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Det svenska anställningsskyddet*

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Det svenska anställningsskyddet

Bilagan innehåller även en längre fördjupad text på engelska i vilken det finns referenser till internationell forskning.

1 Inledning

Ungefär en tredjedel av alla anställda får under ett givet år antingen ett nytt arbete eller lämnar sitt tidigare arbete enligt OECD:s data över arbetskraftens rörlighet i olika länder. Denna omflyttning av anställda och arbetstillfällen tycks bidra till en ökad produktivitet. Sysselsättningen växer snabbare i yngre och mer effektiva företag än i äldre och mindre effektiva företag.

En ständig omstrukturering med uppsägningar och öppnande av nya arbetstillfällen skapar värden för samhället i stort, men det är inte självklart att fördelarna fördelas på ett rättvist sätt. En fabriksarbetare som förlorar sitt arbete på grund av konkurrens från låglöneländer drabbas oförskylt. Det ligger i sakens natur att strukturomvandlingen leder till denna typ av närmast slumpmässiga utfall vilket gör att vi behöver ett socialt skyddsnät. Anställningsskyddet, som reglerar både uppsägningar av tillsvidareanställd personal och användandet av tillfälliga anställningar, kan ses som ett verktyg för att minska risken för att bli uppsagd på grund av dåliga ekonomiska förhållanden, men det kan också ses som ett skydd mot godtyckliga uppsägningar från arbetsgivarens sida. Genom att personalomsättningen begränsas minskar dock också arbetsgivarnas möjlighet att välja ut och leda sin personal samtidigt som det blir svårare att ställa om produktionen efter teknologiska förändringar eller när efterfrågan på företagens produkter förändras. Därför kan regelverket ha negativa effekter på såväl sysselsättning som produktivitet och teknologisk utveckling. Reglerna kan också skapa ojämlikheter mellan de tillsvidare-

anställda som skyddas av anställningsskyddet och de tillfälligt anställda som inte skyddas i samma utsträckning. I slutändan är valet av regelverk därmed en fråga om avvägningar mellan dessa för- och nackdelar.

Denna rapport inleds med en översikt av huvuddragen i anställningsskyddet i Sverige och andra OECD-länder (avsnitt 1). Avsnittet belyser särdragen i det svenska regelverket, vilket tycks kännetecknas av en exceptionell skillnad mellan ett starkt skydd för tillsvidareanställda och mycket begränsade restriktioner vad gäller användandet av tillfälliga anställningar. Därefter beskriver avsnitt 2 och 3 för- respektive nackdelar med ett anställningsskydd. Analysen visar att det svenska anställningsskyddet skapar en tudelad arbetsmarknad med stora skillnader i jobbtillgång mellan unga och äldre. Avsnitt 4 diskuterar därefter reformer av det svenska anställningsskyddet som skulle kunna öka effektiviteten på den svenska arbetsmarknaden.

2 Det svenska regelverket i ett internationellt perspektiv

Den nuvarande svenska lagstiftningen om anställningsskydd finns i Lagen om anställningsskydd från 1982, vilken bygger på den ursprungliga Lagen om anställningsskydd från 1974. I det svenska anställningsskyddet får de tillsvidareanställda ett starkt skydd. Möjligheterna till flexibilitet från företagens sida bygger istället i stor utsträckning på generösa möjligheter att använda tillfälliga anställningar. Dessa egenheter i det svenska regelverket blir tydliga vid internationella jämförelser. Jämförelserna visar att de restriktioner som omgärdar användandet av bemanningsföretag och tillfälliga anställningar är relativt svaga vilket står i kontrast till ett skydd för tillsvidareanställda som istället är striktare än i de flesta andra länder. Sverige är det land inom OECD som har den största skillnaden mellan hur strikta regelverken är för tillfälliga anställningar och tillsvidareanställningar. Med andra ord är den svenska arbetsmarknaden extremt tudelad. Å ena sidan måste företagen följa relativt strikta regler som skyddar anställda med tillsvidarekontrakt. Å andra sidan har de stora möjligheter att använda sig av tillfälliga anställningar.

3 Fördelarna med anställningsskydd

Anställningsskyddet kan både motiveras utifrån ett behov av att skydda de anställda från godtyckliga uppsägningar och utifrån en vilja att få företag att beakta åtminstone en del av personalomsättningens samhällsekonomiska kostnader.

3.1 Skyddande av anställda mot godtyckliga uppsägningar

Behovet av att skydda anställda mot godtyckliga uppsägningar tillgodoses av regelverket kring uppsägningar av personliga skäl, enligt vilket uppsägningar av skäl kopplade till en enskild anställd endast är motiverade om den anställde brutit mot eller inte följt villkoren i anställningsavtalet. Detta är doktrinen om *sakliga skäl* (just cause), som implementerats i de flesta europeiska länder, vilken dikterar att företag inte kan säga upp anställda utan att kunna belägga sakliga skäl.

Ett sådant skydd finns dock inte i alla länder. I USA råder istället ”Employment-at-will”- doktrinen som innebär att båda parter är fria att säga upp anställningen utan skadeståndsskyldighet så länge det inte finns ett uttalat kontrakt som reglerar anställningstiden och så länge den anställde inte täcks av ett kollektivavtal med annan innebörd. Under denna doktrin antas alla anställningar vara ”at will”, vilket innebär att arbetsgivaren är fri att säga upp individer av goda skäl, dåliga skäl eller av ingen anledning alls. Den anställde är lika fri att sluta, strejka, eller lägga ner arbetet av andra skäl.

