



Sabina Stiller

Between incremental changes and large shifts

The development of employment institutions in five EU countries and the United States (1990 - 2016)

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The development of employment institutions in five EU countries and the United States (1990-2016)

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Contents

Between incremental changes and large shifts.....	2
The development of employment institutions in five EU countries and the United States (1990-2016).....	2
Abstract.....	5
1. Introduction	6
Overview of country selection and structure	6
2. United States: A very liberal labour market at the price of large inequalities?	9
Summary	9
2.1 Salient characteristics of labour law and industrial relations.....	9
2.2 Important changes in employment institutions 1990-2016	11
2.3 Reasons for changes.....	13
2.4 Trends in employment institutions over time 1990-2013	13
2.5 Issues affecting the labour market.....	15
3. United Kingdom: dual industrial relations in a largely voluntarist system.....	17
Summary	17
3.1 Salient characteristics of labour law and industrial relations.....	17
3.2 Important changes between 1990-2016.....	19
3.3 Trends in employment institutions over time 1990-2013	21
3.4 Issues affecting the labour market.....	23
4. Germany: Strong employee representation and a dualizing workforce	25
Summary	25
4.1 Salient characteristics of labour law and industrial relations.....	25
4.2 Important changes between 1990-2016.....	28
4.3 Illustration of trends 1990-2013	30
4.4 Issues affecting the labour market.....	32
5. The Netherlands: still searching for a balance between flexibility and (job) security?...	34
Summary	34
5.1 Salient characteristics of labour law and industrial relations.....	34
5.2 Important changes between 1990-2016.....	37

5.3 Illustration of trends 1990-2013	40
5.4 Issues affecting the labour market.....	41
6. Hungary: Eastern European style labour market flexibility?	43
Summary	43
6.1 Salient characteristics of labour law and industrial relations.....	43
6.2 Important changes between 1990-2016.....	48
6.3 Illustration of trends 1990-2013	50
6.3 Issues affecting the labour market.....	51
7. Denmark: Flexicurity and a large role for labour organisations	53
Summary	53
7.1 Salient characteristics of labour law and industrial relations.....	53
7.2 Important changes between 1990-2016.....	57
7.3 Illustration of trends 1990-2013 in various dimensions of employment institutions and expert opinion	59
7.3 Issues affecting the labour market.....	61
8. A comparative view on countries' situation and the direction of change in employment institutions	63
Issues affecting countries' labour markets: general trends versus country-specific issues	70
9. Conclusion.....	71
Acknowledgements.....	73
References	74
Appendix	77
Interviews with country experts	77
The Netherlands	77
Germany	77
Hungary	77
Denmark	77
United Kingdom.....	77
United States	77

Abstract

This paper gives a comparative overview of employment institutions in six countries: the United States, the United Kingdom, Germany, the Netherlands, Hungary and Denmark. It investigates the direction of change in employment institutions and describes the underlying reasons for the changes and important issues influencing national labour markets during the past 25 years based on expert interviews and literature study. An overall comparison of the recent situation of employment institutions reveals, first, that the selected countries show relatively large variation on the protection of the individual and collective employment relationships and employment conditions. Most countries experienced different reform trajectories - in terms of timing and the nature of changes - on the aspects of work related to labour law (individual and collective employment relationship, employment conditions). Second, in terms of reasons for the changes that occurred, there was one strong incentive for EU countries to adapt institutions in the same direction (except for the United States which continued on a course of minimal state invention in the sphere of employment). A prominent reason for varying directions of change across countries is related to governments' policy agendas, which differ because of country-specific contextual factors including the perception of problem pressures, the type of coalition government in place, and political and/or societal opposition to proposed changes. In some other aspects of work – e.g. labour market transitions - countries did follow roughly the same direction of change, for instance, as seen in the spread of the activation paradigm, albeit with country-specific gradations and variations in strictness on positive and negative incentives to get back into work. Third, as issues affecting labour markets in all countries, we identified the expansion of non-standard forms of work, transformative economic change and shifts in business organization and weakening of unions as overarching. Furthermore, labour markets were also subject to country-specific challenges. All in all, since 1990, a remodeling of the broader landscape of employment institutions - including employment-related policies – has been going on against the background of a rapidly changing economic and business context with numerous implications for labour markets. We end the paper with some suggestions for forward-looking thinking and creativity on the part of leading policy-makers and unionists.

Key words: employment institutions, labour law, industrial relations, labour market trends, comparative research

1. Introduction

This paper aims to provide a comparative overview of changes in employment institutions, their underlying reasons in six developed countries and important issues influencing national labour markets during the past two and a half decades. It adds a qualitative dimension to the AIAS Value of Work project by providing more country-specific in-depth knowledge to an earlier quantitative overview of employment institutions in 36 EU and OECD countries (Stiller and de Beer 2017) especially filling in gaps in knowledge where quantitative indicators on institutions are lacking, and adding more recent knowledge about change since 2013 (=year when the dataset ends). Examining countries from each of the clusters in greater depth, Germany, The Netherlands, Denmark, United Kingdom, Hungary and the United States will serve as cases. We look at employment institutions concerning various aspects of work including country-specific features of labour law and legislation pertaining to industrial relations, as well as adjacent policies regulating continuous vocational training, work-to-work transitions and the relationship between work and care activities.

Overview of country selection and structure

In a recent meta-analysis of employment institutions based on data of 2013 (Stiller and de Beer 2017), we identified five country clusters among OECD and EU countries, including an Anglo-Saxon, a 'Mixed', a Conservative, a Central Eastern European and a Scandinavian cluster. From each of these clusters, one country was selected: the United States, United Kingdom (being the biggest country in the 'Mixed' cluster), Germany (being the biggest country in the Conservative cluster) *and* the Netherlands (being the country of the investigators), Hungary, and Denmark. The structure of the paper is as follows. In paragraphs 1 through 6, we cover each country separately. The research questions are: What have been the most important changes in the various aspects of work and why did they occur; and, what were important issues impacting the country's labour market?

First, we provide a brief sketch of a country's situation in terms of labour law and the regulation of industrial relations¹. This part is based on desk research, using sources like the most recent country monographs (2010-2016) of the International Encyclopedia of Labour Law and Industrial Relations, *IELLIR* (year of publications varies per country), comparative reports of academic networks (e.g. International Review of Leave Policies and Related Research) and international organisations (EU and related agencies, OECD) and other (comparative) academic literature. Given time restrictions, country introductions are heavily based on countries' legal and industrial relations system descriptions written by

¹ The country introductions are intended as orientation only, for more details, the reader may refer to the various sources listed in the bibliography.

authoritative country experts writing for the *IELLIR* (which should be consulted for more details and background reading by interested readers), rather than on a collection of other sources. For the investigation of changes in employment institutions, we use the following categories or ‘aspects of work’:

- individual employment relationship,
- collective employment relationship,
- employment conditions,
- personal development/training (continued vocational training),
- labour market transitions,
- reconciliation of work and care.

For these, we highlight important changes between 1990-2016 and their underlying reasons. In addition, there is an overview of country-specific labour market trends or issues (with possible connections to changes in legislation and regulation).

This part is predominantly based on the views expressed by 13 country experts (three on the US, two on Denmark, two on Germany, one on the Netherlands, four on Hungary, four on the UK, see the appendix for experts and their affiliation). They were selected from personal networks of various AIAS senior researchers and/or by expert referral, the main criterion being broad experience with developments in labour law and/or employment related policies in the last few decades. If experts indicated their preference to focus on particular areas, additional experts were consulted in order to cover all aspects of work. Where experts felt unable to comment on (changes in) particular aspects of work, additional literature was consulted to describe the situation and changes therein. Expert interviews took place between October to December 2017, mostly face-to-face and some by Skype (for US experts).

Interviews lasted for about an hour (or longer in some cases), and were based on semi-structured interview schedules with broad questions on institutional changes in the various aspects of work; the underlying reasons for them; and on country-specific issues that influenced labour markets (and possibly institutional changes). In addition, experts were asked to comment on the positioning of their country in a particular cluster in the aforementioned meta-analysis, and, finally, to reflect on data showing clear shifts over time in certain aspects of work. Each country profile ends with this discussion including the graphical illustration of some trends between 1990-2013 (often in the individual employment relationship and in employment conditions) that displayed large changes. Following the country profiles, a comparative section looks at countries’ recent situation,

the direction of changes in the various aspects, as well as labour market issues, discussing similarities and differences in terms of changes. The paper concludes by summarizing the findings and outlining some lessons for policy-makers and unions.

2. United States: A very liberal labour market at the price of large inequalities?

Summary

Individual labour law offers hardly any protection, while 'at will' employment contracts dominate. Collective labour relations enjoy a very low level of federal statutory protection, matched by a very low level of federal protection of employment conditions. There is an all-embracing activating labour market policy in place. Provisions for the reconciliation of work and care are mostly lacking on the federal level. Personal development and learning is employees' own responsibility.

2.1 Salient characteristics of labour law and industrial relations²

One distinguishing feature of the US employment system is the view of employment as an 'at will' arrangement. In practice, a worker can quit for any reason at any time or the employer can dismiss the worker for any reason at any time without resulting liabilities. If employees have a recognized collective bargaining agent, the terms and conditions of employment are established with considerable specificity by collective bargaining (most often at the firm level). Therefore, collective agreements are more detailed and comprehensive than collective agreements in other systems; they are long and detailed documents that encompass nearly every aspect of labour–management relations. In this context it is notable that contractual rights of union represented workers are normally protected through enforcement of the collective agreement, not through enforcement of the individual employment contract. Another characteristic is the separate body of quasi-legal rules developed through a private system of grievance arbitration based on by collective bargaining. Such rules formally recognize normal labor-management practices, workplace customs ('law of the shop'), and the special characteristics of the collective bargaining process as important reference points for interpreting collective agreement. Unionized American workers are represented by a single union selected by majority choice. The selected union is the sole representative of all workers in the bargaining unit, regardless of whether they are members of the union (this is known as the 'exclusivity principle'); however, in the great majority of firm no bargaining representative exists. Where it is present, union representation is more intrusive and inclusive here than in most other industrial nations, but, overall, collective representation plays a smaller role in the United States than it does in most other advanced economies. American unions rely upon political

² This section is based on "General Observations" in Goldman and Corrada (2014), pp.23-27.

action to achieve their goals less often than do their counterparts in most other advanced economies. Similarly, although the government supervises and assists the collective bargaining process, it rarely intrudes into the actual adjustment of the parties' respective interests resolved through collective bargaining. American labor law imposes rules upon the conduct of internal union affairs so as to ensure democratic processes and to protect against abuses of trust. A final characteristic worth mentioning is the very active role lawyers play throughout the labor–management and employment relations system in various ways: by providing guidance for managers and union representatives respecting the bureaucratic mazes through which the laws are administered; by working in government agencies that regulate employment relations; by representing the parties in frequently used public and private adjudicative processes; and by assisting in planning and execution of contract negotiations, writing and interpretation.

Looking back in history, for labour law and industrial relations, the mid-1930s when the US experienced the Great Depression proved to be crucial. Then, government intervention in the form of laws designed to facilitate collectivization of worker bargaining power, and to compel employers to bargain in good faith, enabled the representatives of labor, through the process of collective bargaining, to achieve dramatic economic and social gains. The latter generated considerable political confidence in the viability of the collective bargaining system. In the 1980s, however, this confidence that began to decline with the severe reduction in the unionization rate. The 1930s also saw the adoption of fundamental worker protective legislation: minimum wage and overtime pay laws, workers' compensation laws, child labor laws, and retirement security insurance laws. These laws were reminiscent of legislation that most other industrial nations had adopted 10 to 30 years earlier.

Today, the American economy is largely a management-led system with a moderate degree of governmental oversight. Labour–management relations law still emphasizes private dispute resolution and adjustment of interests between the representatives of management and labour organizations (trade unions). The reliance on private dispute resolution expanded into a significant portion of individual employment arrangements, as employers typically impose such provisions for resolution of all disputes arising out of employment contracts. However, most American workers remain unorganized and only a few segments are predominantly organized. Neither the system of collective bargaining nor individual employment arrangements have adequately solved many social and economic problems that grow out of the employment system for producing and distributing wealth. Instead, public welfare programmes and some private welfare funds meet the basic material needs of most people who are disadvantaged. Despite these efforts, since the early 1980s there has been little if any reduction in the number of those whose needs are not met, while welfare programs for the poor have been significantly curtailed at the same time. On top of this, as a result of the Great Recession starting in 2007, the number of impoverished and

near impoverished Americans has significantly grown. Some claim that collective bargaining is to a large degree responsible for the

inequities, inefficiencies, and structural dislocations that continue to frustrate the achievement of widely shared ideals. In recent decades, concerns respecting inadequacies of labor and employment laws, standards, and practices have been neither sufficiently intense nor widespread to promote or support sharp departures from the status quo. Through the ongoing party-political polarization of federal politics and the start of the Trump presidency in early 2017, hardly any change is expected in the short to medium term.

2.2 Important changes in employment institutions 1990-2016

Table 1 summarizes the most important changes in the various aspects of work indicated by American labour law experts in the context of our study. Regarding the individual employment relationship, there was more attention paid to anti-discriminatory legislation, both in the federal and in the state contexts, while at the same time employees' access to litigation was made more difficult, partially by greater costs, partially by employers restricting that access through clauses in employment contracts. Generally speaking, there has been a trend to less job security, in line with the demise of the standard employment relationship.

In the sphere of the collective employment relationship, strike levels have been reaching very low levels due to a change in employer strategy towards using replacements. As for employment conditions, the stagnation in the federal minimum wage was highlighted (while more positive developments can be seen on state and local levels), and as a very recent development, harassment in the workplace has drawn considerable attention. An important development in the sphere of conciliating work and care has been the federal 1993 Family Medical Leave Act, which is almost singular. State-level legislation and some local level initiatives also introduced the possibility for certain forms of leave. The recently proposed federal Family Act (September 2017) would create a comprehensive national program that helps meet the needs of new mothers and fathers as well as people with serious personal or family health issues through a shared fund that makes paid leave affordable for employers of all sizes and for workers and families (National Partnership for Women and Families 2017).

There have not been improvements in access to child care services (in daycare centres or through nannies), which keeps being dependent on income situation and place of residence. The US does not have a statutory, designated and paid maternity leave entitlement: there is no national provision for paid leave for women at the time of pregnancy and childbirth,

though the possibility of taking up unpaid leave exists for mothers working for employers with 50 or more employees (Blum et al 2017).

As for personal development and training, no institutionalized system exists in the US. Rather, on-the-job-training and development is considered to be an individual responsibility and the take-up of training etc. is dependent on people's personal opportunities and access to educational facilities, including training and courses sponsored by specific employers.

Concerning institutions facilitating labour market transitions, active and passive labour market policies in the US differ markedly from those in European OECD countries. Activating labour market policy is organized through four programmes: 1) unemployment insurance, 2) welfare programmes as Temporary Assistance for Needy Families (TANF, replacing in 1996 the earlier Assistance for Families with Dependent Children (AFDC) programme) and food stamps, 3) workforce development programmes (based on the Workforce Investment Act 1998, providing services locally in One-stop career centers), and 4) federal and state tax incentive programmes, with the largest being the Earned Income Tax Credit (EITC) aimed at workers (Quade, O'Leary and Dupper 2008: 358 ff.).

Concerning unemployment insurance, within a federal framework, US states set the main parameters and are responsible for financing benefits via payroll taxes, while federal funding has played an increasing role especially during recessions. Experts who argue for reform of the system state four issues to improve in particular: addressing the system's financial instability, countering the erosion of coverage with a declining fraction of workers receiving lower benefit amounts, counteracting large and long-lasting earnings losses among reemployed workers; and, finally, the effectiveness of benefits and related programs to quickly re-employ job seekers (Washington Center for Equitable Growth 2016).

Regarding activation, since 1996 (Personal Responsibility and Work Opportunity Act, PRWORA) the country has embraced an overall 'Work-First' approach while allowing considerable discretion among the federal states in its implementation: the objective being to reduce welfare dependency by helping people leaving welfare for work both through work requirements and support services (Quade, O'Leary and Dupper 2008: 346)

Individual Employment Relationship

- for equality legislation: some amendments to Disability Act in 2008; somewhat widened interpretation of sex discrimination (under Obama); more state regulation (e.g. LGBT community)
- high litigation costs discourage court cases; trend of waiving rights to access to judicial forum in arbitration cases; little or no job security (e.g. few 'just-cause' provisions, PS)

Collective employment relationship

- strike levels minimized since 1970s as employers use permanent replacements for striking workers

Employment conditions:

- federal minimum wage stagnates (only state-level and local adjustments to keep up with living costs); harassment awareness has grown in last few years, especially in late 2017 (#MeToo campaign)

Continuing training and development: not addressed by experts

Labour market transitions: not explicitly addressed by experts

Reconciliation work-care

- Family Medical Leave Act (1993), some state legislation, e.g. California Paid Family Leave Programme and similar ones in East Coast states, city regulations on paid sick days; proposal for new Family Act (federal paid family leave scheme)

- child care services appear income/place-dependent; somewhat subsidized for Medicaid recipients; often provided by privately hired child or elderly care persons (often with a migrant background)

2.3 Reasons for changes

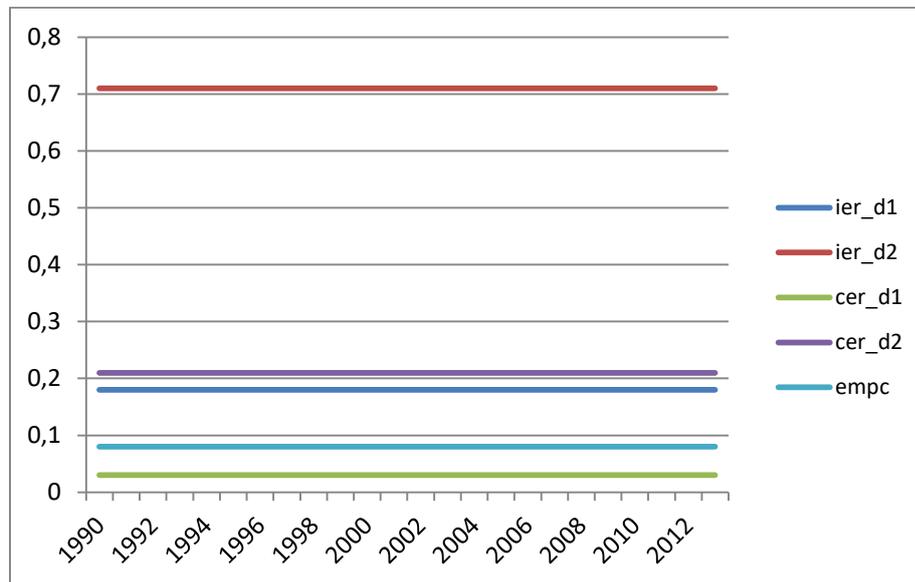
Legislation in the sphere of (family medical) leave has been related to growing female labour market participation and demographic changes (population ageing). For more protective legislation on the federal level, however, a political coalition in favour of regulatory change is needed to overrule the lobbying of organized business interests that defies any changes raising labour costs. In such political coalitions, certainly the political affiliation of the president matters, with Democrats to be more in favour of protective regulation than Republicans. Collective employment rights have become weaker in accordance with declining importance of unions in workplaces meaning that compared to 1990, today far less workers have access to rights laid down in collective bargaining agreements.

