to note that the agreement covers only successive employment relationships, that the rules designed to prevent abuse through successive fixed-term contracts contain no qualitative or quantitative obligations, and that no provision is made for priority access to jobs created or for these workers to have access to appropriate vocational training.”<sup>14</sup> The lack of scope and force in the directive can be explained by it being based on a Framework Agreement which is by nature a compromise between the social partners. Furthermore, the provisions of the agreement themselves allow for flexibility in the transposition of the directive to national law. The provision on the prevention of abuse (clause 5), for example, allows countries to choose from three different measures: objective reasons justifying the renewal of fixed-term contracts, maximum cumulated duration, and fixed number of renewals. And, in relation to both provisions, the social partners should be involved in the transposition of the directive (1999/70/EC).

The flexibility of the EC directive helps explain the variation we can see in the regulation of temporary work, especially in the EMEs. The focus will be put on the provision on the prevention of abuse since the provision on equal treatment is more dependent on the judgements of national courts. In the LMEs, both Ireland and the UK introduced maximum cumulated duration of fixed-term contracts. In the EMEs, the picture is more varied (see table 2). All countries except Poland have introduced regulation with regard to maximum duration in the national legislation. However, in all countries the maximum duration can be exceeded for a number of defined types of contracts. In addition, in Slovakia and Slovenia (as in Sweden and the Netherlands) collective agreements allow for the derogation of national legislation. On the contrary, it is only Poland that has limited renewals. In Slovakia, as we will see below, the introduction of maximum cumulated duration coincided with a more profound deregulation including for example the lifting of the limit on renewals (EC 2008).

*- Table 2 about here -*

The OECD EPL index is composed of two subindicators: the regulation of fixed-term contracts inside and outside TWAs. Some of the reregulation that shows up in figures 1 and 2 above has to do with the regulation of fixed-term contracts inside TWAs which is not covered by the EC directive (1999/70/EC). In the EMEs, TWAs were legalised only in 2004 (Coe et al. 2006). Hence, this produces a strong reregulatory effect in the index. In Poland, for example, the index jumps from 0.5 to 2.5. The distinction between the regulation of fixed-term contracts inside and outside TWAs will be discussed further below, but first the last reform type, across-the-board concurrent deregulation will be presented.

### **Across-the-board concurrent deregulation**

There have been three instances where the legislation on regular and temporary employment has been concurrently deregulated: in Spain 1994 and in Slovakia 2003. The focus here will be on Slovakia. The reform of the regulation of temporary work in Spain went in both directions: fixed-term contracts inside TWAs were de-regulated while fixed-term contracts outside TWAs were reregulated.

In Slovakia, the broad bipartisan coalition which took over in the midst of economic crisis in 1998 began discussions over a reform of the employment protection legislation. The result was first a reform of the labour code initiated by the left-wing government party which strengthened the regulation of working hours, hiring and firing procedures and increased the role of unions, who were given a *de facto* veto in dismissal procedures. With regard to fixed-term contracts the maximum cumulated duration was set to three years. However, before it was introduced in March 2002 an amendment was negotiated between the coalition parties which relaxed the provisions on working hours while retaining unions' veto power (Jurajda and Mathernová 2004).

The conservatives took over in the 2002 elections and quickly pushed through a reform of the labour code, introduced in May 2003, affecting both regular and temporary employment. Regarding the regulation of temporary work, restrictions on the use of fixed-term contracts were relaxed and restrictions on the renewal of fixed-term contracts were removed (outside TWAs). Regarding regular work, unions lost their veto, the notice period for dismissals were shortened and severance payments were limited to two/three months (Jurajda and Mathernová 2004).

According to Jurajda and Mathernová (2004), the concurrent deregulation of both regular and temporary employment was made possible by the combination of strong reform pressure (unemployment was at about 18 per cent, much higher than in the other EMEs), by the popular support for the conservative government, manifested in the 2002 elections, and by the weak position of unions in Slovakia in comparison with the other EMEs.

