



# 20

## Labour Market Segmentation, Regulation of Non-Standard Employment, and the Influence of the EU

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In the wake of the 1970s oil crisis, labour markets in Organisation for Economic Co-operation and Development (OECD) countries changed considerably: deindustrialisation, low economic growth and high structural unemployment went along with tertiarisation and increasing female labour market participation—all challenging the standard employment relationship (SER), in other words, an institution built around the permanently full-time employed male breadwinner working for a fixed employer. Furthermore, in the 1990s, the OECD’s “Job Strategy” promoted labour market flexibilisation to combat unemployment (McBride and Watson 2019) and furthered the spread of non-standard forms of employment (NSER) such as fixed-term, part-time, and agency work. In the early 2000s, the European Union (EU), turned to favouring *flexicurity*—a combination of flexibility and security (Deakin and Reed 2000). Lately, the OECD has changed its goals towards education and training

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of the workforce and a more preventive protection against labour market risks (McBride and Watson 2019).

In line with these contradictory goals, we find diverging results regarding the development of labour regulation. Using OECD data on employment protection legislation, Gebel and Giesecke (2016) identify a decline in protection levels in European countries between the 1990s and 2008, while Allard (2005) indicates an increase in labour regulation between 2000 and 2005. The latter has been confirmed by several studies (Fenwick et al. 2015; Adams et al. 2017) that look at the last two decades and collect their own data. Most quantitative research assesses the effects of labour regulation on unemployment or economic development. Only recently have studies in political economy questioned whether regulatory patterns are accompanied by particular forms of empirical labour market dualisation (Emmenegger et al. 2012) or segmentation (Emmenegger and Marx 2020; Barbieri and Cutuli 2016). However, they often focus on the development of dismissal protection and the liberalisation of non-standard forms of employment but hardly look at regulations concerning equal treatment by gender and non-standard forms of work. Moreover, the story about whether EU membership has had any impact on national NSER regulation in the OECD still has to be told.

## 1 Labour Market Development and Segmentation Since the Oil Crisis

In the 1950s and 1960s, the modern welfare states of most OECD countries were built around the construct of a SER (Mückenberger and Deakin 1989). Institutions connected to the SER upheld strong labour standards such as dismissal protection, working time restrictions and family wages, but also social protection such as health and unemployment insurance. As it was the first time in history that blue-collar workers were able to achieve modest prosperity, the post-WWII period was termed the *Golden Age of Capitalism* (Esping-Andersen 1999). On the downside, the SER was associated with a gendered division of paid and unpaid labour expressed by a male breadwinner model that to a great extent made women economically dependent on their husbands (Orloff 1993).

After the oil crisis in 1973, labour markets changed considerably and the *Golden Age* came to an end. The period was marked by low growth, increasingly saturated product markets, and skill-biased technological change that taken together resulted in deindustrialisation, in other words, a strong decline of the manufacturing sector, and relatively high levels of structural unemployment. In the context of strained fiscal balances, welfare states resorted to retrenchment policies and the flexibilisation of labour markets (Eichhorst et al. 2008). At the same time, societal change resulted from a general expansion of educational attainment and the rise of women's movements supporting increased female labour market participation. This both reacted to and created an increasing demand for non-manual routine occupations mostly located in the expanding service sector (Oesch 2006). Since the provision of childcare facilities lagged behind demand, the different trends resulted in an overall increase in female part-time employment, although with large differences according to country-specific models of defamilialisation (Esping-Andersen 1999).

As NSER were used by employers to "circumvent" direct and indirect costs associated with the SER, labour market segmentation increased. NSER did not fulfil the criteria for social protection in the same way as the SER, which shifted risks and responsibilities back from the employers to the workers. Hence, fixed-term employment and agency work clearly served employers' flexibility needs, while part-time employment met the needs of women who tried to balance the double burden of paid labour and care work. In conservative welfare states, part-time employment was nevertheless associated with insufficient individual protection with respect to social security entitlements (Esping-Andersen 1990). Furthermore, lower wages often reflected a devaluation of "female" occupations and the perception of women as secondary earners (Minkus and Busch-Heizmann 2018).