2.4 Trends in employment institutions over time 1990-2013

This part presents some US data from the dataset by Stiller and de Beer (2017) to illustrate the notable stability of institutional indicators between 1990 to 2013 (mostly based on the CBS-LRI dataset). Except for the legally mandated notice period (IER_d2), most other dimensions remained stable at a very low level of protection (0=no protection, 1=high protection of workers' rights). Because of the lack of visible changes, these graphs were not shown to experts - in contrast to the other five countries covered in this report. All three experts were asked to reflect on the situation of the country in a liberal cluster with some

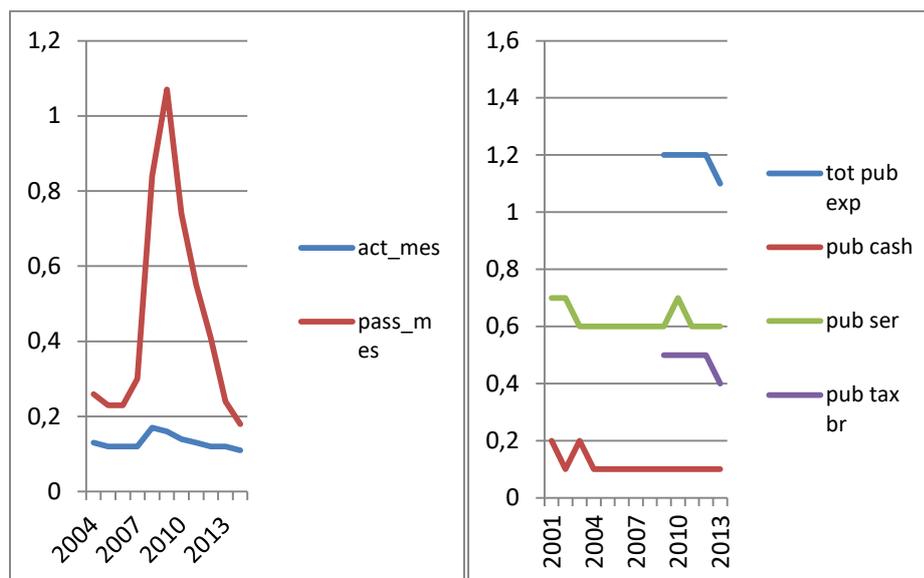
other Anglo-Saxon countries (Australia, New Zealand, Chile, Mexico, Japan, Greece, Lithuania, Norway, Poland, Romania and Turkey) and found this an intuitively right decision. One expert (R. Milkman) noted that she found certain US states - like California - to rather belong to others clusters because of its relatively worker-friendly regulation.

Figure 1. Development of measures of the individual (IER_d1/2), collective employment relationship (CER_d1/d2) and employment conditions (empc)



As for labour market transitions, spending data shows a temporary upswing on spending on unemployment benefits between 2007-2013 with a peak of 1,07% in 2009, but returning to an ever lower level of 0,18% in 2014. Spending on active labour market policies only saw a small increase of 0,05% in 2009, returning to its very low level of 0,11% in 2014. In comparison, spending on families in % of GDP has been at 1,1% (2013), with the highest share on services (0,6%), followed by tax breaks (0,4%) and, lowest, cash benefits (0,1%). Data from 2001-2007 are sketchy, but the latest tendency has been towards a decrease in spending.

Figures 2 and 3. Public spending in % of GDP on work-to work transitions (left) and spending in % of GDP on family policies (right)



2.5 Issues affecting the labour market

When asking US experts about the most important issues affecting the country's labour market (and their effects on regulation) in the period since 1990, their answers can be divided roughly into two parts: First, there have been a number of labour market trends that all signal the deterioration of the quality of work from the view of employees, such as the considerable growth of low-quality jobs. Second, there have been several trends pertaining to quite diverse societal areas: the loss of strength of employee representation by unions (industrial relations); larger-scale economic changes and organizational changes affecting daily work; earlier political-ideological choices by subsequent federal governments/presidencies; and, the regulation of areas affecting employees in the labour market (sectoral rules, migration, social security) were given. Given the comparatively low level of government intervention through federal labour law and regulation of industrial relations in the country, the consequences of the latter in terms of the disparate distribution of wealth were highlighted by all experts as an issue worth mentioning, especially the ongoing rise in inequality and resulting poverty, even for a considerable proportion of those who are working in several jobs to make ends meet.

Industrial relations

- enormous and continuing decline in unionization (2017: 6% in private sector)

Workforce developments

- enormous increase in risk-shifting to workers in terms of social security (especially pension plans)
- tendency towards more bad jobs (little legal protection, low-paid)

Economic changes and business organization

- increased powers of employers over work schedules in some sector
- deindustrialization and upcoming gig economy
- rupture of employment relationship/attempts to make employees into independent contractors

Regulation

- ongoing de-regulation of some sectors (starting before 1990);
- decreasing enforcement of the few existing labour law provisions
- regulation of immigration topical in 1990s and the 2000s

Political-ideological

- neoliberal shift in labour relations since the Reagan presidency (dissolving earlier social contract and loss in job security)

Rising inequality

- growing disparity between productivity and wage development since early 1980s: long-term stagnation of wages in 40 years (said to be directly related to unionization decline) with numerous quality of life effects; rising inequality

3. United Kingdom: dual industrial relations in a largely voluntarist system

Summary

Individual labour law offers only limited protection to employees with extensions conditional on the existence of a collective agreement. The collective employment relationship enjoys a low level of statutory protection. For employment conditions, there are EU minimum statutory levels of protection while some employees benefit from better company collective agreements. Labour market transitions are governed by a workfare-type activating jobseeker policy. In the sphere of reconciliation of work and care, there is a focus on minimum rights. Personal development and training takes place within a mostly employer-based (and financed) system.

3.1 Salient characteristics of labour law and industrial relations³

In order to understand modern British labour law and employment relations, one needs to appreciate three features of the legal framework of industrial relations as it developed until the 1960s. First, the tradition of individualism: the notion of the individual contract of employment is central to the legal analysis of industrial relations. Seeing industrial relations as fragmented into a great many individual relationships is not a modern phenomenon, but is deeply rooted in social and legal tradition. However, the idea of reciprocal rights and duties of the parties flowing from their free exchange of promises arrived relatively late in the UK compared to European countries. As late as the mid-19th century, Blackstone's definition of the master–servant relationship was still used by lawyers, implying that that relationship need not be based on contract. Second, there is the tradition of support for voluntary collective bargaining and abstention of the law from industrial action, as the system of industrial relations until the 1960s rested on a social consensus that the role for the state should be minimal. Parliament did not create statutory rights to strike or organize, but enacted immunities to specific common law torts if committed in the course of a trade dispute. Hence the law of industrial action until the 1970s consisted largely of legislative responses to judicial creativity. The voluntary nature of much of dispute settlement is often cited as a distinctive feature of British industrial relations. Third, there is the selective nature of regulatory or 'protective' legislation. The primacy of voluntary collective bargaining implied that legislation regulation matters such as wages, hours, and health and safety tended to take second place. Legislation applied primarily to children and women rather than to adult men (who were considered capable of protecting themselves).

³ The information in this part is based on Ch.1 through 4 in Hardy and Butler (2014).

In the 20th century, the principle became to cover only those not protected by collective bargaining and to deal only with those subjects which do not appear to lend themselves to collective bargaining. Even where there is regulatory legislation, it has often been designed to allow for its replacement by approved collective agreements, which are at least as good in content as regulatory legislation. In any event, legislation can always be supplemented by collective bargaining on the same subject. As a consequence, there has been an absence of comprehensive regulation found in other industrial countries on matters as working hours and holidays for all employees.

The scope of UK labour law is defined in terms of the law used 'to regulate, to support and to restrain the power of management and the power of organized labour'. The country was for a time not only the 'workshop' of the world, it was allegedly also an exporter of labour law through British emigrants during the 19th and early 20th centuries, who took with them 'more than the attitudes and behaviour learnt in the industries of their mother country' (Hepple 1986, cited in Hardy and Butler 2014: 21). UK labour law was built on the English common law associated with liberal capitalism rising in the early 19th century. Consequently the UK stands apart, from the Roman-Germanic civil law systems prevalent elsewhere in Europe. It was the first country (1824) to legalize trade unions, and the liberal and utilitarian beliefs behind this era of toleration, in which collective bargaining could begin to develop, spread over the next decades to other parts of Europe. For instance, French and German workers, came to the UK at the time of the Great Exhibition to study the workings of the new reformist British trade unions worked.

Yet compared with civil law countries, the British trade union organization in its early years seemed archaic, the structure of industrial relations appears to be chaotic, labour law is uncodified, the common law contract of service is still the cornerstone of legal thinking, and positive legal rights to organize and to strike are absent. Kahn-Freund remarked in 1954 that 'there is, perhaps, no major country in the world in which the law has played a less significant role in the shaping of [labour-management] relations than in Great Britain, and in which today the legal professions have less to do with labour relations'. In 1963, the UK became the last country in Europe (apart from Ireland) to introduce statutory minimum periods of notice to terminate employment, followed by a whole series of new rights for individual employees, especially on unfair dismissal. Until the late 1970s, it seemed that the country was moving towards a more legally regulated system of industrial relations. A radical change in direction came after the 1979 election of a right-wing Conservative government which abandoned both direct incomes policies and support for collectivism. Rather, it carried out a consistent strategy of legal restrictions on trade unions and restored market regulation. The preoccupation of public policies with the power of trade unions distinguished Britain's response to the economic crisis from the rest of Western Europe. Two decades later, New Labour (1997-2006) pursued the view that conflict in industrial relations should be replaced by cooperation, and that the key to successful industrial

relations is a combination of both efficiency and fairness, in order to achieve the 'most lightly regulated labour market of any leading economy in the world' while at the same time, giving workers 'basic canons of fairness'. Regarding new rights, the most radical is a new procedure for statutory recognition of unions for bargaining purposes, supplemented by an individual right to be accompanied by a trade union official or co-worker in disciplinary or grievance procedures. Also important is the introduction of a national minimum wage. Also, there is a qualified right not to be dismissed while taking industrial action; and a reduction of the minimum period of employment necessary to qualify for unfair dismissal rights. However, the government also maintained the key elements of the Conservative employment legislation from the 1980s, including a continuance of restrictive laws on picketing and the prohibition of the closed shop. From 2001–6, the British government had sought to attain its outstanding goals, by way of introducing statutory procedures for dismissals, parity for part-, full-time and fixed-term workers, as well as introducing enhanced maternity and paid paternity leave. After 2010, the Conservative-Liberal Democrat Government set out to reduce red-tape and remove employment laws. For instance, the Equality Act 2012 was a diluted version of that originally proposed by the outgoing Labour Government. Further, the Coalition Government immediately sought to increase the qualifying period for employment protection from dismissal up to a 2-year qualifying period.

3.2 Important changes between 1990-2016

In the individual employment relationship, important changes occurred in the sphere of equalization of rights of part-time workers and concerning anti-discrimination legislation. On the negative side, during a 4-year period (2013-2017), many people were practically barred from litigation possibilities by high employment tribunal fees. Importantly, a duality of (un-)unionized/unionized sectors exists in the UK, which means that employees in unionized sectors tend to have better access to employment rights (and possibilities to defend them) than those not covered by unions and collective agreements, but the former share is declining: collective bargaining coverage continued to decline after the crisis from 34.7% in 2007 to 27.5% in 2014. More specifically, the private sector lost almost a quarter of its coverage, from 20.0% to 15.4%, while the public sector dropped from 72.0% to 60.7% (Emery 2016: 17-18).

Concerning collective employment relations, trade unions experienced statutory recognition in 1999, but also experienced restrictive legislation in the early 1990s, and again recently in 2016 with Trade Union Act, restricting strikes. In terms of employment conditions, important Acts were passed concerning Statutory Sick Pay and the minimum wage, also the Working Time Act (exceeding requirements of the EU Working Time Directive).

As for personal development and training, the UK has a voluntary system for continuing professional development and non-formal training (except for trades that are professionally licensed). Yet, participation in adult educations and training was reportedly high: 66% of UK workplaces participating in the Employers Skills Survey 2015 had arranged training for employees in the previous year, with on-the-job training being most popular. Training in the UK is provided by public and private enterprises, voluntary organisations and many other bodies, including trade unions. Unionlearn (affiliated to the Trade Union Congress) supports unions' learning and skills work. The majority of non-formal training in workplaces is employer-funded (and therefore dependent on economic circumstances), but public sector funding contributes to the cost of for instance community learning, although its scale has been decreasing in 2015 compared to earlier years (UK NARIC 2016).

In the dimension of labour market transitions, there has been a strengthening of the activation paradigm concerning unemployment benefits and social assistance. First activation measures date back to the late 1980s. In the mid-1990s, reforms were enacted changes both job search requirements and benefits (1995 Jobseekers Act prescribed mandatory jobseeker agreements, 1996 Jobseeker allowance). The New Labour government, next to launching the national minimum wage, introduced a 'New Deal' employment programmes and changes to the tax and benefit system to 'make work pay' in a quest to rebuild the system 'around the principle of work for those who can and security for those who cannot (Finn and Schulte 2008: 307) . Reform in the late 1990s and early 2000s brought administrative changes to create one-stop agencies for job search support and benefit payments for all, as well as 'work focused interviews'. After 2008, more activating changes for disadvantaged groups were introduced.

Changes to welfare benefits and the state pension system accelerated following the 2010 general election as the new coalition government embarked on a large-scale austerity programme (Emery 2016: 25). The Welfare Reform Act of 2012 brought a package further tightening rules and sanctions as well as the replacement of six means-tested benefits and tax credits for working-age people by 'Universal Credit' (to be phased in 2013-2017) to simplify the system, end welfare dependency and make work pay (ibid.). The 2015 Conservative government planned to continue with benefits changes, but met resistance, e.g. with further effective cuts on tax credits, in the House of Lords.

Reconciliation of work and care has only been put on the policy agenda in the late 1990s, under the first Labour government. The UK implemented the 1999 EU Parental Leave Directive in a minimal fashion in the Maternity and Parental Leave Act. Apart from maternity leave, parents have access to unpaid parental leave only. Shared Parental Leave was introduced by the Children & Families Act 2014, enabling maternity leave to be more fully shared between men and women (European Commission 2015).

Changes in aspects of work

Individual Employment relationship

- part-time worker regulation 2000 (equality with fulltime workers, implementation of EU directive)
- rise in employment tribunal fees (2013) and their later abolishment (2017)
- disability discrimination act (1990), later taken up in new Equality Act (2010)

Collective employment relationship

- end of closed shop regulation (1989)
- 1990 TUs wage demand strategy in anticipation of minimum wage
- 1999 legislation on statutory recognition procedure for unions
- Transfer of Undertaking protective legislation (2006/2014)
- anti-strike legislation: Trade Union Act 2016 (amending Trade Union and Labour Relations (Consolidation Act) 1992)

Employment conditions

- introduction of minimum wage (1997/98) as tipping point
- living wage vs minimum wage debate
- working time legislation following EU directive

Continuous Vocational Training: no large changes reported

Labour Market Transitions

- greater conditionality for job seekers benefits and low-wage workers
- cuts in social assistance and legal help

Relationship work-care

- 1990s: maternity leave on paper (yet insufficient pay after 6 weeks), patchy regulation
- shared parental leave since 2013

Reasons for these changes included the following: First, the UK amended legislation in response to EU directives. Secondly, many policy changes are owed to political-ideological shifts during the period which saw first a Conservative government, followed by several Labour governments, a Coalition government of Conservatives and Liberal Democrats and, finally a Conservative government, currently with a minority in Parliament.