### **3. The regulation of fixed-term contracts inside and outside TWAs**

In the reforms described above, there have been legislative changes both with regard to fixed-term contracts concluded inside and outside TWAs. In this last section, we will move away from looking at different reform types, in which the regulation of temporary employment combines both of these two types of fixed-term contracts. Instead, we put the focus on

bringing out the variation that exists between the current regulation on fixed-term contracts applicable to a situation when an individual is hired directly by an employer and a situation when he-/she is employed by a TWA.<sup>15</sup> The OECD EPL index makes include this distinction in their subindicators to the regulation of temporary employment (see note 2). Figures 3 and 4 show the development in regulation over time.

*- Figure 3 and 4 about here -*

The distinction between the regulation of fixed-term contracts concluded inside and outside TWAs is interesting to note in itself as it is rarely done in the literature. The distinction is especially important to make if the stringency of the regulation differs between the two areas, i.e. if TWAs face more or less regulations relative to other employers. Antoni and Jahn (2009) has shown that the deregulation of fixed-term contracts inside TWAs in Germany has had an effect on the job tenure in the temporary employment sector. The same reforms with regard to fixed-term contracts outside TWAs might have had a different effect since the regulations are stricter in this area.

The focus in the survey of national legislation, presented in table 3, has been limited to maximum cumulated duration. The other two possible indicators included in the documentation of the LABREF database are restrictions on use and requirements of equal treatment. However, the motivation for not including those indicators is, first, that most of the variation seems to be found in relation to maximum duration, and second, that the other two indicators often are more dependent on court decisions in its implementation and are thus liable to be less valid indicators of actual regulation. However, also maximum duration can be subject to court rulings and the information presented below should therefore be read critically.

The table below shows that the stringency of regulation with regard to maximum cumulated duration of fixed-term contracts differs in the majority of countries between fixed-term contracts concluded inside and outside TWAs. Overall, fixed-term contracts outside TWAs seem to be more strictly regulated than fixed-term contracts inside TWAs. One key explanation for this variation is the fact that the EC directive on fixed-term work only applies to fixed-term contracts outside TWAs. The EC directive on temporary agency work (2008/104/EC), which deals with fixed-term contracts concluded inside TWAs is a separate regulative instrument, which in contrast to the directive on fixed-term work does not address the issue of the prevention of the abuse; it "... makes no commitment in favour of the stabili-

sation of temporary work relationships provided through successive contracts.” (Countouris and Horton 2009, 338)

- Table 3 about here -

An important qualification to the argument above is that fixed-term contracts outside TWAs are much more important in terms of numbers; fixed-term contracts inside TWAs range between 1.4 and 2.3 per cent of total employment in the EU-15 in 1999 (Storrie 2002). In comparison, the total share of fixed-term contracts in the EU-15 was in 2000 about 15 per cent (Eurostat). Nonetheless, temporary agency work has grown over the last decade up until the economic crisis in 2008. Ciett (2011), the International Confederation of Private Employment Agencies, has shown that the market penetration<sup>16</sup> in Europe of TWAs has increased from 1.1 per cent in 1998 to 2 per cent in 2007. The countries with the highest penetration of TWAs in Europe are: United Kingdom (3.6 %), Netherlands (2.9 %), Germany (2.9 %), Belgium (1.7 %), France (1.6 %), and Austria (1.4 %).

#### **4. Conclusion**

The ambition in the article has been to make sense of the variation that exists in labour market reform by, first, identifying the universe of reform types and to analyse the regulatory and political context in which the reforms were introduced, and second, by highlighting the variation that exists within the regulation of temporary work between contracts concluded inside and outside TWAs.

Looking back on labour market reforms from the mid-1980s to the present, there are first some broad trends that warrant our interest. In CMEs/MMEs, which have had a higher initial level of regulation, the main trend has been two-tier reforms. In contrast, in LMEs and in EMEs, which shared low initial levels of regulation for temporary work, there has been a reregulation of such work. While the former trend has been driven by domestic factors, i.e. strong reform pressure emanating from high levels of unemployment, the latter trend is primarily the result of the transposition of EC directives.

These two broad trends make out two of the reform types presented in the article. To capture the underlying variation, we have identified a set of additional reform types (see table 1). First, a distinction can be made between two-tier reforms in countries with high or low levels of employment protection legislation for regular work. Second, in Spain we have seen a reregulation which was based on political reform pressure emanating from the very high



levels of temporary employment. Third, in Slovakia we have seen an example of a single reform which simultaneously deregulated both temporary and regular work. Finally, in Finland and Austria there has been a deregulation of only the employment protection legislation for regular workers.