Growing unemployment and deindustrialisation generally weakened unions' power. However, the manufacturing sector and the public sector remained strongholds of union organisation. In the private services, the mobilisation of the growing share of flexible employees and women was more difficult. Declining union power was accompanied by lower collective bargaining coverage and lower-wage floors in countries without specific legal support for unions' representation or organisation (Müller et al.

2019). In many countries, protection of so-called “insiders” was still strengthened, but rising social inequalities also raised demands for better protection of the so-called “outsiders” (Rueda 2014).

The EU promoted a policy of labour market flexibility based on a deregulatory, neoliberal approach combined with security measures. The neoliberal aspects were expressed in the Council’s recommendations in 1997 on the framework for the European Monetary Union and in the Stability and Growth Pact in 1999. At the Luxembourg summit in 1997, guidelines for European employment policies also envisaged collective solutions to reconcile flexibility and security and stressed the equal opportunities pillar (Deakin and Reed 2000). When the concept of flexicurity was proposed in the Lisbon Strategy in 2000, experts perceived it as a softening of the purely neoliberal approach.

Looking at equal treatment, the EU launched directives to combat several kinds of discrimination in the new millennium (2000/43/EC; 2000/78/EC). Demands for more gender-equal employment (von Wahl 2005) were answered shortly afterwards with policies emphasising equal treatment of men and women in employment, vocational training and promotion (2002/73/EC). Starting already in 1993, this was framed by measures that enhanced the equal treatment of NSER (Walby 2004), such as directives on part-time (1997) and fixed-term employment (1999) as well as agency work (2008; 2008/104/EC). It is important to highlight that NSER equal treatment policies were intended to protect not only non-standard employees from abusive employment conditions but also SER workers from being undercut by NSER workers (Peers 2013).

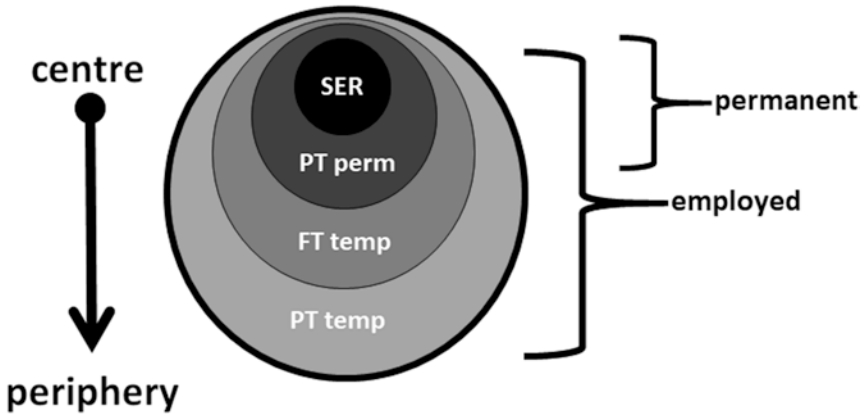
We ask how EU policies translated into national legislation. We look at the strength of SER and NSER regulation in selected European countries and whether it coincides with the share of NSER in national labour markets. Furthermore, we explore whether EU membership is associated with particular regulatory patterns in contrast to other OECD countries. As the EU played a decisive role in addressing demands for more gender-equal employment (von Wahl 2005) and equal treatment of non-standard employees (Walby 2004), we assume that the membership in this supranational organisation made a difference in the development of national employment regulation patterns.

## 2 Methods, Data, and Indicators

In the following, we retrace how the development of NSER regulation and labour market segmentation played out in selected European countries. For this purpose, we combine labour market data from the 2017 European Labour Force Survey (EU-LFS) with indicators from the 2017 Cambridge Centre for Business Research Legal Regulation Index (CBR-LRI; Adams et al. 2017).