3.3 Trends in employment institutions over time 1990-2013

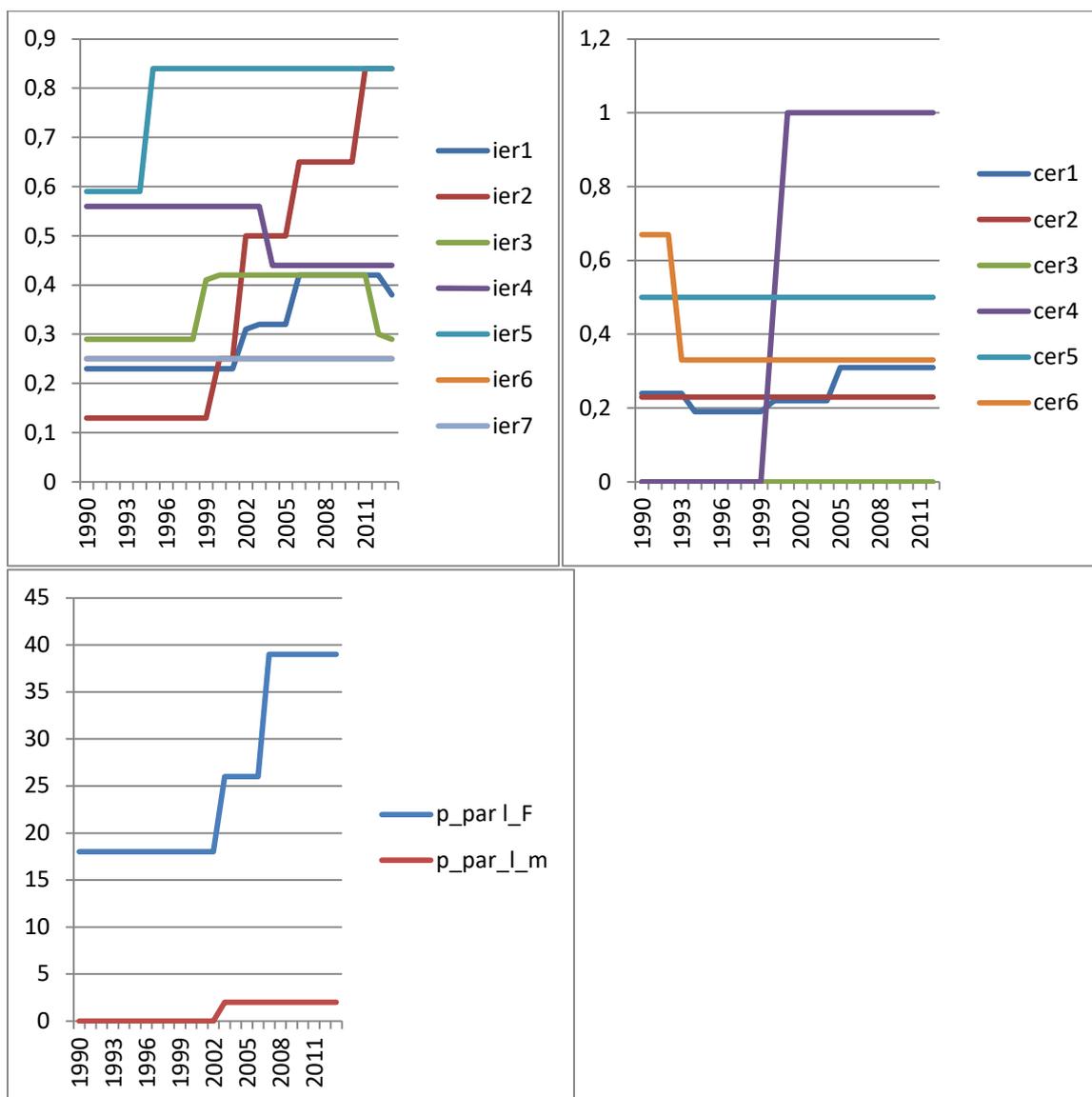
The analysis by Stiller and de Beer (2017) situated the UK in a country cluster (with Austria, Finland, Ireland, Luxembourg, Slovenia and Israel) which was characterized as being protective of some (but certainly not all) collective workers' rights, which is a picture that our experts did not recognize and which deserve explanation here. On average, this cluster feature the highest values – amongst all five clusters identified - on 1) a combined measure

of co-determination of workers/works councils/extension of collective agreements (CER1: 0,63), and 2) on protection of unofficial industrial action, and of strikes during the duration of a collective agreement, i.e. lack of a peace obligation (CER5: 0,39). On CER1, the UK shows a large negative deviation (-0,35) from the cluster average (CER1: 0,28) which means that co-determination and works councils etc. are much less protected there. On the second measure, the UK shows a slight positive deviation (CER5: 0,5), reflecting the fact that the country currently has no statutory peace obligation if a collective agreement is in place, interpreted as offering stronger protection of workers. Other significant negative differences between the UK and the cluster average can be seen on CER2 (IR constitutional rights/works council involvement in wage negotiations: -,17) and especially on CER3 – treatment of specific industrial action and lockouts – where the UK scores 0 (no protection) compared to a cluster average of 0,48. The only area where the UK scores the maximum value and thus much higher (+0,35) than the cluster average is on CER4 (regulation regarding employer obligations: the duty to bargain and replacement of striking workers). This nuanced look at the UK thus shows that even though a country fits into a certain cluster, significant difference on some characteristics may be in place.

Furthermore, one expert on collective employment relations (D. Gregory) recognizes that most changes have indeed occurred in the sphere of individual employment relations, as the visualization of data suggests (especially on IER2 - equal treatment of different types of workers/max. duration fixed-term contract - but also on IER1 - general rules on contract forms and substantive constraints on dismissal - and on IER5 - dismissal notification and costs for dismissal of different workers), while voicing doubts about the practical importance of seemingly large changes shown in CER4 - regulation regarding employer obligations (showing a shift from 0 to 1, the maximum level of protection, in 1999) and CER6 - closed shops/regulation on pre- and post-industrial action phases (in 2000/2001), Another large change, in employment conditions is recognized (the EmpC2 dimension containing variables on minimum wage, shows a large increase in 1998/1999). Another expert on collective employment relations (L. Emery) voices skepticism about the meaning of the statutory recognition of unions in 2000 (subject to many restrictions, practical importance is limited) for collective employment rights, and also criticizes the application of a stringent activation approach in the UK, as more spending on activation services does not necessarily get people into 'good' jobs.

Figure 1 and 2. Individual and collective employment relations (top left and right)

Figure 3. Length of paid parental leave (bottom)



3.4 Issues affecting the labour market

The table below lists those issues country experts thought to have influenced the UK labour market. They can be grouped into industrial relations issues (e.g. change of the dominant form of bargaining, wage development), policy choices (support for low-wage forms of employment), issues related to the transformation of the economy and business/organizational forms as well as changes in the composition of the workforce.

Industrial relations

- rise of decentralized (company-level) bargaining, reduced union membership and bargaining coverage
- recent trend of wage stagnation/real wage decline since the onset of the 2009 crisis
- government incentives for low wage jobs, topped up by public subsidies

Economic and organizational change

- privatization of public services (utilities, transport)
- automatization of working processes
- rise of the gig economy and efforts to regulate it
- increase in working time on public holidays/Sundays
- increase in irregular working patterns/flexible and part-time work etc.

Composition of the workforce

- continuation of increase in female employment and part-time employment,
- older workers (65+) more commonplace due to higher retirement age, skills, changed lifestyles, low pension incomes (helped by flexibilized workforce and zero-hour contracts)
- increasing reliance on migrant workers in certain sectors (agriculture, hospitality, transport, services, social & health care)

4. Germany: Strong employee representation and a dualizing workforce

Summary

Individual labour law offers a medium level of protection as standard employment typically enjoys better protection than atypical work does. Collective labour law offers a high level of statutory protection and extended rights to employee representation in a context of autonomous social partners. For employment conditions, there is a medium level of statutory protection, sometimes topped up by sectoral collective agreements. In the sphere of labour market transition, there is an activating jobseeker policy but also adequate benefit levels. Support for the reconciliation of work and care is medium to high with extensive statutory rights to family support and paid parental leave as well as legal entitlements to childcare provision. Personal development and training is organized within a mostly employer-based system (albeit with very diverse providers).

4.1 Salient characteristics of labour law and industrial relations⁴

In Germany, labour law is understood to be those rules which are applicable to the (individual) employment relationship and those which structure the collective relationship between capital and labour. As for the former, labour law is only applicable to relationships based on private contract, excluding an important group of the workforce, e.g. career public servants (*Beamte*). Individual labour law covers rules on how a labour contract is concluded, what rights and duties the parties have in such a contractual relationship, how far the parties can dispose of these rights and duties by negotiating alternative clauses and, finally, how a labour contract can be terminated. In addition, it covers all the laws protecting individual employees, thereby setting minimum standards which the parties to the individual contract cannot fall below. It is a significant feature of German labour law that the legal protection of individual employees by minimum laws is very elaborate.

Collective labour law is focused on the structures of industrial relations. It defines and regulates who can be an actor, their rights and duties, and how their activities and agreements affect the individual employment relationship. Collective labour law consists of the law of collective bargaining, including the law on trade unions and employers' associations; the law on industrial conflict; the law on employee representation by works councils; and the law on employee representation on the supervisory board of large companies. Concerning employee representation by works councils, collective law differs

⁴ This section is based on Weiss and Schmidt (2010).

most between the private and public sectors, as for the latter, relevant legislation is the Works Councils Act (amended in 1972). Both areas of labour law are closely related, meaning that working conditions in an individual employment relationship can really be evaluated if both collective and individual labour law is taken into consideration. An individual contract, the applicable protective laws, the collective agreement, the works agreement concluded between works council and employer cannot be seen as isolated factors but as parts of a whole. Since the powers of the individual parties to the labour contract are in many ways limited and shaped by the involvement of the works council, individual labour law cannot even be described without taking its role into account.

Labour law and social insurance law are closely interrelated, and because of societal developments like population ageing and persistent long-term unemployment, these areas of law are becoming increasingly important. Despite the close interrelationship, social security law in Germany is strictly separated from labour law as it is considered part of public law. The main sections of German social security law are the Acts dealing with social insurance, codified in the Social Security Code (*Sozialgesetzbuch* – SGB). The law on social insurance covers health insurance (*Krankenversicherung* – SGB V), work accident insurance (*Unfallversicherung* – SGB VII), the statutory pension scheme (*Rentenversicherung* – SGB VI), including occupational incapacity and total disability insurance (*Berufs- und Erwerbsunfähigkeitsversicherung*), and unemployment insurance. (*Arbeitslosenversicherung* – SGB III), to mention only the four most important systems. These systems have a long tradition, with the oldest one, health insurance, dating back to 1883.

German labour law relies on a variety of sources, Constitution (Grundgesetz) being at the top of the hierarchy. It plays a dominant role especially in collective labour law where legislation is very fragmented and problems not regulated by the legislator have to be solved by recourse to the Constitution. For example, all rules on industrial conflict have been developed by interpretation of principles laid down in the Constitution. But it also plays an important role in individual labour law; however, since the principles laid down in the Constitution are very vague and unspecific, the leeway for interpretation is quite wide, increasing the powers of courts, particularly the Federal Constitutional Court.

Furthermore, there is - almost exclusively federal - legislation, which offers a comparatively high level of protection. Its importance lies in setting minimum standards for all employees, whether or not they are union members. However, the various legal provisions (quite often from very different periods), are spread over so many specific acts that it is difficult even for experts to oversee the whole structure. Attempts to combine at least the principal rules of individual labour law into one single code have failed so far. After unification, labour law scholars from East and West Germany presented a draft for a code on employment contract law. However, parliamentary legislation is still being constrained by diverging pressure groups and seems to have great difficulties in gaining political majority for such an ambitious project. Trade unions as well as employers' associations

are much too afraid that the legal position of their respective constituencies would be worsened by a new *Arbeitsvertragsgesetz*. Next to federal legislation, the Federal Labour Court has the sole power to develop law further and it has become at least as important as the legislator.

Turning to collective agreements as source of labour law, its normative part (in contrast to the obligation part which deals with rights and duties between the contracting parties) directly affects the individual employment relationship. If rights laid down in normative clauses of collective agreements are violated, the individual employee and the employer to whom these clauses apply both have recourse to court assistance. The relation between legislation and the normative part of collective agreements is rather complicated. If there is an Act stipulating a minimum standard, the collective agreement cannot fall below it but can only exceed this standard. However, there are many exceptions where the legislator expressly allows a collective agreement to fall below the minimum standard, the reason being that parties to a collective agreement are supposed to know better than the legislator what is appropriate from an overall and long-term perspective. If the law does not set a minimum standard but only provides a regulation for the use of the contracting parties, the collective agreement may disregard this regulation.

Although statistics show that industrial conflict does not happen frequently in Germany, the law on industrial conflict is nevertheless of major importance for the understanding of German labour law. Taking a traditional legalistic approach, unions and employers' associations act along the lines laid down by legal rules. The law on industrial conflict defines the power relationship between the two actors and, consequently, the structure of free collective bargaining is mainly determined by its legal rules. In the 2000s, controversies on this very definition of power relations have increased and the acceptability of the decisions of the Federal Labour Court for parties affected has evidently decreased. At present, practically all important problems of the law on industrial conflict are subject to judicial control by the Federal Constitutional Court, but it is undecided whether the Court will be able to fulfil the expectations which are placed on its ability to act as a kind of 'super-legislator'.

Probably the most important characteristic of German labour law is the 'works constitution' (*Betriebsverfassung*), referring to the institutionalized system of employee representation by works councils in the private sector (and by staff councils in the public sector). Being based on legislation from the 1950s, new technologies and the demand for more flexible working patterns have led to the fact that many firms are organized in a way differing from the organizational structure the amended Works Constitution Act (BetrVG 1972) had been based on. There had been a debate on whether or not the act should be amended to adopt notions such as e.g. 'establishment' to the changed circumstances. The reform in

2001 had several aims: to improve the conditions for application in small and medium-sized firms, to adapt traditional organizational structures to an ever changing reality, to improve the resources available to the works council and to increase its powers in certain areas.

For the German government, intervention in the economy and in the labour market has become more and more important. There is large variety of instruments of intervention ranging from indirect mechanisms as tax relief to more direct mechanisms such as subsidies, but one of the most important tools is certainly legislation. It is not only labour law in a strict sense which is shaping the structure of the labour market and industrial relations; tax law, competition law, etc. are equally important. After the demise of the 'Concerted Action' tripartite cooperation in the 1960s, formal as well as informal bi- or tripartite arrangements still play an important role. Particularly in the course of restructuring the economy and the labour market in the territory of the former GDR following unification, their function can hardly be overestimated. Since unemployment increased seriously after 1990 in all parts of Germany, several so-called pacts for employment (*Bündnisse für Arbeit*) were established on the federal, Land and enterprise levels, with the involvement of employee representatives and one or more employer(s) or their representatives (the government(s) is/are not necessarily involved in any case) with the aim to protect and, if possible, to create jobs.

4.2 Important changes between 1990-2016

Germany experienced important changes in the first three aspects of work. In the sphere of the individual employment relationship, flexible work experienced an overall boost helped by deregulation of these forms of work since the late 1990s and the Hartz labour market reforms of the early 2000s. Reasons for this development can be found in multiple source problem pressure faced by policy-makers. This period of flexibilization, however was met by a counter-discourse seeking re-regulation after 2010, after the rise in precarious work and perceived growth of inequality. The introduction of the minimum wage (as a new element in the sphere of employment conditions) by the Grand Coalition in 2015 is an example of this.

In the collective employment relationship, trade unions faced challenges to their collective bargaining power by the rise of more employer-friendly competitors and a general trend towards derogation from sectoral collective bargaining (to ensure a firms competitiveness and secure jobs) helped by the 2004 Pforzheim agreement.

Regarding the dimension of personal development and training, few changes occurred. Publicly promoted CVT is targeting at groups varying from unemployed persons to those with no school-leaving qualifications to executives. In-company training may take place inside or outside a firm, but is usually paid by the company and takes place during working

hours. There are also many collective agreements containing training provisions, with the one in the metal and electricity industries of 2001 serving as the benchmark. Nearly half of all training providers are private-sector ones next to public sector organizations, chambers, professional associations and others. In 2014, the IAB company panel survey showed that 54% of companies offered further education; most CVT takes place in companies and is company-funded (Hippach-Schneider and Huisman 2016). Our German expert added that the system has a bias towards highly-skilled workers, with most training possibilities offered by large firms. The large majority of publicly offered training courses are aimed at job-seekers (the exception being a recent Federal Employment Agency programme aimed at those still employed).

The sphere of labour market transitions has been modernized (see also the sub-section below on issues affecting the labour market) since the 1990s, markedly, the Hartz reforms - as part of Chancellor Schröder's Agenda 2010 - brought an intensification of activation measures, cuts to previously generous and lengthy entitlements, and the introduction of more flexible types of jobs, such as marginal ones (Minijobs). Since about 2010, however, a development of re-regulation has occurred, not at least to "limit extreme distribution asymmetries in earnings" (Walwei 2015) and culminating in the introduction of the national minimum wage by a Social Democratic minister of Social Affairs in 2015.

Regarding the reconciliation of work and care, there have been many changes to family policy since the early 2000s (individualization of parental leave, universal entitlement to reduce working time) as well as new legal entitlements to childcare places and pre-school care and the subsequent expansion of daycare from the mid-2000s onwards. A cut in parental leave to 14 months (and the introduction of paternity leave) in 2007 was coupled to a new parental leave benefit in the form of an unconditional wage replacement of 67 percent (Elterngeld) that is usually seen as a large reform. Lewis et al (2008) argue that the country has 'shifted away from positive support for a traditional gendered division of labour toward greater de-familiarization and incentives for women's employment'. One could argue that Germany has come to resemble Scandinavian countries more than those countries with Conservative welfare states.