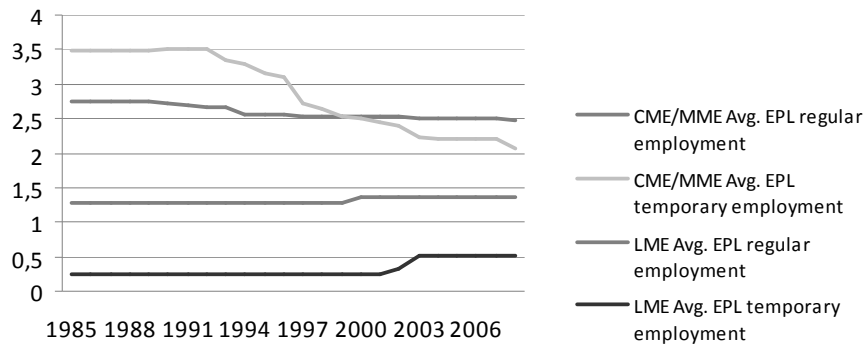
Analytically, after having mapped the variation in labour market reform, it is possible to draw some tentative conclusions about the effects of the regulatory and political context in which the reforms have been made. First, looking at the regulatory context the main trend is one of deregulation. The regulation of temporary work has been made less strict in most countries apart from those which had very low levels of initial regulation, the LMEs and the EMEs. A case in point is the lack of regulation of TWAs in the EMEs. The employment protection legislation for regular work has, on the other hand, remained unreformed in most countries. Interestingly, this holds true for both high- and some low-regulation countries (Italy, Belgium and Denmark, but not Ireland and the UK). This finding challenges the view that the deregulation of temporary work only takes place in countries with high regulation of regular work. The two countries where we can see a deregulation of the employment protection legislation for regular work, Austria and Finland, both share initial low levels of regulation of temporary work. A tentative interpretation could be that the combination of high levels of regulation of regular work and low levels of regulation of temporary work leads to pressure to deregulate the legislation on regular work.

The fact that the employment protection legislation for regular work has remained unreformed throughout the period in both high- and some low-regulation countries suggests the importance of political explanations. In the literature on two-tier reforms, explanations have focused on the vote-maximising strategies of political parties and unions' defence of their organisational interest. The across-the-board reform in Slovakia has been suggested to result from a combination of strong reform pressure, a radical government and weak unions. The reform of the regulation of temporary work can be explained by a number of factors. Deregulation is often a result of strong national reform pressure resulting from high levels of (youth) unemployment. In Spain, in contrast, national reform pressure from very high levels of temporary employment spurred a reregulation of temporary work. In the LMEs and the EMEs, reregulation has either been a result of the transposition of EC directives into national legislation or of the legalisation of TWAs.

In the last part, the regulation of temporary work was disaggregated into two categories, fixed-term contracts concluded inside and fixed-term contracts concluded outside TWAs. This type of variation has seldom been covered in the literature. Taking this variation into

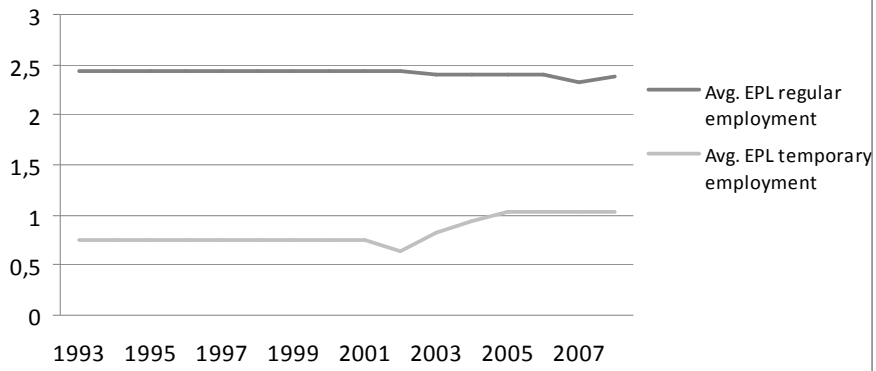
account, it is possible to disentangle to what extent the regulation differs between the two types of temporary workers and how they are respectively affected by a particular reform.