We use the share of different forms of NSER in contrast to the SER as an indicator for labour market segmentation. We focus on all employees aged twenty to sixty-five years and base our analysis on weighted, aggregated microdata from 1984 to 2013, the period both datasets cover. We chose an approach that combines contract and social space and depicts employment relationships based on their “distance” from the SER, for example, the permanent full-time employee. Putting the SER at the centre, we distinguish permanent part-time, temporary full-time, and temporary part-time (see Fig. 20.1); data limitations prevented us from considering agency workers. Depending on the social protection system, this differentiation of employment relationships might cover the full range from protected integration to unprotected marginalisation, where the spread of NSERs might indicate the increasing vulnerability of employees in the labour market.

We capture labour regulation with data from the CBR-LRI 2017 which measures de jure labour regulation based on individual labour law and similar norm-setting documents such as collective agreements. It covers the period from 1970 to 2013 and applies leximetrics—an approach that quantifies the strength of law. In the following, we focus on three dimensions: *NSER equal treatment*, *NSER restriction*, and *dismissal protection*. In the case of the latter we replicated Adams et al. (2017) and measured it using the mean of equally weighted indicators; it indicates the general level of protection enjoyed by the SER. In the case of NSER regulation, we split up the CBR-LRI dimension *different forms of employment* according to the function of norms. The dimension NSER equal treatment captures whether the law stipulates that part-time, fixed-term, and agency workers are treated in the same way as employees with an SER. In contrast, NSER restriction reflects to what extent non-standard employment is controlled or even prohibited and the degree of



**Fig. 20.1** Contract-spatial concept of labour market segmentation. (SER = standard employment relationship, PT = part-time, FT = full-time, temp = temporary, perm = permanent. Source: own conception)

labour market flexibilisation. The scale of the three dimensions ranges from 0 to 1, and values closer to 1 indicate high regulation or highly restricted NSER; the indicators for the three dimensions are presented in Table 20.1.

Figure 20.2 combines our indicators for labour market segmentation and NSER regulation for a selection of the few countries for whom almost three decades of information is available, but nonetheless represent most divergent cases according to various typologies: the three types of *legal labour regulation* (Mückenberger and Supiot 1999; Deakin 2000) are represented by France (rights according to citizenship guaranteed by the state), the UK (rights according to the market based on equal competition) and Germany (rights according to status ascribed by the collective); different *worlds of welfare capitalism* (Esping-Andersen 1990) are represented by the inclusion of conservative (Germany, France), liberal (UK), social-democratic (Denmark), and southern (Italy) welfare states; *varieties of capitalism* (Hall and Soskice 2001) are represented with coordinated (Denmark, Germany, the Netherlands), liberal (UK), and ambiguous (France, Italy) market economies; and role models of the *flexicurity discourse* with the Netherlands and Denmark (Wilthagen and Tros 2004). To demonstrate the influence of membership in the supranational body

**Table 20.1** Indicators for the dimensions of labour regulation

Dimensions	Indicators
NSER equal treatment <sup>a</sup> ( <i>high value = equal treatment to SER</i> )	<ul style="list-style-type: none"> <li>part-time workers have the right to equal treatment with full-time workers</li> <li>the cost of dismissing part-time workers is equal in proportionate terms to the cost of dismissing full-time workers</li> </ul>
NSER restriction* ( <i>high value = high restriction</i> )	<ul style="list-style-type: none"> <li>fixed-term workers have the right to equal treatment with permanent workers</li> <li>agency workers have the right to equal treatment with permanent workers of the user company</li> <li>fixed-term contracts are allowed only for work of limited duration</li> <li>maximum duration of fixed-term contracts</li> <li>agency work is prohibited or strictly controlled</li> </ul>
Dismissal protection ( <i>high value = high protection</i> )	<ul style="list-style-type: none"> <li>legally mandated notice period</li> <li>legally mandated redundancy compensation</li> <li>minimum qualifying period of service for the normal case of unjust dismissal</li> <li>law imposes procedural constraints on dismissal</li> <li>law imposes substantive constraints on dismissal</li> <li>reinstatement normal remedy for unfair dismissal</li> <li>notification of dismissal</li> <li>redundancy selection</li> <li>priority in re-employment</li> </ul>