Changes in the various aspects of work
<p><i>Individual employment relationship</i></p> <ul style="list-style-type: none"> - expansion of fixed-term contracts - 2003 Hartz I and II reforms deregulated temp agency (TA) work, introduced mini-jobs/'Ich-AG' - 2011 legislation implementing EU directive on TA work (AUG) - 2017 reform of AUG to strengthen rights of TA workers (yet exceptions in CAs are permitted) <p><i>Collective employment relationship</i></p> <ul style="list-style-type: none"> - rise of 'yellow'(employer-friendly) unions and pressure on rights in collective agreement after Hartz reforms - 2001 reform of Works Councils Act (modernizing works constitutions to contemporary firm

structure)

- 2004 Pforzheim agreement enabled deregulation of sectoral collective agreements

Employment conditions

- 2015 introduction general minimum wage

Continuing vocational training: no important changes reported

Labour Market transitions

- shortening & tightening of unemployment benefits (since 1990s)
- introduction of means-tested Hartz IV benefit substitutes unemployment assistance (2003)
- cuts to active labour market programmes (since 2000s)
- 'softening' reforms to counter earlier deregulation effects (since 2010s)

Reconciliation of work and care

- new parental leave benefit introduced in 2007 (Elterngeld),
- expansion of parental leave for fathers
- new legal entitlements to child care and pre-school care, expansion of all-day schools

Coming to the reasons for these changes (Eichhorst interview and Eichhorst 2012: analysis of sequences of de- and re-regulation), experts referred to mounting and multiple economic and fiscal concerns facing political decision-makers, especially in the late 1990s and the early 2000s. When the political climate for change became favourable with the Red-Green government, comprehensive and fundamental deregulation of flexible work and benefit cuts coupled to activation were introduced. Interestingly, none of the experts referred to EU legislation as reason for changes, which might point to the fact that their implementation may have been overshadowed by the quite visible Hartz reforms or that the gap between existing legislation and the EU directives was quite small. The changes from the 2010s onwards regarding attempts at better protection of temp agency workers and the coming of a national minimum wage should be seen as a backlash against what some saw as 'excessive' deregulation by the Hartz reforms, leading to a rise of the share of the workforce that is denoted as 'precarious', i.e. threatened by poverty (Eichhorst 2012).

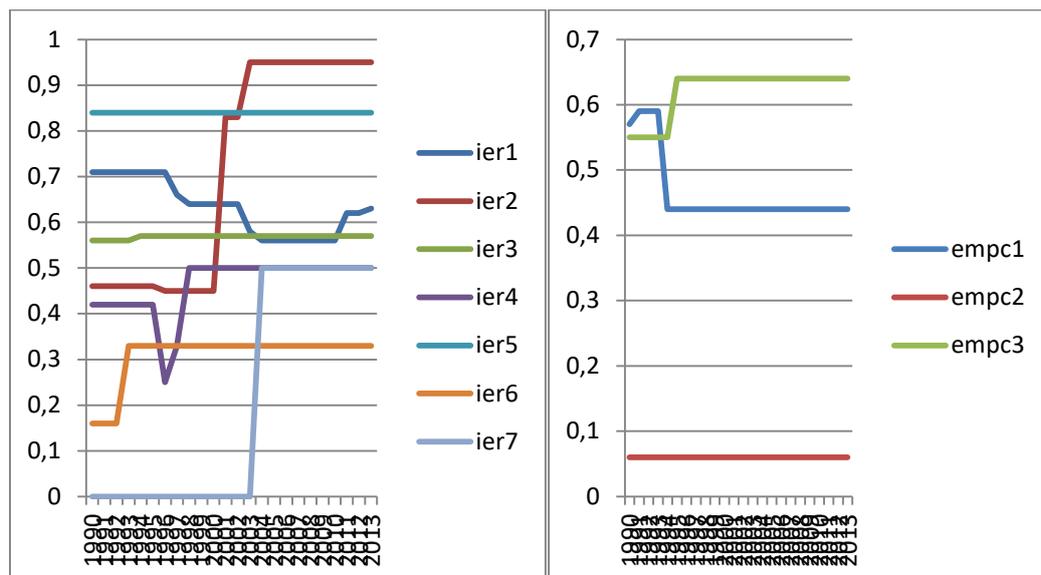
4.3 Illustration of trends 1990-2013

German experts were asked to reflect on the situation of Germany in a mostly 'Conservative' country cluster (Belgium, France, Italy, Netherlands, Switzerland, Latvia, Spain, Portugal and Canada). One expert voiced some skepticism about Germany sharing enough characteristics in the sphere of collective rights with countries as France and the three Southern European countries, especially when it comes to the regulation of strikes. He also pointed to some commonalities with Scandinavian countries and Austria and Slovenia, which are in separate clusters. The other expert recognized the cluster characteristics to be

true for the German situation, but added that a great extent of heterogeneity can be seen in that cluster.

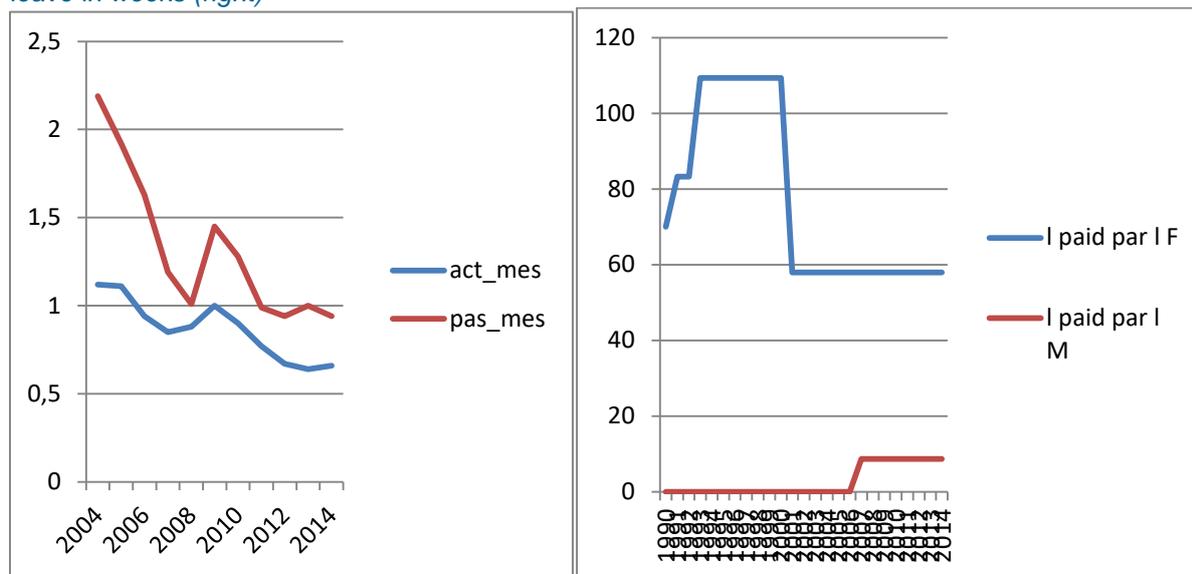
Looking to the trends visualized in figures 1 to 4 below, in the individual employment relationship (figure 1), notably the dimensions of IER2 (equal treatment of different types of workers/maximum duration of fixed-term contract), IER4 (extra dismissal regulations for employers), IER6 (legally mandated notice period) and IER7 (legally mandated redundancy compensation) saw upward changes, whereas the dimension of IER 1 (general rules on contract forms and substantive constraints on dismissal) saw first a decline and after 2011 some restoration of protection. Our expert on labour law (J. Heuschmid), however, prefers to nuance these positive changes since an improvement of rights on paper and the actual practice is said to be different (e.g. right to redundancy compensation). As for changes in employment conditions (figure 2), the biggest change, the introduction of a national minimum wage in 2015, is not captured by the data ending in 2013, however, a decrease of rights in terms of working time plus an increase in rights to leave can be seen in the data (during the mid-1990s).

Figure 1 and 2. Development of institutions in the individual employment relationship (left) and of employment conditions (right)



The trend on labour market spending in relation to GDP (Figure 3) is judged to be correct by the expert on labour market policy (W. Eichhorst); in addition, developments in the length of paid parental leave for both women and men (figure 4) are recognized as being in line with actual policy developments (e.g. restrictions to length of parental leave in 2001, expansion of paid parental leave for fathers in 2007).

Figure 3 and 4. Development of labour market policy spending/GDP (left) and of length of paid parent leave in weeks (right)



4.4 Issues affecting the labour market

In view of the enormous task of uniting West and East Germany after 1990s, the issues reported by experts often had to do with several challenges for policy makers: on the one hand, to ensure the continuous strength of the German economy at a time of economic slowdown and persistent high unemployment, and, on the other, to modernize its welfare state, including active and passive labour market policies, in view of the crisis of the socio-economic 'German model' discussed at length in the late 1990s. The reforms undertaken to modernize the German labour market and social policy in the early 2000s by the first Social Democrat-Green government have to be seen against that background. Moreover, issues linked to the transformation of the economy, especially the changing role of technology, were highlighted, too.

Industrial relations

- increased working time sovereignty (since recently part of union campaigning in the metal sector)

Problem pressure perceived by public policy makers

- discourse about ensuring competitiveness through deregulation (1990s until early 2000s)
- discourse on cost containment motivated by fiscal stability objectives since early 2000s (explained wage moderation, some welfare state reconfiguration, esp. Hartz reforms)
- deregulation efforts manifested by lower protection of temp agency and fixed-term jobs
- objective to mobilize a larger labour supply due to counter demographic ageing (encouraging female employment etc.)

Economic and organizational change

- technological change and digitalization as ubiquitous trend affecting jobs, work processes and organization of work

5. The Netherlands: still searching for a balance between flexibility and (job) security?

Summary

The individual employment relationship knows a medium level of protection with the equality principle mostly applied to flexible forms of work. Collective employment relations enjoy a high level of statutory protection and a medium level of protection for employee representation. In the sphere of employment conditions, medium levels of statutory protection apply, often extended by sectoral collective agreements. As for labour market transitions, a work-first activating jobseeker policy is in place. Combining work and care is supported by a medium level of statutory rights complemented by mostly sectoral collective agreements. Personal development and training is taking place in a mostly employer-based (and financed) system.

5.1 Salient characteristics of labour law and industrial relations⁵

Dutch labour law can be analysed in two main subdivisions: individual labour law, which focuses on the contract of employment, the rights and duties of the individual employer and worker, dismissal law and similar problems, pertaining to private law. In addition, there are rules about the working environment in the enterprise, such as rules concerning maximum working hours, safety and health. Collective labour law includes trade union law, collective bargaining, collective agreements, strikes and institutional participation. Individual labour law is a real mix between state legislation and regulation emanating from the social partners. However, industrial relations in the Netherlands are largely ordered by the social partners' self-government. Therefore legislators have not needed to intervene in the area of industrial relations as intensively as, for example, in France or the UK, with the exception of industrial democracy, notably the system of works councils, which is imposed on business through Acts of Parliament. Dutch labour law can be characterized as 'middle-of-the-road', on the one hand protecting the weak and giving workers a say in socio-economic governance, while not overburdening enterprises and leaving ample scope for managerial decision-making. There is a constant tug-of-war about increasing managerial freedom and as a result a reduction of the protection of workers or vice versa. Although there are always discussions regarding minor adaptations, none of the major political parties, trade unions or the employers proposes a major overhaul of the existing socio-economic system.

Legislative power and socio-economic policies in the Dutch welfare state have become unthinkable without dialogue with the social partners: this is often described as 'the

⁵ This section is based on the account of Jacobs (2015), Chapters 2 through 5.

economy of concertation' (or consensus economy). In the Netherlands, this situation is shaped by delicate political relationships, which attach much importance to social consensus. There are always attempts made to avoid severe public confrontations, both on the part of the government and on the part of the social partners. Public authorities avoid taking overtly the side of one or the other of the social partners (in contrast with the traditional UK case of the intimate relationship between the Tories and business and between Labour and the unions), although it stands to reason that a Centre-left government is preferred by the unions, while a Centre-right government will be more sensitive to employers' aspirations. As a result, social development is never a stop-go process as in France or a periodical swing of the pendulum as in the UK, but more a steady evolution with labour law and social security law undergoing many, but unspectacular, adaptations from year to year.

The Dutch industrial relations system is characterized by its rather harmonious character, as employers and employees' organizations adopt a strategy of conflict avoidance and a climate of industrial peace is predominant. Compared with many other countries, employees in the Netherlands and their unions only rarely resort to the strike weapon. In this system, the trade union movement is weak in numbers, moderate in its positions and therefore well-regarded in the eyes of the public, the politicians and the employers. Employers are not hostile to trade unions. Ideas like 'union bashing' are completely unknown, and would not be accepted by the courts and public opinion. Most employees are individualistic and not very strike prone; discussion and bargaining over problems and antagonistic interests in order to reach a consensus is widely preferred.

One principal change in reaction to various challenges to the system was made during the 1980s and the 1990s: the near-total abolition of all instruments of state control on wage formation. Only auxiliary forms of state intervention, such as the statutes on collective agreements, minimum wages and equal pay remained as statutes. Ever since the system has been characterized by a number of voluntary practices providing for consensus building at all levels, labelled with the buzz-word 'poldermodel'. The various characteristics of the Dutch system of industrial relations may perhaps be best highlighted by contrasting them to neighbouring Germany. Both countries have some features in common:

- an orderly, comprehensive and legalized system of collective agreements;
- a dual system of workers' representatives (unions and works councils);
- a very low strike record and interventionist control of strikes by the courts

However, many differences persist, to name just a few: the lesser strength of Dutch employee representation (competences of works councils, no direct representation in supervisory councils); a greater extent of extension of collective agreements in the Netherlands; and a weaker idea of the autonomy of the social partners (with the Dutch government being less reluctant to intervene in collective bargaining). A major difference between the two countries regarding the existence of a statutory minimum wage has disappeared with the 2015 introduction of a German minimum wage.

In the 1980s, economic recession forced many firms to lay off thousands of workers. However, during recovery these firms did not re-expand their standard workforce to prerecession levels, but instead new employment was mostly created by means of 'flexible contracts' – fixed-term work, on-call work, temporary agency work, subcontracting, freelance work etc. Quite often labour law as regards these peripheral workers is weaker than the labour law protecting the traditional standard workforce. The most important legal cause for this development has been attributed to the rigidities and cost-raising aspects of Dutch labour law, especially the law on dismissals. Indeed, the Dutch law in this field has been somewhat tougher than elsewhere in Europe, because for each dismissal without the consent of the employee, an administrative permit or a judicial rescission of the contract was required (as of 2015, these restrictions have been loosened somewhat). Courts became generous in imposing severance pay at the average rate of about one and a half monthly salary for every year of service. Most flexible contracts escaped this rigidity, which made the use of flexible labour very attractive to Dutch employers. Government felt pressure from the employers to lift some of the tightest rules of labour law, notably the ex-ante controls on dismissals. On the other hand, it was also exposed to pressure from trade unionists and labour lawyers to improve the protection of flexible workers. Governments at the time favoured deregulation and were not anxious to issue new statutory labour law, but wanted to leave the issue of drawing up suitable arrangements by negotiation to business organizations, individuals and the social partners.

In the mid-1990s, a clear compromise policy under the name 'flexicurity' emerged: a combination of flexibility and security, aiming to combine a flexibilization of labour laws in certain areas with a consolidation and even a strengthening of the labour law protection in others. The Flexibility and Security Act of 1999 substantially enhanced the position of workers in atypical employment. Further compromise strategies occurred in the area of working time, reconciling employer calls for greater flexibility with demands from trade unions and other groups for measures to ensure a better work–life balance for employees. The latter compromises were embedded in a general context of wage moderation as essential element of the Dutch model, with the trade unions being moderate in their pay claims and not opposing employers' strategies for modernization and technological innovations.

The many changes in Dutch labour law and social security law were not inspired only by political and economic motives. They were also inspired by changes in society, such as the weakening of the male bread-winner family and the expansion of female employment from the 1970s onwards. Equally, the drive for equal treatment of men and women, supported by international norms, but also equal treatment for non-standard categories of employees, mostly based on EU legislation played a role.

5.2 Important changes between 1990-2016

In the Netherlands, most changes can be noted in the sphere of the individual employment relationship. Here, as in other EU countries, regulation on the equal treatment of different sorts of workers has been implemented, yet within a more general desire of regulating flexible forms of work that gained ground up already during the 1990s. At the same time, and in an effort to reduce spending on social security and increase employment, access to and entitlements in case of sickness and disability have been restricted. The 2015 Work and Security Act aimed to simplify individual dismissals and to increase the rights of fixed-term workers. Most recently, the 2017 coalition agreement envisaged further changes in the sphere of employment institutions, changing statutory grounds for dismissals by courts, the severance payments, trial periods and rules on fixed-term contracts, more regulation of payrolling, regulation of the pay of solo-self-employed and a reduction of the length of statutory sickness pay for small businesses. In comparison, the collective employment relationship experienced much smaller (legal) changes, as stated in the table below.

Concerning personal development and training, the Netherlands does not have an institutional framework for CVT, but training provision is market-driven with many suppliers. Social partners are able to stimulate training with their sectoral organized training and development funds (Opleidings- en ontwikkelingsfondsen), most often financed by payroll levies by employers. One change has been the replacement of tax deduction for employers by a subsidy system and considerable budget cuts in 2014. Next to the initial forms of vocational training (legally regulated and publicly financed), there is CVT for unemployed and other jobseekers financed by the public employment service (UWV) or municipalities, and there is private, non-government funded training for employees and self-employed. The latter is provided for 75% by commercial training companies and financed by employers and/or employees. Concerning the entitlement to training, one interesting change occurred: the 2015 Work and Security Act discussed above introduced a right to training for employees (in relation to individual dismissals based on inadequate functioning).

In the dimension of labour market transitions, many of changes occurred since the 1990s, too, resulting in ever more restricted access to unemployment benefit (administered by the Labour Office UWV) and stricter requirements for those jobseekers without entitlement to that benefit who, since 2015 need to turn to municipalities for social assistance and help with re-entering the labour market.