## 1. EPL Reforms - CME/MMEs and LMEs



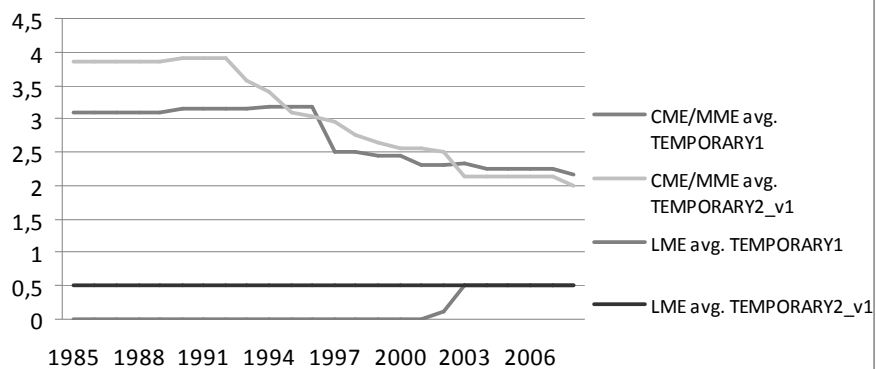
Source: OECD (Indicators EPR\_v1 and EPT\_v1)

## 2. EPL Reforms - EMEs



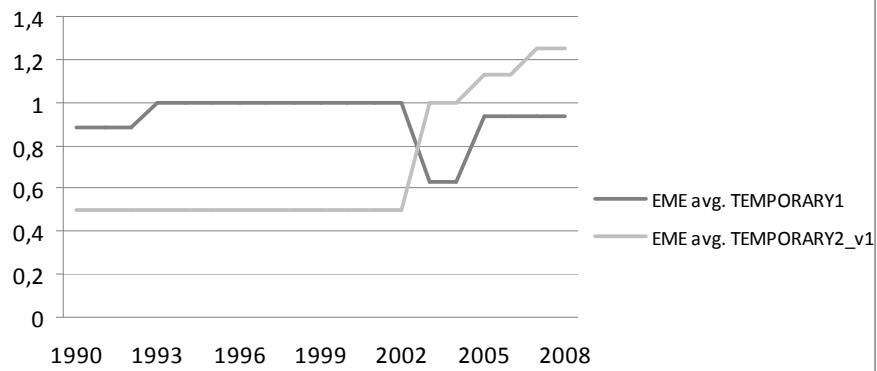
Source: OECD (Indicators EPR\_v1 and EPT\_v1)

### 3. EPL reforms - FTCs inside/outside TWAs



Source: OECD (TEMPORARY1, outside TWAs; TEMPORARY2\_v1, inside TWAs)

#### 4. EPL reforms - FTCs inside/outside TWAs



Source: OECD (TEMPORARY1, outside TWAs; TEMPORARY2\_v1, inside TWAs)

1. Reform types							
	Regulatory context		Political reform pressure		Reforms		Countries
	Regular work	Temporary work	EU-level*	National-level**	Regular work	Temporary work***	
1. <i>Two-tier reforms</i> in high-regulation countries	High	High		X		-	FR, GR, GE, NE, PT, SE
2. <i>Two-tier reforms</i> in low-regulation countries	Low	High		X		-	BE, DK, IT
3. <i>Reregulation</i> of temporary work in countries with high levels of temp. employment	High	High		X	-	+	SP
4. <i>Reregulation</i> of temporary work in countries with low regulation of temporary work.	Low	Low	X			+	UK, IR, PL, CZ, HU
5. <i>Concurrent across-the-board reform</i>	High	Low		X	-	-	SK
6. <i>Deregulation</i> of regular work in countries with low regulation of temporary work.	High	Low		X	-		AT, FI†

\*The two EC directives (1999/70/EC); (2008/104/EC) \*\*The reform pressure on the national level varies between countries and revolves around the following issues: high levels of unemployment, problems of labour market entry (youth unemployment), high levels of temporary employment, and government partisanship \*\*\* No distinction is made here between fixed-term contracts inside and outside TWAs † This reform type is not presented in detail. In Austria the employment protection legislation for regular work was deregulated in 2003; the reform transformed the severance pay legislation into a system of individual savings accounts (OECD 2004). In Finland, the deregulation has entailed a gradual shortening of the notice period in three reforms in 1991, 1996 and 2001.