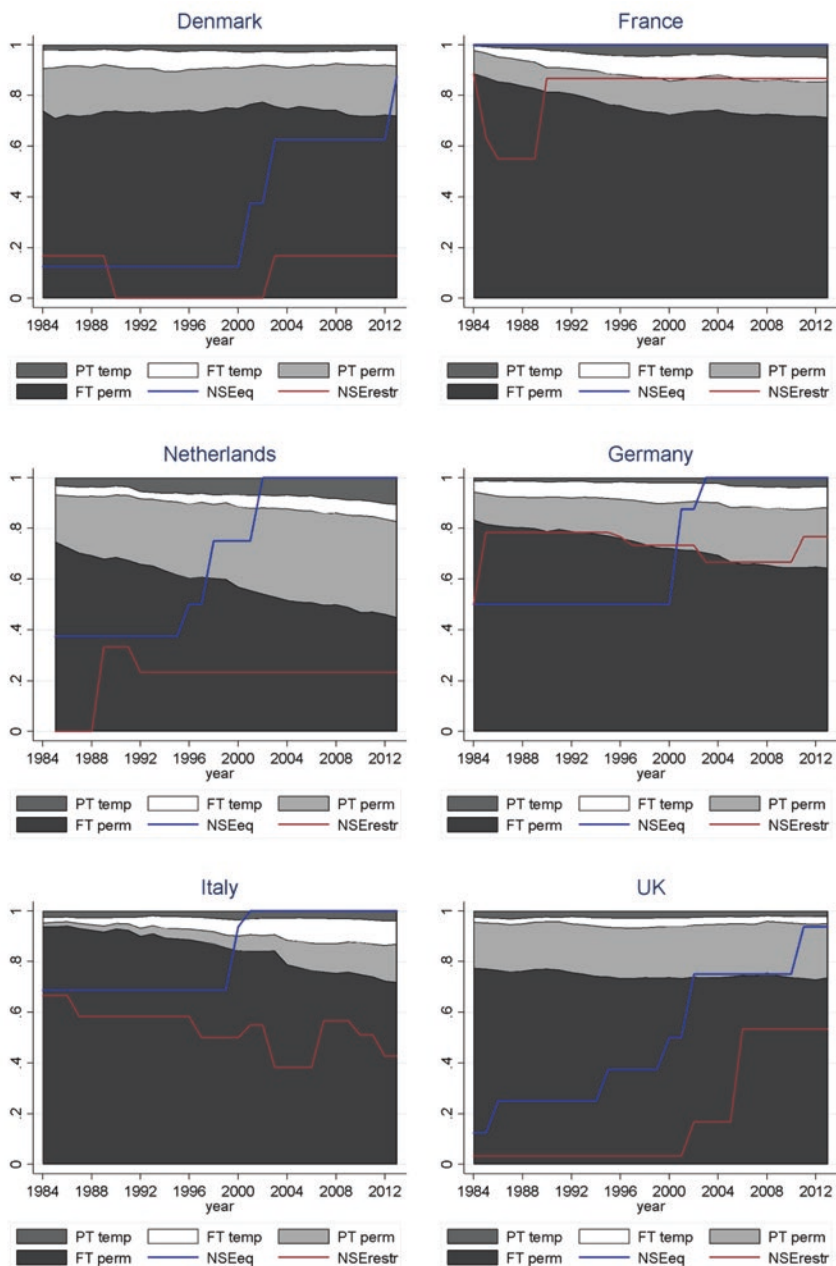
Source: CBR-LRI

<sup>a</sup>Own classification

on national labour regulation, we contrast the development of labour regulation in EU member countries with that of other OECD countries. Because of data restrictions, we cannot show trends for Eastern European countries, Chile, and Israel.