In the sphere of reconciliation work and care, starting in 1998, legislation entitled employees to request reduction of working hours (followed up by the Flexible Work Act 2015 after the Adjustment of Hours Act 2000) and therefore strengthened possibilities to combine work and care. These regulations allow employees – in practice often women after their maternity and parental leave – a structural reduction to part-time hours. The latest legislation (2015) also allows flexibility on working times and place which excludes employees working in place-dependent jobs. In addition, many special forms of leave are regulated by collective agreement, only maternity and parental leave (length) are specified by law, long-term care leave and calamity leave are in principle unpaid. If and how specific forms of leave are paid, is regulated in sectoral CAs.

In the late 2000s, Dutch policy was characterized as giving ‘continued support for the one-and-a-half breadwinner model family as main means of reconciling work and family responsibilities, with substantial protection of part-time workers. However, the state had passed on more costs for funding childcare provision to employers and to employees than, for instance Germany, France and the UK (Lewis et al 2008: 274). Public subsidies for child care had been increased 2004-2009 to stimulate attendance and higher working hours for mothers, leading to a doubling of children on subsidized places over the period 2005-2014 (nearly 640,000 in 2014). Reasons included, for instance, a (further) increase in female employment and the substitution of informal by formal child care. However, in 2012 this development reversed through a combination of strong retrenchment of child care subsidies - that had reached an all-time high in 2010 - and the effects of the economic crisis that brought austerity measures. As a result, there was a noticeable decrease in the use of the child care subsidy through to 2014 (Ministry of Social Affairs 2015). Accordingly, there was decreasing child enrolment and even considerable loss of employment in childcare facilities

Since the 2010s, the government actively strives to improve the combination of work and care for children and elderly relatives, one objective being to enable women to participate more in the labour market. Instruments include improvements in the quality of child care facilities on the one hand and, on the other, measures as parental leave and legislation like the Flexible Work Act enabling people to reconcile their working hours either temporarily or permanently (Sociaal Cultureel Planbureau 2016). In 2015 (as in 2013), two-thirds of pre-school age children attended childcare facilities, including those who also were taken care of

at home by family, friends or neighbours: informal child care has grown rapidly in popularity. In the same period, childcare centre attendance has grown for children at primary school age (4-12). Besides that, only part of those entitled to parental leave and care leave took up these periods, with mothers using parental leave more frequently and for longer periods than fathers.

Changes in aspects of work
<p><i>Individual Employment Relationship</i></p> <ul style="list-style-type: none"> - strengthening of equal treatment of workers - concern with regulating flexible forms of work (since mid-1990, 1999 Flexibility Act) - downscaling of social security entitlements since late 1990s (sick pay, disability pensions) - several changes (including flexibilization of?) dismissal law 2015 (Wet Werk en Zekerheid)
<p><i>Collective Employment Relationship</i></p> <ul style="list-style-type: none"> - small adjustments for works councils - limiting company dispensation from collective agreements that are extended by statute (<i>algemeen verbindend verklaard/AVV'd</i>)
<p><i>Personal Development and Training.</i></p> <ul style="list-style-type: none"> - employers' duty to enable/pay training necessary for an employee's job (scholingsplicht, 2015)
<p><i>Employment Conditions</i></p> <ul style="list-style-type: none"> - few legal changes, yet: increase of regulation by (sectoral) collective agreements
<p><i>Labour Market Transitions</i></p> <ul style="list-style-type: none"> - introduction of work-first approach, re-integration responsibilities fully devolved to municipal level for social assistant recipients (2015) - tightening unemployment benefit entitlements and eligibility (in several steps, last reform 2015)
<p><i>Reconciliation work and care</i></p> <ul style="list-style-type: none"> - legal entitlements to request reduction of working hours in one's job expanded since 2000 - Flexible Work Act (2015)

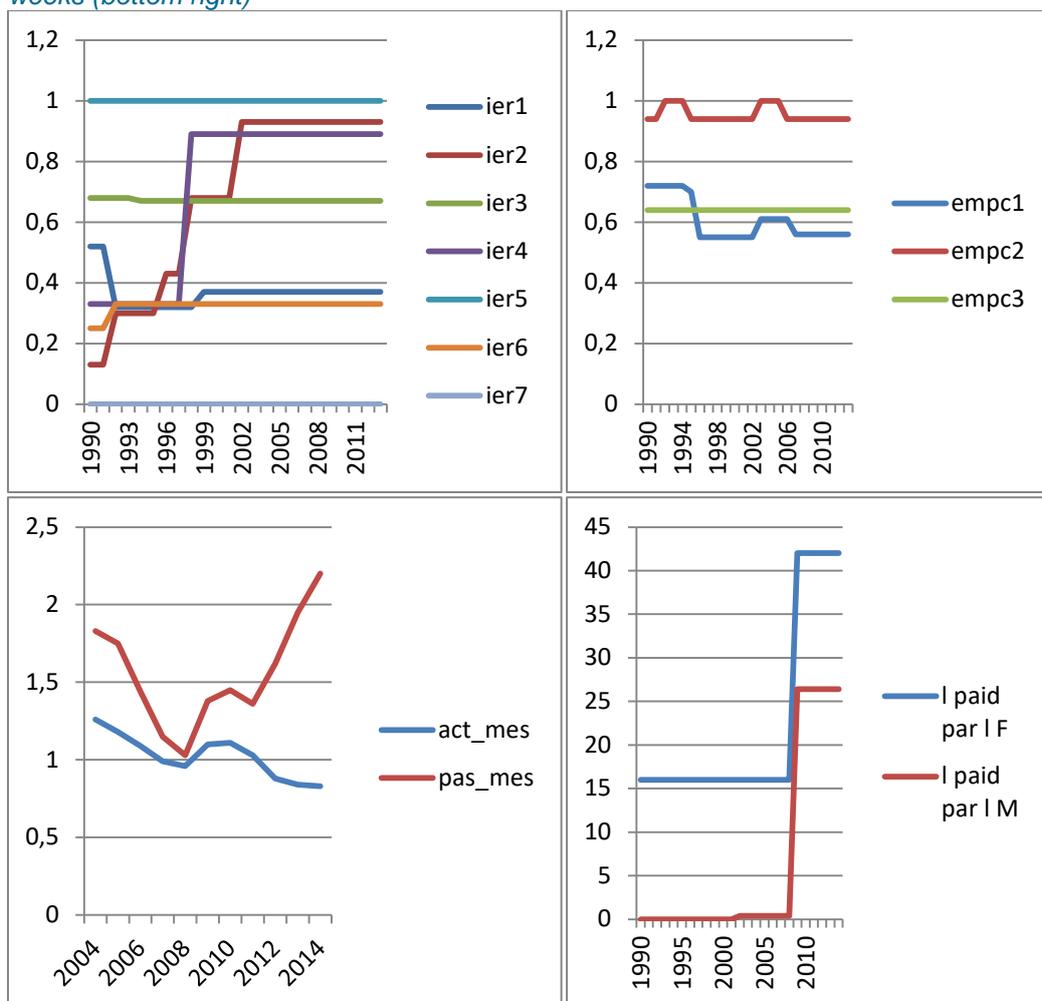
As for the reasons for changes in institutions, a few stand out. As for individual employment relations, the transposition of EU directives into Dutch law was an obvious driver. Moreover, governments' concerns about the undue use of welfare state provisions by too many inactive recipients ushered in eligibility restrictions for social security programmes from the late 1990s onwards, including reforms in the sphere of labour market transitions where activation was taking hold. As for regulation of the growing incidence of forms of flexible work in the mid-1990s, tripartite bodies as the Social-Economic Council (SER) sought to arrive at workable rules, including arrangements that allowed employees to chose for the voluntary reduction (or increase) of working time (see also Visser 2013).

5.3 Illustration of trends 1990-2013

The Dutch expert (E. Verhulp) accepted the categorization of the Netherlands in the 'conservative cluster' (Germany, Belgium, France, Italy, Switzerland, Latvia, Spain, Portugal and Canada), recommending to add one detail to the overall cluster characterization in the area of collective employment regulations: all countries have regulations to declare collective agreements as generally binding. This observation is in line with the Stiller and de Beer dataset, which shows that cluster 3 countries on average score quite high (and only second to cluster 2 countries) on measure of collective employment relationship variables, CER1, which includes the variable 'extension of collective agreement'.

The subsequent selection of graphs zooms in on trends over time in variables measuring protection of the individual employment relationship (figure 1) and employment conditions (figure 2). The former experienced most changes (IER 2 - equal treatment of different types of workers/max. duration fixed-term contracts; IER4 - extra dismissal regulations for employers, and IER6 – legally mandated notice period), while small changes to works councils' regulation did not seem to be reflected in the data on collective employment relations. Employment conditions saw a lowering of protection concerning empc1 (regulation of working time and overtime pay), while empc2 (minimum wage and mechanism) was moving up from a high to the maximum level of protection and back twice. Active and passive labour market spending/GDP (figure 3) went up during the crisis, with passive spending in relation to GDP rising after 2011-2014 and active spending declining since 2011. The final graph on family policy spending (figure 4) shows an up- and downward development on public spending on services between 2005-2009 (with a decline since then): in part this reflects a 'jojo policy' on public subsidies for child care centres to parents.

Figures 1, 2, 3, 4. Developments in the individual employment relationship (top left), employment conditions (top right), spending on labour market policy (bottom left) and length of parental leave in weeks (bottom right)



5.4 Issues affecting the labour market

For the Netherlands, the expert noted a number of regulatory issues that appeared responses to earlier changes in employment institutions and accompanying rules employers need to comply with: on the one hand, there has been an increase in the bureaucratic load associated with employment that has made hiring of self-employed more attractive. On the other, (and related to the latter), there have been (mostly fiscal) incentives created for employees to switch to free-lance work. A second issue mentioned relates to economic changes: digitalization and associated changes in how businesses are organizing work processes (e.g. agile work and others). Finally, regarding the character of labour law, there has been a long-term shift of responsibilities from employers towards employees (e.g. the tendency to regard waiting times no longer as formal –paid- working time)

Regulatory

- more legal and regulatory requirements for employers (leading to)
- more (indirect) incentives for employees to become self-employed (also fiscal) and, for employers, to hire self-employed

Economic and work organization

- digitalization and changes in business organization/organizational forms

Legal aspects

- shift of (risk) responsibilities from employer to employees

6. Hungary: Eastern European style labour market flexibility?

Summary

The sphere of the individual employment relationship enjoys only limited protection, with many contracts not concluded under labour law but civil law provisions. Collective employment relations enjoy a medium level of statutory protection and employee representation. Employment conditions are covered by a minimum to a medium level of statutory protection. For labour market transitions, a public works programme and very limited jobseeker benefits are in place. The sphere of reconciling work and care knows a low to medium level of support with extended statutory rights, but varying possibilities for childcare provision. Personal development and training is taking place in employer-based system, often with public subsidies.

6.1 Salient characteristics of labour law and industrial relations⁶

Describing the salient features of Hungarian labour law means to pay tribute to its special context as former member of the Eastern Communist bloc: this sets it apart from the other countries we analyze and necessitates reference to the most important changes of the economic and social transformation after 1990, but also to those under the current government after 2010.

Let's first look at some fundamental principles underlying labour law, i.e. some relevant constitutional principles. The new Hungarian Fundamental Law (2012) has restructured the location of fundamental freedoms, slightly diminishing employment related fundamental rights. It mentions among the general principles that the economy of Hungary is based upon value-producing work and the freedom of enterprise. The role of the state is to take measures for the opening of employment options: it should present to everyone the opportunity to work. The Fundamental Law also affirms that everyone is obliged to contribute to the community's enrichment with his/her work to the best of his/her abilities and potential. In contrast to the former Constitution (heavily amended in 1989), it also sets out an objective regarding the provision of humane habitat and access to public services.

The labour law-related basic rights in the Fundamental Law include the freedom of association and organization; the right to free choice of employment; non-discrimination; and social rights. The former Constitution (textually) considered social security as a fundamental right and defined as rights the allowances required for living in the case of old

⁶ This section is based on Hajdu (2015), Ch. 1, 2 and 5.

age, illness, disablement, widowhood, orphanage and unemployment through no fault of one's own. In contrast, social security is defined as a state objective in the Fundamental Law: Hungary shall strive to provide social security to all of its citizens and allowances for the aforementioned situations, which are defined as statutory subsidies. Furthermore, a system of guarantees based on basic legal principles affects the regulation protecting both the employer and the employee, e.g. mutual cooperation, good faith and fairness, the obligation of the parties to provide information on a mutual basis, the right to representation of interest and self-organization, the ban on discrimination, the protection of the weaker party, positive discrimination based on social grounds, the requirement of proper legal practice, and others. However, the new Hungarian Labour Code (HLC, in force July 2012) changes the basic approach to labour law: compared to earlier regulation, individual and collective agreements are given a much broader scope, thereby shifting the parties' relationship towards juxtaposition; in addition, general requirements of conduct are also formed according to the rules of civil law. In this way employment risks are for the most part shifted from the employer to the employee.

In Hungary, labour law is defined as the branch of the legal system which regulates social relations connected with performing human work, i.e. the relations established between people in the work situation, including individual labour relations; collective labour relations; and, the legal relations which organize and protect labour relations (labour administration). Labour law is an independent branch of law and not a part of Civil Law. However, the key feature of the HLC is that it intends to align the regulation of the working environment with that of contractual law enshrined in the Civil Code.⁵⁷ The individual labour relationship is a link created between two persons (employer and employee) in the performance of some task. Performing certain work – providing manpower – may, however, take place for several reasons and in many different ways. According to jurisprudence, only those cases are included in labour relations in which the manpower of one of the parties is placed, generally and with the intention to be of an enduring character, at the disposal of the other party (to assert his/her right to work and to acquire the means necessary to his/her living and on the other hand, to perform his/her duties by means of the manpower at his/her disposal).

Collective labour relations are legal relationships characterized by the fact that at least one side of them has a collective character (trade union, works' council, employers' organization, employees' or employers' collective, etc.). Trade union activities such as protection of interest collective negotiations and agreements, employee participation in employer's decisions, direct actions and resolution of collective conflicts all belong here. Part III of the HLC deals with the

legal relations connected with activities of trade unions (as representative organizations of workers and employees), as well as the role and rights of the workers' collective in the enterprise. This is the more justified because, as the role of the trade union in Hungary,

includes the latter aspect, and the activity if the trade union is closely linked with that of the workers' collective.

The regulating principle of the previous Labour Code (1992) was to establish 'minimum standards' from which the employment contract and/or collective bargaining may only depart where the law provides, and such departures must establish more favourable terms for employees. Acts passed in 1992 were targeted towards ensuring a legal basis and framework in the employment field to help structural adjustment from a centralized, state-owned economy to a decentralized and privatized real market economy; in the political field, they also created the possibility of real freedom of association of workers and employers with pluralistic and democratic features. That transition and the associated structural adjustment was a rather difficult process and period, especially in the social field, and was accompanied by much disappointment on the part of workers who hoped for improvements of welfare, human rights and possibilities for participation in the workplace. However, many of them were faced with unemployment, mass redundancy, atypical workers, 'forced entrepreneurship', discrimination, flexibility, competitiveness, deregulation, etc. As a consequence, the Labour Code of 1992 alone has been modified several times, in order to make employment more flexible; to harmonize Hungarian legislations with the body of EU labour and social law; and to fight against illegal employment relationships (employment-related fraud and fictitious contracts).

Flexibilization meant, first, softening the contracting obligations of employers, allowing them more and more divergence from the stipulated employment contract (especially concerning the workplace and the employee working sphere and of working time regulations. Secondly, it brought wider application of atypical and precarious forms of employment (especially fixed-term employment and the 'automatic' use of a trial period). Finally, in 2000 temporary agency work was introduced in the Labour Code, resulting in a less protected position for workers.

Harmonization with EU law was anticipated very strongly by trade unions because they hoped that its application would ensure protection against the negative effects of flexibilization and strengthen workers' and trade union rights. However, the harmonization process created in many cases, more disappointment than satisfaction. The government, supported by employers, initiated the disposition of EU directives at the lowest (minimum) level and with as many derogations and exceptions as possible. Moreover, sometimes the whole harmonization process was utilized rather as a 'pretext' to make working conditions more flexible overall. However, EU labour law harmonization has in some cases, brought improvements in the position of workers, especially in the fields of equality and anti-discrimination, collective redundancy, information of workers and the protection of young workers. These positive results were due to the social partners' participation in the preparation of the legislation.

In the 2000s, the widespread use of undeclared work has become a major issue in legal and political debate, with several measures being undertaken to reduce its level. In 2001, the HLC extended the list of formal criteria concerning employment contracts, e.g. they must be written and include elements like the amount of the basic wage, a job description and the work location. While illegal employment on a 'double contract' (a formal contract providing for pay at the national minimum wage and an informal contract reflecting actual pay) was widespread in the early 1990s, the late 1990s increasingly saw a trend towards 'bogus' civil law contracts – not governed by labour law - whereby a client commissions, e.g. a lawyer or a builder for a specific task. Undertakings also conclude service contracts for 'employment-like work' with self-employed persons acting as micro-enterprises, who are in fact in a position of dependent employment ('forced entrepreneurs'). Given that employment involves a considerable tax and social security contribution burden, there is a short-term interest of both employers and employees to evade employment contracts. Additionally, employers gain important flexibility advantages when using informal agreements or civil contracts.

154. The details of the 1992 Labour Code established a combination of fairly flexible regulations with some strict minimum standards. It was envisaged that sectoral and workplace-level collective bargaining by sectoral unions and workplace Level unions would ensure better terms and conditions for workers than those stipulated by the minimum standards of the labour code.

The accession of Hungary to the European Union in May 2004 brought about a further wave of fundamental changes in the concept and regulation of the HLC. The profound restructuring of the economy had a major impact on unions. Sectoral collective agreements have not played any major role in regulating terms and conditions of employment. The role of workplace collective agreements has also considerably diminished, covering only a minority of employees, mostly in larger companies.