**2. Legislation on max. duration of fixed-term contracts (outside TWAs) in EMEs after the EC directive on fixed-term work**

	Maximum cumulated duration	Maximum renewals	Objective reasons extending duration	Derogation in coll. agreements
Czech Republic†	2 years. Break of >6 months opens up for a new period.	Unlimited within the 2 years.	Older employees; academic employees; and serious operational reasons. Allow FTCs to exceed 2 years.	No
Hungary†	5 years.* Break of >6 months opens up for a new period.	Unlimited within the 5 years.	Employees in executive positions; employees working with “official approval”	No
Poland†	No††	2	Temporary replacement; seasonal work; specific work; during trial periods. Allow for more than 2 renewals.	No
Slovakia†	3 years. Break of >6 months opens up for a new period.	Unlimited within the 3 years.	Replacement of an employee; temporary increase in workload of max. 8 months; result-based task. Allow FTCs to exceed 3 years.	Yes
Slovenia†	2 years** Break of >3 months opens up for a new period.	Unlimited within the 2 years.	Managerial staff; non-citizen; replacement of temporarily absent worker; elected and appointed officials. Allow FTCs to exceed 2 years.	Yes, for small firms. Negotiated at firm level.

Source: EC 2008 <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=199> \* With the same employer \*\* For same worker and for the same job. Transitional period: 3 years until 2007 (large firms), 2010 (small firms) † Transposition date (all before accession to the EU on 1 May 2004): Czech Republic 1 March 2004; Hungary 1 July 2001 and 1 July 2003; Poland 14 November 2003; Slovenia 1 January 2003; Slovakia 2003 and 2004. †† N.B. That the Supreme Court has ruled in reference to the EC directive that FTCs should not be excessive in length.



### 3. Legislation on maximum duration fixed-term contracts (FTCs) inside and outside TWAs

	FTCs	FTCs (TWA)
Austria†	According to case law renewal leads to the contract being transformed into an opened-ended contract unless objective reasons justify the renewal of the FTC.	No limit regarding maximum duration and number of renewals if concluded for objective reasons.
Belgium***	Maximum duration is limited to 2 years, or 3 years with the authorisation of the social and labour inspectorate. With objective reasons (replacement, temporary increase in workload etc) there are no limits to maximum duration.	Restrictions: replacement of absent workers, temporary increases in work load, or exceptional work. Duration is respectively: 6-12 months; 18 or more if extended by collective agreement; 3 months.
Czech Republic	Maximum duration is 2 years.	Maximum duration is 2 years.
Denmark†	No limit on maximum duration in legislation. Collective agreements and court rulings indicate that maximum duration is between 2-3 years after which notification procedures are required.	No legislation, but regulation in collective agreements. Court rulings suggest 4-5 renewals require notification procedures (no information on court rulings on maximum duration).
Finland†	No limits regarding maximum duration, but for successive contracts they can be subject to examination by the court.	No limits regarding maximum duration, but for successive contracts they can be subject to examination by the court.
France	The cumulated maximum duration is set at 18 months, but varies between 9 and 24 months depending on the reason for its use. FTCs not allowed until after 6 months following dismissals for economic reasons.	Maximum duration is set at 18 months, but varies between 9 and 24 months depending on the reason for its use. Not allowed until after 6 months following dismissals for economic reasons.
Germany	Maximum duration is set at 2 years, and 4 years for newly created enterprises during their first 4 years, and 5 years for workers over 52 years old who are unemployed since at least 4 months. If there is an objective reason the contracts can be renewed further.	No limit of maximum duration.
Greece	The maximum duration is 2 years after which the FTC is transformed into an opened-ended contract.	Maximum duration is 8 months with 1 renewal (total duration 16 months).
Hungary	The maximum cumulated duration is 5 years.	No limit on duration.
Ireland	The maximum cumulated duration is 4 years.	No limit on duration.
Italy	The maximum cumulated duration is 3 years.	No limit on maximum cumulated duration. However, maximum cumulate duration can be set by collective agreements.
Netherlands	The maximum cumulated duration is 3 years. Collective agreements can derogate from national legislation.	After the first year, 8 renewals are allowed, each for 3 months. Maximum cumulated duration is 3 years after which the contract will be transformed into an open-ended contract with the agency.
Poland	No limitations on maximum cumulated duration.	The maximum duration is 1 year. For the replacement of absent workers it is 3 years.*
Portugal***	The maximum cumulated duration is 3 years when there is a fixed date of termination and 6 years when there is no fixed date of termination.	No limit on maximum duration.
Slovakia	Maximum cumulated duration is 3 years. However, when there are objective reasons there is no limit on duration.	No limit of maximum duration.
Slovenia	Maximum cumulated duration is 2 years (3 years for SMEs up until 2010)	Maximum cumulated duration of 1 year.
Spain	The maximum duration depends on the reason for its use. For temporary increase in workload: 6 months (12 if neg. in collective agreements); for other reasons, no limitation, but if the worker has been under contract for 24 months within a period of 30 months, it is transformed into an opened-ended contract. Training contracts: max. 2 years (3 years by collective agreement); for workers with disability: 3 years. For replacement contracts for workers close to retirement: 5 years.	No limit on duration in case of substitution and for contract related to a specific task. Contracts for temporary increase in workload are limited to 6 months and contracts covering temporarily a post during a selection process are limited to 3 months.
Sweden**	Maximum duration is 2 years. Collective	Duration decided in collective agreements.