### 3 Labour Market Segmentation and Employment Regulation in EU Countries

We find a general trend of expansion of NSER since the 1980s with different impacts in the various countries: The most drastic change in employment forms can be observed in the Netherlands where SER shrank from 75 percent in 1985 to 45 percent in 2013, while permanent



**Fig. 20.2** Labour market segmentation (rate) and NSER regulation (index value) by country. (Sources: EU-LFS 2017, CBR-LRI 2017; own weighted analysis; PT = part-time, FT = full-time, temp = temporary, perm = permanent, NSE = non-standard employment, eq = equal treatment, restr = restriction)

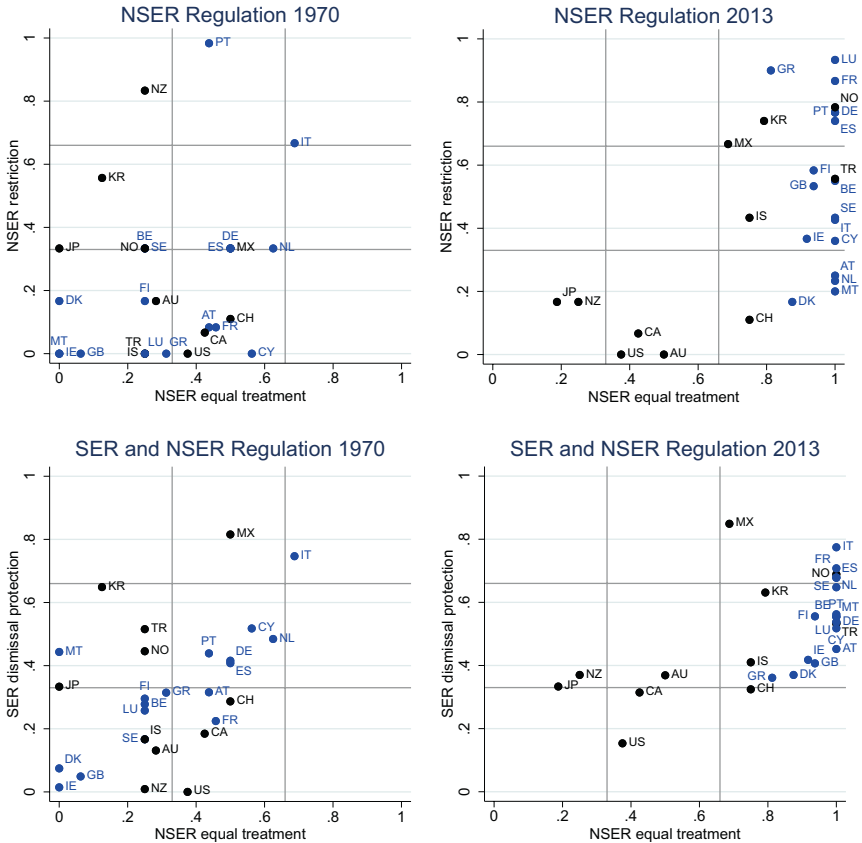


part-time employment doubled (from 19 to 38 percent) and temporary part-time employment tripled (from 3 to 10 percent). A more moderate development occurred in France, where the SER declined from 89 to 71 percent, while temporary full-time employment quadrupled (from 2 to 9 percent). In contrast, we find a more or less stable SER in Denmark and the UK.

The variation in this trend of more or less strengthened labour market segmentation is not unilaterally related to NSER regulation. Interestingly, both between-country and within-country comparisons of the impact of NSER restriction on the share of NSER yield no conclusive results: both the UK and Denmark demonstrate low restriction levels for NSER, but nevertheless have high SER shares, while highly restricted France and Germany show relatively high shares of NSER. Furthermore, the development of NSER seems to be independent of changes in the restriction level: in Germany and the Netherlands, temporary employment was rising between the mid-1980s and mid-1990s, although there was an increase in aggregated restriction levels, while changes in NSER restriction did not affect the distribution in Denmark and the UK. However, we can see that NSER equal treatment regulation was strongly increased in all countries during the mid-/late 1990s (with the exception of France, where it was constantly at an all-time high), and that the increase in NSER clearly preceded that event. It demonstrates that equal treatment regulation was rather a reaction to than a cause of increased NSER.