Profound changes in the economy and in regulation after EU accession in 2005 necessitated a partial 're-legislation' of the HLC. In 2004, the governing left-liberal coalition government had initiated a complete re-drafting of the labour code, aligning the legislation of the working environment with that of contractual law, which enables a less rigid, more flexible system of regulation. In this way, a more flexible legislation would allow reduction of the amount of undeclared work and also help companies to be more competitive. The project failed, however, because unions vehemently rejected the concept of the re-legislation, arguing that it aimed to weaken workers' rights.

In 2010, however, the new right-wing Orbán government placed re-legislation, or rather replacement, of the 1992 labour code back on the agenda. It aimed for a new labour code which (a) made the regulation of the working environment flexible to help convert Hungary into one of the most competitive economies in Europe; and (b) cut traditional rights of

unions to a minimal level, which would allow little more than their mere existence in workplaces. The key feature of the new HLC is that it intends to align the regulation of the working environment with that of contractual law enshrined in the Civil Code. Therefore, as a principle, it allows collective agreements – or a works agreement in cases where there are no unions – and individual labour contracts to regulate the content of work differently from what is stipulated by labour law. Moreover, to achieve flexibility, the new HLC allows agreements to deviate to the benefit of the employer, and not only to that of the employee. (e.g. in the case of additional annual leave days that may be restricted by agreements) with the result possibly being a deterioration of previous minimum standards in the HLC.

It is in line with the general trend of many recent labour law reforms across Europe, in that it aims to allow more flexible regulation of work to help firms to regain competitiveness, while at the same time opening up considerable possibilities for cost cutting. Hungarian regulations, however, are likely to stand out of the crowd of recent labour law amendments by constituting a comprehensive re-regulation. The stated aim of the government was to carry out revolutionary changes in Hungary. Consequently, the HLC was conceived as a comprehensive regulation that aligns labour law with civil law and shifts many risks of employment onto the shoulders of employees. Some unions reported that if an employer used all possibilities offered by the new code to cut wages and flexibilize work arrangements, it could save 30 per cent of the total wage cost.

In the 1992 HLC, the government aimed to adapt the German-type industrial relations system for use in Hungary, wanting to see works councils as the sole workers' organ of employee input at the workplace with the right to conclude work agreements. At the same time, it intended to shift collective bargaining to the sectoral level in order to establish the basis for works agreements, as in Germany. Unions, however, wanted to preserve their exclusive bargaining rights at the workplace level and saw in the works councils an artificial institution, whose main mission would be to help destroy their workplace presence. After tough negotiations, a compromise included the creation of works councils with rights to be informed and consulted about determined issues only. Unions retained their exclusive bargaining rights and some entitlements to ensure their proper functioning in the workplaces; also, they were entitled to be informed and consulted over issues deemed important for their bargaining activity. Therefore, somewhat confusingly, the law mandated the coexistence of workplace-level unions and works' councils which were granted partly overlapping rights.

The legal status and role of the parties of the collective labour law has been modified in the new HLC, regulating the relationship between the employer, the trade unions and the works' council. The regulation is based on Directive (2002/14/EC) for informing and consulting employees, weakening the position of unions and elevating the rights of works councils. Most importantly, in case of a lack of unions at the workplace, a works agreement can be concluded with the works council, regulating all issues which a collective agreement

could – even to the benefit of employers – with the exception of remuneration. That shift of rights to be informed and consulted from unions to works councils is a clear ‘signal’ that unions will suffer a substantial loss of entitlements and prestige. While there is an independent part in the HLC regulating the institutions of the collective labour law, the right to strike is regulated in a separate law (Act VII of 1989). The Strike Act served as the opening of the democratic regulation of trade union rights. Freedom of association is guaranteed as a democratic principle in the Hungarian Constitution, in which the right to strike is also expressly determined in the new system.

6.2 Important changes between 1990-2016

In Hungary, the most notable changes occurred in regulation of the individual employment relationship as well as the collective employment relationship. Both areas were affected by reforms of the Labour Code in the 1990s and the 2010s. Reforms in the 1992 Labour Code set the stage for post-communist labour law and labour relations. In that period, legislation developed that more or less mimicked Western European legislation and policies, e.g. the introduction of works councils that faced an uneasy relationship with union in the first place. Experts, however, refer most to the many and more recent changes ushered in by the new Labour Code 2012 whose objective to create more jobs by flexibilization of many aspects regarding work is seen critically by many experts, including the ones interviewed. At the same time, policies to ease transitions from one job to another in the sense other developed countries know them, do no longer exist, as active labour market policies have been curtailed to finance the public works programme and unemployment benefits are severely restricted. In addition to some training programmes for job-seekers (to acquire state-recognised

qualifications and funded from a central budget). Regarding personal development and training for other groups, there are courses outside the formal school system without a formal qualification but a certificate. Since 2013, the Adult Training Act (2013) enables state subsidies for vocational programmes not leading to formal qualifications if compatible with requirements approved by state authority MKIK. If employers organize training for their employees, funding is provided by employers through grants and subsidies, however, to be eligible to state budget subsidies, the training must be state-approved. Professional training organised and financed by employers can lead to state-recognised qualifications if the content of the training (curricula) conforms with the regulation in matter (Farkas et al. 2016). Regarding the reconciliation of work and care, there have been improvements, yet child care provision under the age of 3 is often lacking and the current government is also openly critical of (young) mothers’ role in the labour market, encouraging raising small children at home.

Changes in aspects of work, reasons for changes

Individual employment relationship

- Labour Code 1992: easing of dismissals
- Labour Code 2012
 - further easing of dismissals
 - no right to reinstatement and restriction of compensation
 - risk-shifting to employees
 - flexibilisation of work
 - reversal of favourability principle
- smaller changes through implementation of EU legislation, e.g. temporary work directive

Collective Employment Relationship

- Labour Code 1992: allowed plurality of unions but curbing of union rights
- introduction of works councils in firms alongside unions
- anti-strike legislation 2011 with objective to guarantee essential public services
- limited mandate and TU participation of/in tripartite body to advise on minimum wage
- Labour Code 2012
 - curbed TU representative rights,
 - union rights to bargain (representation threshold)
 - reversal favourability principle for CAs

Employment conditions

- widening and increase of reference period (for applying max. of working hours) to detriment of workers
- extension of working hours on weekends

Labour Market transitions

- 2010-present: restrictions of unemployment benefit
- subsidized public works programme replaced ALMPs and training

Reconciliation work and care

- Labour Code 2012:
 - questionable combination of maternity leave and part-time work
 - abolishment of female salary upgrade after return from maternity leave
 - decreasing protection of family life for parents and single parents by extreme flexibilisation demands

In Hungary, reasons for those changes can be grouped into at least three different categories. First, many changes of the 1990s are due to the political and economic transformation process and reactions to structural economic changes. Second, since the EU accession in 2005, Hungary has dealt with the transposition of EU legislation in the area of employment into national laws. Third, there have been several changes of government since the early 1990s with varying political coalitions. The coming into power of the centre-right Orbán government in 2010 has ushered in various changes (described in the introduction and the expert accounts), in particular with the launch of the new 2012 Labour Code that

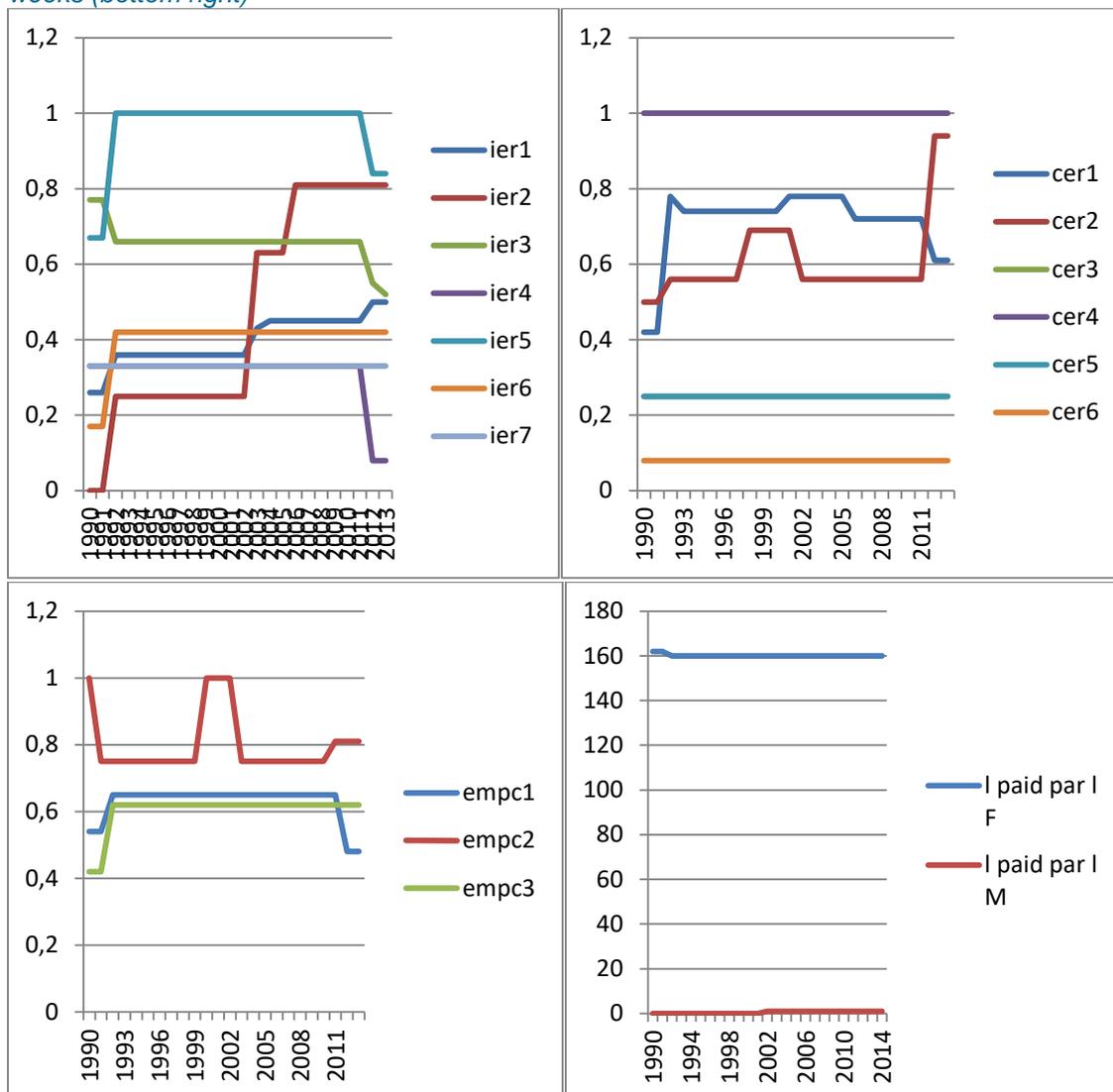
had many implications for the individual and collective sphere of employment rights as well as for the protection of employment conditions.

6.3 Illustration of trends 1990-2013

When shown the country cluster Hungary is situated in (and other clusters), one expert (L Neumann) did not doubt the country being grouped together with the Czech and Slovak Republic and Estonia but suggested that clusters reflect similarities mostly due to the same sort EU legislation on employment law that many countries needed to implement. Another expert (C Kollonay) was critical about the situation of Hungary within an Eastern European cluster that is said to feature ‘strong rights with respect to reconciliation work-care’, based on family policy spending and length of paid parental leave only. She questions that these measures adequately capture the true flexibility of parents with respect to work and care obligations (clusters and graphs were not discussed with the two Hungarian speaking experts because of time constraints).

Below, four graphs are shown visualizing trends in the regulation of the individual and collective employment relationship, in employment conditions and in the development of labour market policy spending in relation to GDP. The individual employment relationship shows largest changes over time (e.g. 2011), with the second dimension (IER2- equal treatment of different types of workers/maximum duration fixed-term contract) showing the largest absolute change (figure 1). Also, for collective employment relations, CER2 (industrial relations constitutional rights/works council involvement in wage negotiations) shows a remarkable increase (after 2011) and CER1 (co-determination of workers/works councils/extension of collective agreements) a decrease after 2012 (figure 2). The impact of the economic crisis in terms of passive labour market policy spending in relation to GDP is quite visible, while the share ALMP spending/GDP over the period has nearly tripled until 2014 (figure 3). The development of the available length of paid parental care (figure 4) , nearly 3 years for women, is recognized by the expert interviewed about reconciliation work-care (C Kollonay), yet – even in combination with family spending in relation to GDP – she points out that these indicators do not say enough about people’s possibilities to achieve the combination of both duties in practice.

Figures 1, 2, 3, 4. Developments in the individual employment relationship (top left), collective employment relationship (top right), employment conditions (bottom left), length of parental leave in weeks (bottom right)



6.3 Issues affecting the labour market

Asked for prominent issues that have affected the Hungarian labour market, several categories of issues appear. First, the transition from a communist to a democratic system brought deeply felt economic changes that were accompanied by dismissals and unemployment. Subsequent economic phases brought different issues with them. Second, a number of structural characteristics of the labour market itself appeared, presenting challenges to (labour) policy makers of several governments. Third, actors in the industrial relations sphere have experienced changes in terms of their clout (unions have been losing strength since the early 1990s but are not powerless) and influence on government policy.

Economic change and consequences of policy

- 1992-96: after system transformation economic shock and restructuring of sectors, high unemployment
- late 1990s- mid-2000s: consolidation and some economic growth
- economic crisis, what years?
- post-crisis: 2013/2014- present: high numbers of self-employed due to lack of employment policy (except for public works programme), labour shortages and tight labour market

Characteristics of labour demand/supply

- low employment levels as persistent problem
- problem of illegal work (large informal sector) and fraud regarding reported vs real wage payments
- increase of employer demand for more flexible work, often at the expense of job security (e.g. women on maternity leave taking up PT work but giving up rights)
- recent labour shortages exacerbated by emigration

Industrial relations sphere

- active multinational companies lobbying for favourable legislation
- decreasing unionization levels (2016: 9%, down from 90% in 1990 and 20% in 2001), yet some successful opposition to government proposals like a very extended reference period

7. Denmark: Flexicurity and a large role for labour organisations

Summary

The individual employment relationship enjoys a fair degree of protection with the equality principle increasingly applied across non-standard contract forms. The collective employment sphere enjoys a medium level of statutory protection but is covered by strong social partner agreements. Employment conditions are covered by medium level of statutory protection with extensions by sectoral collective agreements. Labour market transitions are regulated within an activating flexicurity system aimed at minimized unemployment spells. The sphere of reconciling work and care knows statutory minimum rights with extensions by collective agreements. Personal development and training is offered within a mostly publicly funded public-private system.

7.1 Salient characteristics of labour law and industrial relations⁷

One salient characteristic of the Danish system is that the government has widely maintained a passive role in relation to the formation of rules of labour law and collective bargaining. Nor has any administrative authority general power to make decisions or to intervene in the affairs of the parties in the labour market. Nearly all political parties agree that Parliament should pass statutes (Acts of Parliament) for labour conditions only in exceptional circumstances and if so by participation of the social partners in the preparation of the suggested bill. Instead, the rules for the labour market are drawn up by labour organisations by collective agreements and by the judicial authorities at their request, by private arbitration tribunals, and by the official Labour Court. As a result of this tradition, statutes in the field of labour law are traditionally sporadic and of a casuistic nature. It was not until recently that this picture changed due to Danish membership of the EU and the necessity of implementing European rules by statutory law which – unlike Danish collective agreements in Denmark – had validity *erga omnes*.

However, Parliament has from time to time forced to intervene in the bargaining process of new collective agreements, when the parties have not been able to solve the problems themselves and industrial conflict has threatened the community. Many issues which in other countries are handled by Acts of Parliament and public institutions are in Denmark transferred into the hands private non-profit-making associations for all sorts of purposes such as rendering unemployment benefits and social aid, forming associations for housing purposes, etc. Often this is economically supported by the state. Thus formation of

⁷ This part is based on information from Hasselbalch (2016), Ch.1 through 5.

employer and employee organisations falls in line with the normal concept of how to handle human relations.

A very well-known feature of the Danish labour market system is 'flexicurity'. The term indicates three elements. The first is flexibility on the labour market, i.e. flexible rules for hiring and dismissing of employees thus making it easy for the enterprises to adapt to shift in market conditions and new technologies. Formal employment security (i.e. security of being able to stay in the same job due to employment protection and tenure with the same employer) is rudimentary compared to what applies in most other modern industrialised countries. Second, moderate employment protection is compensated for by a fine-meshed social security net where income security (understood as security to have a pay) is achieved by a comprehensive system of cash benefits heavily financed by the state on a generous and in principle long-term basis in case of either unemployment, sickness or disability. This means that most people are eligible to claim sufficient benefits if they lose their job. Third, and in addition to social security, remaining employed in the long run (though not necessarily in the same job) is achieved by means of 'active labour market policy'. This includes legislation which ensures job offers and support and guidance of both employees and unemployed in their efforts to find new jobs and rather substantial investments by the state in training, retraining and in-service education. Moreover, there are strict rules on the obligation of the unemployed to accept available jobs. In sum, the Danish labour market system is not a comprehensive system of social security for employees based upon the actual employer. Instead it represents a desire to create job possibilities achieved by a constant upgrading of qualifications according to the actual needs of the labour market at any given time, with the goal to qualify people for new or different jobs. This creates a well-trained and updated labour force able to compete not on wages but rather on the basis of innovation and quality. As a consequence, enterprises as well as employees are more willing to run risks and undertake projects which include such risks. The system is widely accepted among voters and by the social partners and thereby forms a kind of unwritten 'contract' between the state, employers and employees.