	agreements can derogate from national legislation.	
United Kingdom	Maximum cumulated duration is 4 years after which the contract will be treated as a opened-ended contract.	No limitation of maximum duration.
<p>Source: EC DG Ecofin LABREF Database <a href="http://ec.europa.eu/economy_finance/db_indicators/labref/index_en.htm">http://ec.europa.eu/economy_finance/db_indicators/labref/index_en.htm</a> - the information is based on the adherent documentation outlining national legislation; EC 2006, 2008 * The information in Poland has been complemented since the information in the documentation did not match the movement of the OECD EPL index with regard to FTCs in TWAs: <a href="http://www.eurofound.europa.eu/eiro/2003/08/inbrief/pl0308103n.htm">http://www.eurofound.europa.eu/eiro/2003/08/inbrief/pl0308103n.htm</a> ** Sweden is not included in the LABREF documentation. Instead national sources have been used. *** Belgium and Portugal also have minimum duration of FTCs: 3 months and 6 months respectively. † N.B. the strong role of the courts in these two countries.</p>		

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<sup>1</sup> Regular work refers to open-ended contracts and temporary work to fixed-term contracts. The relevant OECD indicators are: EPR\_v1 and EPT\_v1. With regard to EPT\_v1, see note 2 below. EPR\_v1 concerns dismissal protection for workers in regular employment and is composed of three subindicators: (1) procedural inconveniences of individual dismissal of employees on regular contracts (item 1-2); (2) notice and severance pay for no-fault individual dismissal (item 3-4); (3) difficulty of dismissal (item 5-8). [www.oecd.org/employment/protection](http://www.oecd.org/employment/protection) Accessed 2010-11-12.

<sup>2</sup> The relevant OECD subindicators are: TEMPORARY1 and TEMPORARY2\_v1. Together they make up the indicator EPT\_v1. TEMPORARY1 is composed of three items: (1) valid cases for use of fixed-term contracts; (2) maximum number of successive fixed-term contracts; (3) maximum cumulated duration of successive fixed-term contracts. TEMPORARY2 is composed also of three items: (1) types of work for which temporary work agency employment is legal; (2) restrictions on number of renewals of temporary work agency contracts; (3) maximum cumulated duration of successive temporary work agency contracts. [www.oecd.org/employment/protection](http://www.oecd.org/employment/protection) Accessed 2010-11-12.

<sup>3</sup> [http://ec.europa.eu/economy\\_finance/db\\_indicators/labref/index\\_en.htm](http://ec.europa.eu/economy_finance/db_indicators/labref/index_en.htm) Accessed 2010-12-03.