## 4 Comparing Particular Elements of Employment Regulation in EU and Non-EU Countries

With an enlarged sample of OECD countries, we can find clear distinctions between EU and non-EU countries with respect to equal treatment regulations over time. Figure 20.3 shows scatter plots of NSER and SER regulation for OECD countries in the years 1970 and 2013. Comparing the upper two plots, in 1970 we see low NSER restrictions in most countries, while NSER equal treatment levels are low to medium. South Korea, New Zealand, Portugal, and Italy were outliers, displaying medium



**Fig. 20.3** Individual labour regulation (index values) by country and year. (Sources: CBR-LRI 2017; own weighted analysis; blue = EU member countries, black = other OECD countries)

to high restriction levels, while the latter even had strong equal treatment laws. During the late 1990s, equal treatment regulation strongly increased in all European countries. In 2013, we observe high NSER equal treatment levels among all EU member and affiliated countries, while NSER restrictions ranged from low to high with Luxembourg and Greece at the top and Switzerland and Denmark at the bottom. In contrast, all non-European liberal welfare states with liberal market economies still display low levels of NSER restriction and low to medium NSER equal treatment. While the US and Canada have not moved at all, New Zealand has

drastically reduced restrictions, and Australia slightly decreased restrictions but increased equal treatment legislation. Thus, the move towards high equal treatment regulation of the liberal market economies UK and Ireland can be perceived as an indication of EU influence. Among the non-European countries, only South Korea and Mexico also show high NSER regulations, both with regard to restrictions and equal treatment.

The lower part of Fig. 20.3 connects NSER equal treatment laws to the core of SER regulation, in other words, the strength of dismissal protection. Focusing on the year 2013, we observe that the high equal treatment legislation in European countries was unrelated to the level of dismissal protection, which covered a wide range of values. For the non-European countries, however, there seemed to be a link between the level of SER regulation and the strength of equal treatment: countries with high to medium SER dismissal protection showed medium to high levels of NSER equal treatment (South Korea and Mexico), while countries with low to medium dismissal protection had also low to medium equal treatment levels (e.g. Japan, the US, and Canada). This makes sense, as in countries with low SER regulation, NSER are “by default” treated equally, for example, all employment relationships are equally unprotected. Equal treatment laws become necessary where SER regulation is high. To a certain extent, we can perceive high equal treatment laws in European countries with low SER regulation as an artefact driven by the equal treatment directives of the EU.

## 5 Conclusion

Our findings emphasise that the strength of NSER regulation is surprisingly not associated with its frequency in the labour market: highly-regulated countries do not necessarily display low shares of NSER and vice versa. We observe that the restrictions on fixed-term contracts do not effectively limit the discretionary power of employers to use such forms of employment. We assume that the spread of part-time employment is rather related to gender role models or cultural values, and the enabling of mothers’ labour market participation through defamilising measures such as the provision of (public) care facilities. Furthermore, our findings suggest that intensified NSER regulation is a reaction to the spread of non-standard

forms of employment especially in countries with high SER regulation where inequalities in employment protection become blatant.

Looking at international interdependencies, there seems to be a direct influence of EU membership on patterns of legal regulation. Most EU countries have increased their NSER restrictions. This stands in clear contrast to the constantly low regulation in liberal countries outside of the EU—although in 2013 there is still a huge variation between restriction levels within the EU. The pattern of extremely high NSER equal treatment regulations in all EU countries is far more apparent. Here, EU members and affiliated countries clearly stand out from other OECD countries.

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