Another characteristic is that the 'rule of law' plays a major role in Danish thinking. Moreover, due to the limited number of Danes, values such as solidarity with fellow citizens and responsibility to your next of kin have a high priority. This is the reason why serious confrontations have historically been avoided in the Danish labour market where negotiation and compromise have normally been regarded as the way forward and the most important tool for handling upcoming problems and conflicts of interest. Originally the Danish labour market was dominated by a strict public control of the manpower, disciplinary power of the employer and a social security based mainly on the relationship with the employer – eventually the fact that the employee lived in the employer's house. Little by little, however, contractual law became a more dominant factor. Relations between employee and employer and working conditions now had to be regulated by an agreement

or contract between the parties made in accordance with their individual wishes. In Danish legal theory the core of labour law is divided into branches of collective labour law (kollektiv arbejdsret) and individual labour law (ansættelsesret). Collective labour law comprises the legal rules which regulate collective agreements, individual labour law comprises the legal rules which apply to contracts between employer and workers.

In Denmark, collective agreements became common at the beginning of the 20th century. There was a feeling in the various employers' confederations that the trade unions had a serious wish to constrain the employer's right to make decisions in his own enterprise. The result was a serious and very long industrial conflict in 1899, when the employers' confederation DA established a lock-out of 40,000 members of the trade union confederation LO (then called the DsF). The conflict was brought to an end in September 1899 by the September Agreement. Apart from ending the conflict, this agreement included some important matters of a more fundamental character, e.g. it regulated the formal rules and conditions for establishing industrial conflict, and expressly stated that the employer had exclusive right of direction. The most important result of the September Agreement was, however, not its written rules, but the premises on which they were based and their interpretation. Thus, the Labour Court soon stated that the natural premises of the agreement meant that the parties had recognised each other's right to exist, and thereby the right of employees and employers to join their respective trade unions and confederations without the consent of the other party in the contract of employment. These decisions were important, because they meant that there has been no need in Denmark to create statutes relating to the right of organizing. In the years following the conclusion of the agreement, its very brief rules and not least its premises were subject to interpretation by the Labour Court, creating a web of rules which regulated, and which to a great extent still does so, the rules of collective labour law.

Trade unions and employers' organisations, which are not members of the LO and the DA, have to a large extent acceded to the September Agreement, and the later Basic Agreement, so that these documents are in reality the legal background for most collective agreements. Furthermore, the Labour Court has, in a number of its decisions, stated that some of the most important rules in the September Agreement and the Basic Agreement must be considered as manifestations of general principles of labour law which will be valid even if not expressly written into an agreement.

These solid foundations of a collective labour law-system laid down in the September Agreement (and in the work of the subsequent August Commission) meant that Parliament decided that there was no need for statutes in this particular field. That is why there is a strong tradition in Danish labour law that the formation of rules of law is entrusted first to the parties of the labour market by concluding collective agreements, and secondly to the Labour Court and the Arbitration Tribunals by establishing case law. When, in exceptional

cases, rules were created by statutes this was to protect certain groups of workers whose organisations had insufficient power to protect their members. Moreover, in these situations statutes were usually based on the content of the collective agreements of the labour market. The Annual Holidays Act (FL) is an example of statutes of this nature.

From the end of the 1930s, legislators took an increased interest in the labour market. Developments within the field of salaried employees are only one example of this. Also Acts on annual holidays, sickness benefits, supplementary earnings related pension and other issues were passed. Due to Danish membership of the EU, the trend accelerated from the 1970s, with a string of scattered statutes. This was accompanied by a growing body of statutes on health and safety at work and social security aspects. Still, it is characteristic of Danish labour law that there is still no general statute for the contract of employment or its content, nor is there any general statute for the existence and content of collective agreements. For special categories of worker, some general statutes for working conditions and employment contracts exist (white-collar workers, agricultural and domestic workers, seamen and vocational trainees).

We will now outline some important sources of labour law. There is no general statute (Act of Parliament) about working conditions and industrial relations in Danish law. The statutes in this field are of a sporadic and casuistic nature. There are some orders (administrative regulations/statutory instruments) which affect the conditions of the labour market. To a certain extent such regulations do exist in connection with statutes which belong to public law. This applies, for instance, to the Annual Holidays Act (FL).

In the field of collective labour law the only existing statutes are the Act on the Labour Court and Industrial Arbitration Tribunals (ARL) and the Official Conciliators Act. In the sphere of individual labour law there are more statutes. One group of Acts in this field concerns the basic conditions of employment for certain groups of employees: white-collar workers, vocational trainees, seamen and others. Another group of Acts regulates specific working conditions for more or all groups. Some of these types of statute are modelled upon the content of the collective agreements between the more important organisations of employees and employers or on EU directives. Statutes relating to working conditions cover a wide area, partly concerning statutes valid for all, or at least the great majority, of the population in employee positions. Moreover, some of the ordinary social security statutes relate to the employment relationship too. One important act in this category is the Annual Holidays Act which regulates the right to paid holidays for nearly all employees (except 'crown servants'). Other examples are the Sickness and Pregnancy Benefits Act (valid for all employees and ensures daily cash benefits from the employer in case of illness for the first two weeks), the Dismissal on Grounds of Union Membership Act, the Equal Treatment for Men and Women Act, Equal Pay Act etc.

The contract of employment itself is an important source of labour law. Thus the starting point in Danish law - valid for labour law too - is that the parties have the freedom to conclude contracts by their own volition and with a content meeting their own wishes.

The collective agreement is a most important instrument in Danish labour law. Thus collective agreements to a very great extent, substitute for statutory law in various important fields of labour law, so that one could say that Parliament has actually delegated some of its power to labour market organisations (social partners). There are various types of collective agreements. The most important are basic agreements containing more permanent rules for one or more sectors, industry-wide agreements for one sector only and local agreements supplementing the industry-wide agreement on the enterprise level. In each of these levels supplementary agreements may be concluded regulating special conditions. Examples of this are those relating to the solution of industrial disputes, especially disputes of interpretation of the collective agreement, agreements regulating shift work, work studies and the setting up of cooperation committees.

In Denmark it is common for top (or main) organisations such as LO and DA, which comprise a number of sub-organisations, to conclude agreements which are called basic agreements. Basic agreements are characterised by being valid for all members of the two main organisations who are parties to the agreement and by being valid for a much longer period than a normal collective agreement. They typically contain general regulation on the conditions of the relationship between the main organisations and their members, such as formal rules on strikes and lock-outs, rules limiting the right of the employer to direct work; rules on how collective agreements are terminated, and rules on the peace obligation of collective agreements. Most statutes on the employment relationship and many statutes on collective labour law are non-derogable, which means that they cannot be deviated from either by collective agreement or by a contract of employment (or by custom and practice). Furthermore, it is a basic principle in Danish labour law that the stipulations of a collective agreement cannot be deviated from by the parties to the contract of employment in a way unfavourable to the employee. Therefore, such deviations will only be lawful if the parties to the collective agreement have consented.

7.2 Important changes between 1990-2016

The direction of change in the individual employment relationship has been one towards relatively more protection for those in atypical employment, a group that has been growing in Denmark like in other countries. Looking to collective employment relations, most changes can be linked to a development of decentralization – of collective bargaining - but

also centralization, as desired by labour organizations. In the sphere of employment conditions, more workers' rights have been developed especially through collective agreements. Continued vocational training, an important pillar for the flexicurity has received more attention in the 2010s and is in the process of being updated to phenomena like an increase of atypical workers. Labour market transitions continue to attract a lot of policy attention as integral component of the Danish flexicurity model and activation principles have been firmly integrated during the period of investigation, even leading to some recent criticism for putting too much emphasis on negative sanctions. In the sphere of reconciling work and care attempts have been made – mostly via collective agreements - to improve the already good standards to enable many more fathers to go on parental leave longer as it is customary in other Scandinavian countries.

Important changes in aspects of work
<p><i>Individual employment relationship</i></p> <ul style="list-style-type: none"> - expansion of rights for marginal employees over time (temp agency workers, marginal part-time and fixed-term employees) - limited severance payments (2010)
<p><i>Collective employment relationship</i></p> <ul style="list-style-type: none"> - 'decentralized centralization' of social partner organisations (mostly in the private sector) in 1990s - some changes in employee representation (atypical employees count for determination of shop stewards) - partial merger of health & safety with cooperation systems in enterprises
<p><i>Employment conditions</i></p> <ul style="list-style-type: none"> - changes in different forms of leave covered under reconciliation work/care
<p><i>Personal development and training</i></p> <ul style="list-style-type: none"> - review of public-private training system since 2011 in terms of efficiency and barriers to training - lowering of eligibility threshold to include more of atypical workers
<p><i>Labour market transitions</i></p> <ul style="list-style-type: none"> - long-term trend towards more guidance and control - shift from compensation to activation, also spreading to other social benefit systems - some reduction of active labour market spending (but still at high level) - gradual reduction of net replacement rate for medium/higher income groups - tighter rules on compensation but accrual of rights by those in atypical employment
<p><i>Reconciliation work and care</i></p> <ul style="list-style-type: none"> - Leave Act (2002) introduces 52 weeks of parental leave (further flexitime and other paid leave arrangements are regulated in CAs) - statutory right to fathers' paternity leave introduced (mid-2000s) - earmarking of a part of parental leave for fathers since 2007 in CAs

The reasons for those changes can be grouped into the influence of European Union legislation (directives), political government programmes and decisions by social partner organisations. As for the first, the implementation of EU directives has led to changes in the individual employment relations dimension by increasing the amount of statutory labour law on various issues, from equality to leave. Changes in the area of parental and paternity leave came about due to political agendas of various governments, the same goes for the adaptation of the unemployment system. Social partner beliefs about the necessity of changes in the collective bargaining sphere led to more decentralization but also the broadening of issues regulated to those in the sphere of the welfare state. The appearance of alternative labour organisations (trade unions) also falls into this category.

7.3 Illustration of trends 1990-2013 in various dimensions of employment institutions and expert opinion

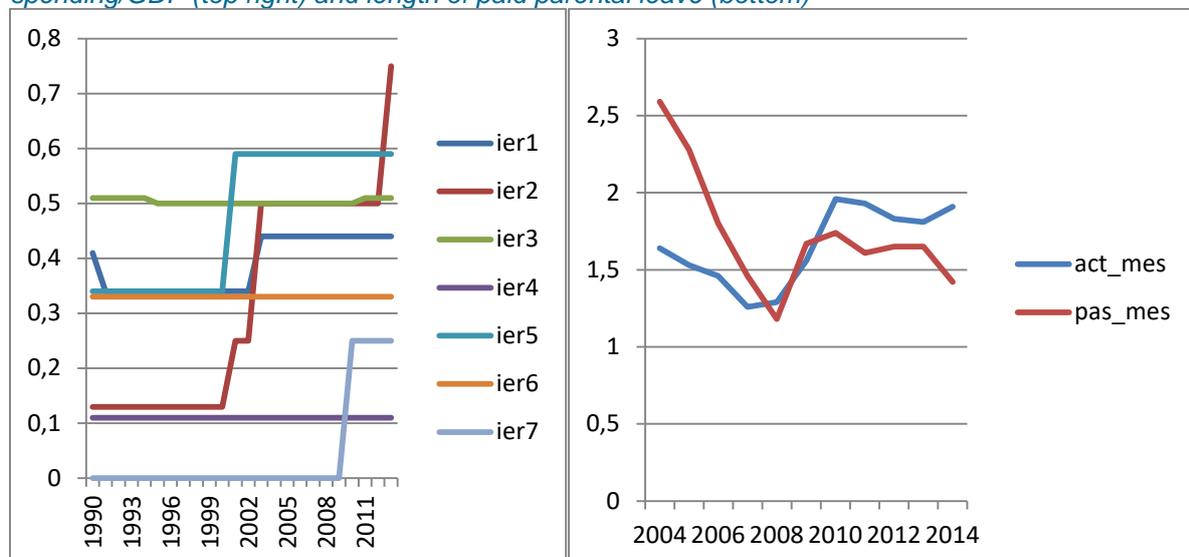
When confronted with the situation of Denmark in a Scandinavian cluster (with Sweden and Iceland), both experts agreed but voiced their surprise at two cluster features: 1) the highest scores of all clusters on the variable 'legally mandated notice period'. Here, Denmark scores lower than the cluster average (0.33 versus 0.56), taking into account the Salaried Employees Act for white-collar workers with months increasing with rising length of service, and the lower norm in collective agreements. 2) the coding of the peace obligation with the value '0' was questioned, given the strong Danish rules on observing that obligation. The LRI dataset, however, interprets the existence of a peace obligation as reflecting a very low degree of worker rights protection.

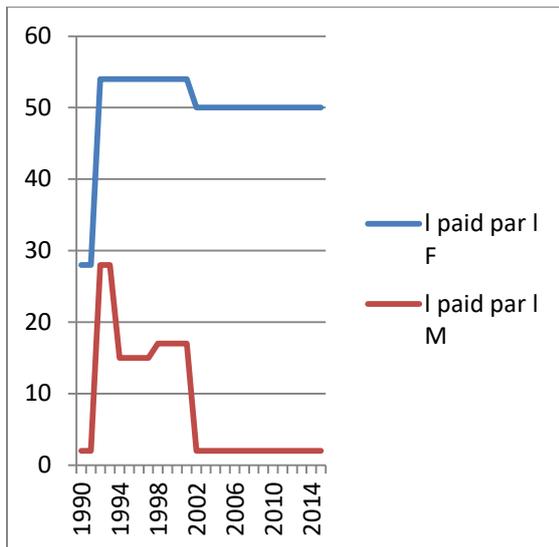
Below, we show those graphs based on the dataset in Stiller and de Beer (2017) that illustrate the areas with most changes in the various aspects of work. Here, generally, higher values on the range 0 to 1 represent a higher level of worker protection. The graph in the upper left corner (figure 1) shows that in 4 out of 7 dimensions (IER 1 - general rules on contract forms and substantive constraints on dismissal, IER2 - equal treatment of different types of workers/maximum duration fixed-term contracts, IER5 - dismissal notification and costs for dismissal of different workers, and, IER7 – legally mandated redundancy compensation) of the individual employment relationship, there was an upward development. Both experts concurred in that the implementation of EU directives on part-time and fixed term work was responsible for the increase. Compared to that aspect to work, changes in the collective employment relationship and employment conditions were very limited (and are not shown here). The graph in the upper right corner (figure 2)

visualizes changes in active/passive labour market spending in relation to GDP from the mid-2000s, with spending on passive policies decreasing (except during the economic crisis) and spending on active measures increasing. Here, one expert (M. Mailand) notes a possible explanation for these figures being a decrease in economic activity rather than a real decrease in labour market spending, taking account of business cycle effects (with an upswing in economic growth around 2013). Moreover, experts note that the rising share of GDP on active policies may not truly reflect a rise in spending since 2007.

The third and final graph below shows OECD data on paid parental leave for both sexes since 1990s. We see a steep increase of female parental leave in the early 1990s from 26 to 54 weeks, followed by some decrease in 2003 to 50 weeks, whereas male parental leave was reduced from a high of 28 weeks in 1992 to 2 weeks in 2003. Both experts added that the apparently large reduction of weeks for men needs some nuancing. In 2004, a roll-back of the previous childcare leave system was agreed and phased out in 2011. At the same time, in 2002 an extension of paid leave schemes to 52 weeks was agreed. Moreover, the OECD data apparently hide important parallel developments in CAs, where leave periods and pay were extended and/or increased during our period of interest. For instance, part of parental leave was earmarked for fathers in 2007/08 linked to pay within some sectoral collective agreements and extended from 3 to 5 weeks. The former government's plans for statutory earmarking of 3 months of parental leave for fathers were rejected in 2015, leaving the issue to be regulated by collective agreements (Blokgaard and Rostgaard 2017).

Figure 1, 2, 3. Developments in the individual employment relationship (top left), labour market spending/GDP (top right) and length of paid parental leave (bottom)





7.3 Issues affecting the labour market

Danish experts note three types of issues with an impact on the labour market. First, a number of developments in the sphere of unions, collective bargaining and conflict resolution. Moreover, notably employment conditions (hours, wages) were subject to more flexibilization. Due to the 2005 EU enlargement, Denmark received a large amount of migrant workers adding to labour supply. Moreover, and specifically to the public sector, the application of New Public Management policies had effects on (public sector) employment levels and work organization.

Industrial Relations issues

- trend towards individualization and individual wage bargaining etc. in CA negotiations
- decline in union density and collective organization in some sectors (e.g. in the creative sector) without overall reduction of collective bargaining coverage
- rise of alternative/ideological unions and consequently increasing use of civil law to resolve disputes (lack of access to traditional arbitration and dispute resolution system)
- broadening of CAs to take on more traditional welfare policy areas (social partners take on these areas as their responsibility)
- flexibilisation of working hours and wages

European Union

- influx of migrant workers due to EU enlargement

Political-ideological factors

- application of New Public Management principles to the public sector

8. A comparative view on countries' situation and the direction of change in employment institutions

This section looks back at the information from the previous country sections, 1) offering a comparative overview of the overall 'landscape' of employment institutions; 2) attempting to chart the direction of changes the countries experienced; and, 3) summarizing important issues that have impacted on countries' labour markets in order to identify commonalities and differences.

As for the first endeavor, table C1 below briefly summarizes the recent (as of 2016) characteristics of institutions for each aspect of work across the five countries. To describe the 'quality' of the current situation, it uses various parameters relating to the various aspects of work from an employee's perspective, namely:

degree of protection (individual employment relationship): continuum from 'hardly any' to 'high'

degree of protection (collective employment relationship): continuum from 'hardly any' to 'high'

degree of protection/generosity and their base - statutory and/or collective agreement – (employment conditions): continuum from 'hardly any' to 'high'

type of activation applied in labour market policy or other policy developments (labour market transitions);

extent of rights and entitlements stemming from family and flexibility policies (reconciliation work-care): continuum from 'hardly any' to 'high'

characterization of continuous vocational training system (personal development and training).