<sup>4</sup> The included countries are: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom. For national reforms, the article makes use of the OECD EPL-indicators, a new database constructed in cooperation between Fondazione Rodolfo De Benedetti and IZA (Not yet published online: <http://www.frdp.org>), features and news articles from the European Industrial Relations Review, and secondary literature. For information on the transposition of the EC directive on fixed-term work (1999/70/EC), the article relies on publications by the EU Commission EC. 2006. *Commission Staff Working Document. Report by the Commission services on the implementation of COUNCIL Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP (EU-15)*, EC. 2008. *Commission Staff Working Document. National Legislation Transposing Directive 1999/70/EC on Fixed-Term*

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*Work in the EU 10.* For information on regulation regarding FTCs inside and outside TWAs, the article has made use of Ecofin's database LABREF:

[http://ec.europa.eu/economy\\_finance/db\\_indicators/labref/index\\_en.htm](http://ec.europa.eu/economy_finance/db_indicators/labref/index_en.htm) Accessed 2010-12-03.

<sup>5</sup> The use of political-economy types from the Varieties of Capitalism literature is justified since the typology includes labour market regulation.

<sup>6</sup> Figure 1 and 3 includes data for the following countries – CME/MMEs: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Portugal, Spain, Sweden; LMEs: Ireland and the UK.

<sup>7</sup> Figure 2 and 4 includes data for four EMEs: Czech Republic, Hungary, Poland and Slovakia. Slovenia is not available in the OECD index.

<sup>8</sup> N.B. The regulation of employment protection for regular workers is stronger in the CEEC countries than in the LMEs.

<sup>9</sup> While the large majority of reforms are covered by the OECD EPL-index there are a few exceptions: the two reforms on temporary employment in France in 1985 and 1986 are not included while the reform concerning regular employment is represented in the index. So is also the case with the deregulation of temporary work in Italy in 1987.

<sup>10</sup> Art. 18 in the 1970 Workers Statute stipulates that, in firms employing more than 15 employees, any worker deemed by the court to have been dismissed without just cause or a valid economic motive has a right to choose between monetary compensation (15 months of wage) or *re-integration* in the previous job, which also entails that the employer must pay retroactive wages and social contributions. This provision does not apply to those employed in firms with less than 15 employees, where those deemed to have been dismissed without just cause or a valid economic motive are only entitled to modest monetary compensation (set by the judge at a level between 2.5 and 6 monthly wages, that can be increased up to 10 monthly wages for those with more than 10 years of firm seniority, and up to 14 for those with more than 20 years of firm seniority), unless the employer decides to *rehire* the worker, thus establishing a new contract, whereby the worker loses his/her previous seniority (and no retroactive contributions nor wages are due).

<sup>11</sup> The information on the transposition of the EC directive is taken from: EC. 2008. *Commission Staff Working Document. National Legislation Transposing Directive 1999/70/EC on Fixed-Term Work in the EU 10*. For a similar study of the EU-15 see: EC. 2006. *Commission Staff Working Document. Report by the Commission services on the implementation of COUNCIL Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP (EU-15)*.

<sup>12</sup> In Western Europe, most countries had legalised temporary work agencies earlier in the 1960s and 1970s (Netherlands, Denmark, Ireland, Germany, France, UK, Belgium); in the 1980s (Austria, Portugal), and in the 1990s (Sweden, Spain, Italy). Finland and Greece legalised such agencies in 2001 – Coe, Neil, Jennifer Johns, and Kevin Ward. 2006. *Regulating Temporary Staffing: the geographical unevenness of national labour market legislation. Working Brief, University of Manchester* (18).

<sup>13</sup> In addition, there existed a possibility for employers to by-pass the Labour Code by using a special form of task-based contracts, so-called “civil contracts.” These fell under the Civil Code, which contained no provisions on employment regulation and had been intended for independent workers. Statistically, these contracts are usually included in the self-employment category - Cazes, Sandrine, and Alena Nesporova. 2003. *Labour markets in transition: Balancing flexibility & security in Central and Eastern Europe*. Geneva: ILO. P. 46.

<sup>14</sup> [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/employment\\_rights\\_and\\_work\\_organisation/c10822\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/employment_rights_and_work_organisation/c10822_en.htm) Accessed 2011-04-12.

<sup>15</sup> N.B. TWAs can also hire on an open-ended contracts.

<sup>16</sup> Defined as the number of full-time equivalents - as supplied by Ciett National Federations - divided by the total active working population - as published by the ILO.