Taking the country experts' judgements on the most recent changes and additional literature into account, we arrived at an approximate characterization of the various aspects of work in countries *relative to each other*, observing, for each aspect, countries with only rudimentary protection versus countries that fare much better and those that lie in between. In doing so, we made no difference between statutory labour law and rules contained in collective agreements, as both are generally considered formal sources of labour law. Obviously, a caveat is in place here: the resulting categorization is to some degree subjective and dependent on the choice of countries. Yet we believe this is acceptable given the purpose *is to illustrate the general range of protection* offered by labour law as well as rights and duties embedded in employment-related policies.

Examining those aspects where a continuum of protection/rights describes the differences in institutions, considering the individual employment relationship, one could rank countries in the following way (sorting them from high level to low level of protection with gradations in between):

1. Denmark
2. The Netherlands
3. Germany
4. UK/Hungary
5. United States

For the collective employment relationship, the ranking would look slightly different:

1. Germany
2. Denmark/The Netherlands
3. Hungary
4. United Kingdom
5. United States.

Regarding employment conditions, Germany, Denmark and the Netherlands generally feature good levels of protection, followed by the United Kingdom, Hungary (where conditions are subject to more flexibility since the new Labour Code) and, again in the final position, the United States.

As for labour market transitions, a ranking of countries in terms of benefit systems and active labour market policies would be a difficult task. If comparing the intensity of activation applied to jobseekers and other inactive groups, we may say that the United States probably has the most activating system with least generous benefit provision; on the other extreme, we find Hungary without a clear activation policy but a workfare programme that is not tailored to regain access to the regular labour market. All other countries have different types of activation in place as well as benefit systems tailored to their specific type of welfare state support.

Turning to reconciliation of work and care, a stylized view would describe the United States as the country with least state support, and Denmark as the country with most instruments in place to enable parents to combine their work and care tasks. In between these

extremes, the UK offers rather weak and, as experts put it, 'patchy support'; Hungary offers long parental leave periods but adds little cash benefit nor sufficient services. Germany and the Netherlands, in contrast, both feature a fair amount of rights and financial incentives, with Germany extending statutory instruments more than the Netherlands, which relies more on paid parental leave arrangements in collective agreements combined with ample possibilities to request part-time work. Finally, personal development and training is most institutionalized (with public involvement) in Denmark and completely personalized in the US, with Germany, the Netherlands, Hungary and the UK occupying a middle position with employer-based systems with the involvement of many more bodies as providers.

Table C.1 – Current characterization of employment institutions across countries

	United States	United Kingdom	Germany	Netherlands	Hungary	Denmark
Individual Employment Relationship (level of protection)	Hardly any protection, 'at will' employment contract	Limited protection, extensions conditional on collective agreement	Medium level of protection, standard employment enjoys better protection than atypical work	Medium level of protection, equality principle applied to flexible work	Limited protection, contracts under labour and civil law	Fair degree of protection with equality principle increasingly applied across contract forms
Collective Employment Relationship (level of protection)	Very low level of federal statutory protection	Low level of statutory protection	High level of statutory protection and employee representation, autonomy of social partners	High level of statutory protection, medium level of employee representation	Medium level of statutory protection and employee representation	Medium level of statutory protection but strong social partner agreements
Employment conditions (degree of protection)	Very low level of federal protection plus state and local legislation	EU minimum statutory levels of protection, some company collective agreements	Medium levels of statutory protection and (often) sectoral collective agreements	Medium level of statutory protection, extension by sectoral collective agreements	Minimum to medium level of statutory protection	Medium level of statutory protection, extension by sectoral collective agreements
Labour market transitions (type of activation)	All-embracing activating labour market policy	Workfare-type activating jobseeker policy	Activating jobseeker policy and adequate benefit levels	Work-first activating jobseeker policy	Public works programme and very limited jobseeker benefits	Activating flexicurity policy
Reconciliation work and care (degree of rights and entitlements)	Very low: few federal provisions plus some state and local legislation	Low: focus on minimum rights	Medium to high: extended statutory rights, legal entitlements to childcare provision	Medium: extended statutory rights complemented by collective agreements	Low to medium: extended statutory rights but differing childcare provision	High: statutory minimum rights, extension by collective agreements
Pers. Development and training (type of system)	Not institutionalized, personal responsibility	Mostly employer-based system	Mostly employer-based system	Mostly employer-based system	Mostly employer-based system with some public support	Public-private system

Turning to a second comparison, which trajectories did the various countries follow to get to the current situation? Table C2 below gives a stylized overview of the overall direction of change between 1990 and 2016 in the various aspects of work across the country cases. Because of the difficulty of defining overarching qualitative parameters of change, the various rows offer qualifications based on different criteria (these relate to the parameters used in table C1 where possible, with some further specifications where the type of changes justify this):

- degree of protection (individual employment relationship);
- strength of unions and status of collective bargaining (collective employment relationship);
- generosity of employment conditions and their base (statutory and/or collective agreement);
- type of activation visible in labour market policy or other policy development (labour market transitions);
- general direction of change to family and related policies (reconciliation work-care).

Because of the absence of large changes in the organization of (continuing) personal development and training in most countries, there is no corresponding row.

Overall, when judging the extent of changes, we may argue that the protection of the individual employment relationship 'in the books' (i.e. legal practice may differ) has been strengthened over time, especially in the EU countries (with the exception of Hungary in recent years); whereas the US experienced a downsizing of protection. In the collective employment relationship, it is striking that unions everywhere, except for Denmark, have been experiencing losses in membership and negotiation power. Employment conditions have improved in some respects, but also been flexibilized (working times), however, the US only knows sparse federal leave legislation and state and local initiatives trying to alleviate the situation of the poorest somewhat. Unemployed job-seekers have been exposed to more duties and obligations via the strengthening of the activation paradigm nearly everywhere although their rights to assistance and benefit differ markedly across countries. In the sphere of combining work and care tasks, many countries have tried to step up legal rights and policy instruments but still large differences remain and higher female employment and concerns to increase gender equality are not in place everywhere. Although this paper did not have the objective to assess the *extent of change* in employment institutions, looking back at the accumulated changes in institutions, one may argue that today's landscape of employment institutions does no longer resemble the landscape we knew in 1990, to say the least. While this report could not systematically analyze the link between institutional changes and issues affecting the labour market report

due to time and space limitations, it is plausible to assume that the presence of these issues led to some adaptation of employment institutions. We now turn to our third aspect of comparison, looking at the nature of these issues in some more detail.

Table C2. Comparison of direction of institutional changes per aspect of work across countries

	United States	United Kingdom	Germany	Netherlands	Hungary	Denmark
Individual Employment Relationship	Since late 1970s: hollowing out of standard employment relationship, labour law and (union-based) institutional worker protection have lost effectiveness	Normalization of part-time employment, more focus on anti-discrimination than on job security	Diversification of employment contracts and other forms of work, loosening of job security	Flexicurity strategy since 1999, standard contracts with high level of job security	Flexibilization of part of workforce driven by employer demands (esp. flexibilization of employment contracts law)	Flexicurity without statutory dismissal protection, increasing protection for atypical employment
Collective Employment Relationship	Unions lose strength, strike action often defied by employer strategies	Unions lose strength and face more regulation, e.g. strike laws	Sectoral collective bargaining hollowed out to some extent; increasing importance of works agreements	Decentralization of collective bargaining, weakening unions	After 2010: marginalization social dialogue, abandoning of earlier tripartism; weakening unions face strengthened works councils; hostile regulation including strike laws; re-regulation of CB bargaining	Decentralized centralization of social partners, unions weakened in some sectors but not overall
Employment conditions	Increasing gap between income and productivity as real wages decrease over time, top-ups are dependent on place and sector	EU minimum requirements, but real wages decrease especially after the 2008 crisis	EU minimum requirements and top-ups in collective agreements, increasing dualization (high- vs low-skilled) of conditions since 2000s	EU minimum requirements and top-ups in collective agreements, more focus on employability	EU minimum requirements, employment conditions increasingly dependent on individualized agreements	EU minimum requirements next to regulation through collective agreements
Labour market transitions	Strengthening of activation within entire social welfare system	Stepwise tightening of activation towards strict 'workfare' policies; benefits partially (to be) replaced by financial (tax) credits	Late replacement of passive status-protection benefits by stronger activating approach with promoting and demanding elements; means-tested system of social protection	'Work first' activation approach to prevent exclusion and promote re-integration into paid work for all target groups ('activating social security law')	Scale down of relatively generous social benefits since 2007; creation of rigorous workfare (public works) programme at the expense of active labour market policy	Activation aimed at inclusive and socially cohesive society, strong focus on employability and some tightening of eligibility and benefit receipt
Reconciliation work and care	Personal (financial) responsibility: only limited minimum recognition of unpaid leave for family purposes achieved, more federal law proposed	Strengthening of rights to family-related leave, limited financial support for care leave; childcare provision limited	Re-orientation of policy towards de-familiarization; incentives for more gender equality in combining work and care	Varying regulative and financial incentives to reconcile work and care, yet very share of female part-time employment	Trend towards decreasing protection of family life for parents and incentives; expectation for young mothers to care at home	Increasing incentives/provisions to support work and care; more focus on more gender equality in combining work and care

Issues affecting countries' labour markets: general trends versus country-specific issues

When analyzing issues affecting the labour market in different countries, we may distinguish two categories: one type of issues that is said to occur everywhere (although to various extents) as they relate to global and mainly economic and/or organizational developments, and another type of issues that reflect country-specific circumstances (although, admittedly, the first type of issues may impact on the second type, too). In the first category, we find:

- the increase of atypical and often low-paid jobs, including independent contractors/solo-self-employed,
- unions losing strength in terms of membership and coverage of the working population,
- the transformation of economies including the onset of digitalization and changes in how businesses operate and organize working processes,
- government programmes trying to adapt regulation to particular objectives, often tailored to business demands (flexibilization of human resources, competitiveness).

In the second category, we find issues that are specific to particular countries. To give a few examples, US experts pointed to long-term political-ideological choices since the Reagan government, strongly influenced by business interests, to keep state regulation of work – including employee protection - to a minimum, leaving it to markets. In the UK, Conservative governments since prime minister Thatcher have tried to restrict union activity, while the subsequent New Labour governments favoured the later creation and expansion of low-wage jobs with state subsidies if that suited the needs of employers. German governments since 1990 have had to tackle - after one another – first the challenges of unification for the labour market and society more broadly, and restructure entrenched passive welfare state policies while trying to keep up the country's economic strength. The expert on the Netherlands noted a shift over time towards more regulation and bureaucratic rules for employers regarding dependent employees, which helped to increase the demand for non-standard (or outsourced) work and solo-self-employment. Hungary, in turn, lived through a complete political and economic transformation after the fall of the Communist regime in 1990 and had to re-invent employment regulation and collective employment relations before joining the EU in 2005. Finally, Denmark has been modernizing its socio-economic model with the participation and consent of its strong labour organisations while trying to cope with labour market consequences of EU enlargement, especially migration.

9. Conclusion

This paper has presented a comparative overview of employment institutions in the United States, the United Kingdom, Germany, the Netherlands, Hungary and Denmark. The subsequent country sections were divided into two parts. First, they characterized the different systems of labour law and industrial relations. Second, and based on the accounts of thirteen expert interviews and additional literature, they investigated the direction of change in employment institutions and described the underlying reasons for the changes and important issues influencing national labour markets during the past 25 years.

Following the country sections, an overall comparison of the recent situation of employment institutions revealed that the selected countries *show relatively large variation on the protection of the individual and collective employment relationships and employment conditions*. Here, the United States is situated at the 'lower protection' end of the continuum and Denmark, Germany and the Netherlands at the 'higher protection' end, with the United Kingdom and Hungary being situated in between. In a way, this degree of variation is not surprising, given that countries were selected from different country clusters identified in previous research (except for Germany and the Netherlands, which were both assigned to the 'conservative' cluster). Most countries experienced different reform trajectories - in terms of timing and the nature of changes - on the aspects of work related to labour law (individual and collective employment relationship, employment conditions).

Analyzing the reasons for the changes that occurred, there was one strong incentive for EU countries to *adapt institutions in the same direction* (=all countries examined except for the US and Hungary before 2005). Affecting in particular the aspects of individual employment relations, employment conditions and reconciliation of work and care, EU directives in the 1990s and 2000s prescribed minimum standards on part-time, fixed-term and temporary agency work, on working time, and, in 2010, also for parental leave. EU countries needed to comply with these, which led to the adaptation of existing legislation, often meaning improvements, or to new legislation where statutory law had not yet existed (e.g. Hungary) or issues had been mostly regulated by collective agreements (e.g. Denmark). Of all the countries studied, only the United States was left free to continue on its course of minimal state invention in the sphere of employment. However, frustration with inactivity of consecutive federal governments has led to examples of more employee-friendly leave regulation or on higher than national minimum wages in several states and locally.

A prominent reason for *varying directions of change across countries* is related to governments' policy agendas. These inevitably differ because they depend on country-specific contextual factors including the perception of (the urgency) of problem pressures that need to trickle through the policy process, the type of (coalition) government in place, and, political and/or societal opposition to proposed changes. One illustrative example was the decision by the first Social-Democratic and Green government in Germany after 1998 to

fundamentally reform labour market policy in order to combat unemployment and fight the image of the ailing 'German model', whereas the previous Conservative-Liberal government that dealt with the immediate economic consequences of German unification had been unable to tackle such reforms.

Admittedly, in some other aspects of work – e.g. labour market transitions - countries did follow roughly the same direction of change, for instance, as seen in the spread of the activation paradigm, albeit with country-specific gradations and variations in strictness on positive and negative incentives to get back into work. In the area of reconciliation of work and care, policy-makers in many countries realized in the period under investigation (even before EU legislation was put into place), that a regulatory context that enables parents to combine work and child (or elderly) care would help to increase female employment to prop up employment levels and labour supply, but also improve gender equality. Regarding personal development and training, the provision and financing is not institutionalized by public policies (except for Denmark) and has not experienced large changes. As for important issues affecting labour markets in all countries to some degree, we identified the expansion of non-standard forms of work, transformative economic change and shifts in business organization and weakening of unions as overarching. Furthermore, labour markets were also affected by country-specific challenges.

All in all, since 1990 a remodeling of the broader landscape of employment institutions - including employment-related policies – has been going on against the background of a rapidly changing economic and business context with numerous implications for labour markets. New demands on labour demand and supply are, on the one hand, urging policy-makers to adapt pre-existing ideas about how to ensure sufficient protection of employees in the face of growing atypical employment. On the other hand, social partner organizations, especially unions, are prompted to come up with new strategies, sometimes in the face of anti-collective action regulation or campaigning against a role played by collective employment relations (as in the UK, Hungary and the US), and with growing parts of the working population becoming less prone to union membership. These processes require forward-looking thinking and creativity on the part of leading policy-makers and unionists.

Policy-makers may consider to:

create minimum forms of employment security for those working under contract forms (and forms of work not linked to employment contracts, like crowd work) not yet covered by labour law (national and EU legislation),

think more systematically about how to employ instruments in the area of development and training – an area largely unchanged in the past 25 years compared to the other aspects of work - to ensuring that employees switch jobs, if needed, smoothly, and better make use of short spells of unemployment.

Unions, on the other hand, to avoid further weakening of their membership base, need to:

find creative ways of reaching out to those not fitting the image of their members often still employed on standard contracts (females, starters on the labour market, self-employed, hybrid workers),

think of innovative ways of representing the needs of these 'new' workers next to collective agreement negotiations and social dialogue processes.

Last but not least, and although not formally part of employment institutions, there is an important role to be played by knowledge-producing organisations, whether part of universities, e.g. academic centres of studying employment and industrial relations issues, or privately financed think tanks. These bodies need to be actively producing and disseminating knowledge to support policy-makers and social partner actors in adapting ideas and strategies to 21st century labour market realities and their implications for labour law and industrial relations.

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Appendix

Interviews with country experts

The Netherlands

- prof. dr. Evert Verhulp, AIAS-Hugo Sinzheimer Institute, University of Amsterdam (01.12.17)

Germany

- dr. Johannes Heuschmid, Hugo Sinzheimer Institut für Arbeitsrecht (HSI), Frankfurt (01.11.17)

- dr. Werner Eichhorst, Institute of Labour Economics (IZA), Bonn (28.11.17)

Hungary

- prof dr. Laszlo Neumann, Department of Labour and Social Law, Eötvös Loránd University, Budapest (03.11.17)

- Maria Tarsoly, sectoral expert, Hungarian Metalworkers Federation (VASAS), Budapest (02.11.17)

- Erszebet Berki, lecturer and former official at the Hungarian Ministry of Economic Affairs, Department of Industrial Relations, Budapest (02.11.17)

- prof. dr Csilla Kollonay-Lehoczky., professor emeritus Central European University, labour law expert in the area of reconciliation work and care, Budapest (15.11.17)

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Denmark

- dr. Mikkel Mailand and dr. Trine P Larsen, Danish Institute of Labour Relations (FAOS), University of Copenhagen (combined interview, 25.11.17)

United Kingdom

- prof. dr. Denis Gregory, Ruskin College, University of Oxford (17.11.17)

- Lewis Emery and Nerys Owen, Labour Research Department, London (combined interview, 18.11.17)

United States

- Prof dr Ruth Milkman, Graduate Center and Murphy Institute, City University of New York (NY) (16.11.17)

- prof. dr. Angela Cornell, Cornell Law School, and prof. dr. Risa L. Lieberwitz, Cornell University School of Industrial and Labor Relations (ILR), Cornell University, Ithaca (NY) (combined interview, 06.12.17)

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