Det finns goda argument för den Europeiska doktrinen om sakliga skäl. Inte minst kan anställningsskyddet vara ett bra sätt att skydda de anställda från godtyckliga beslut från arbetsgivarens sida. Exempelvis kan en arbetsgivare som inte följer arbetsmiljöreglerna säga upp anställda som klagar. Arbetsgivaren kan tjäna på detta så länge hon har möjlighet att ersätta de uppsagda till en låg kostnad. Genom att skydda anställda mot denna typ av uppsägningar kan effektiviteten i ekonomin förbättras.

Det bör dock noteras att anställningsskyddets positiva effekter i allmänhet fördelas ojämnt och att skyddet kan leda till att välfärden försämras för vissa grupper. Mer specifikt så missgynnas ofta de tillfälligt anställda av ett stark skydd för de tillsvidareanställda eftersom arbetsgivarna kan bli ovilliga att omvandla tillfälliga

anställningar till tillsvidareanställningar om det är dyrt eller besvärligt att säga upp tillsvidareanställd personal. Därför kan ett starkare skydd för de tillsvidareanställda gynna grupper som får större möjligheter att behålla sina jobb, och samtidigt vara till nackdel för de arbetslösa och de tillfälligt anställda vilka istället får försämrade möjligheter att få ett stabilt arbete. Denna mekanism förklarar varför de på insidan, s.k. ”insiders”, som har tillsvidareanställningar kan försvara ett strikt anställningsskydd även om det medför en kostnad för dem som står utanför, s k ”outsiders”, som inte har ett fast arbete. De som är unga, lågkvalificerade eller har invandrarbakgrund är överrepresenterade i gruppen ”outsiders”, medan högkvalificerade medelålders män vanligen tillhör gruppen ”insiders”.

Doktrinen om sakliga skäl som syftar till att skydda anställda mot godtyckliga uppsägningar är ett rimligt motiv bakom delar av det svenska anställningsskyddet, exempelvis arbetsdomstolens existens och lagstadgade varseltider som ger de anställda en möjlighet att förbereda sitt försvar. Däremot kan turordningsreglerna, som definierar den ordning utifrån vilken de anställda blir uppsagda, knappast motiveras som ett skydd mot godtyckliga uppsägningar. Snarare framstår turordningsreglerna som ett uttryck för en stark relativ position för insiders med lång anställningstid som kan vidmakthålla reglerna trots de negativa konsekvenserna dessa har för andra delar av arbetskraften. I realiteten kan företag och fackföreningar ofta kringgå turordningsreglerna vid lokala förhandlingar. Detta gör i praktiken regelverket mindre strikt men stärker också fackföreningarnas position. Det viktiga är att turordningsreglerna beskriver vad som händer om man inte kommer överrens vilket innebär att turordningsreglerna stärker ”insiders” positioner relativt ”outsiders”. På ett liknande vis kan återanställningsrätten och kraven på att anställda inte ska sägas upp om de kan omplaceras inom företaget, något som gynnar insiders, knappast motiveras som ett skydd mot godtyckliga uppsägningar.

3.2 Beaktande av personalomsättningens samhällsekonomiska kostnader

Alla moderna ekonomier är föremål för en ständig förändringsprocess med teknologiska innovationer och förändringar i folks

preferenser, något som innebär att vissa jobb med nödvändighet försvinner och ersätts av nya jobb i andra företag. Denna ständiga process med skapande och förstörelse av arbetstillfällen bidrar till tillväxten och det är därför ingen förlust för samhället om ett jobb försvinner av dessa skäl även om det kan vara en väldigt påtaglig förlust för den person som förlorar sitt jobb. Ett regelverk som hade förhindrat att jobbet försvann hade samtidigt förhindrat den gemensamma vinsten som skapas genom omvandlingen. Samtidigt finns det dock faktorer som pekar mot att det kan vara önskvärt att skydda vissa arbetstillfällen även om företagen inte har incitament att behålla den anställde. Anledningen är att det finns en skillnad mellan det privata och det samhällsekonomiska värdet av ett arbetstillfälle.

En anställd får lön av en arbetsgivare för hjälpa till med att producera varor eller tjänster. Produktionen representerar jobbets privata värde, och detta värde delas mellan en lön för den anställde och en vinst för företaget. I en modern ekonomi är dock varken företag eller anställda isolerade från resten av världen, och deras beslut kommer därför också påverka andra som inte har något som helst med företaget att göra. Detta fenomen, när någons beslut påverkar andra än de som fattar beslutet kallas för en *externalitet*. Ett annat vanligt exempel på externaliteter är miljöförstöring som ofta drabbar andra än de som fattar beslut om en miljöförstörande verksamhet.

Konsekvenserna av en uppsägning begränsas inte till den anställdes och arbetsgivarens egenintressen. En uppsägning kan också ge upphov till externaliteter och om så är fallet sammanfaller inte samhällets värde med det privata värdet – det samhällsekonomiska värdet är summan av det privata värdet och externaliteterna.

En viktig anledning till skillnaden mellan det privata och det samhällsekonomiska värdet uppstår genom det övergripande skatte- och bidragssystemen. De största intäkterna i statsbudgeten kommer från dem som har ett jobb medan arbetslösa och inaktiva bidrar väldigt lite till finansieringen av offentlig konsumtion och transfereringar. Därför uppstår en skillnad mellan det privata och det samhällsekonomiska värdet av ett jobb. Skillnaden uppgår till summan av de förlorade arbetsgivaravgifterna och inkomstskatterna samt de extra utbetalningar från socialförsäkringssystemen som blir resultatet när någon går från att vara löntagare till att bli arbetslös eller inaktiv. I de flesta OECD-länder är denna

skillnad betydande, och detta är ett starkt motiv för att ha ett anställningsskydd i någon form.

4 Anställningsskyddets kostnader

De senare årens forskning om anställningsskyddets konsekvenser visar att ett strikt anställningsskydd har en negativ effekt på sysselsättningen för vissa grupper (framförallt de unga), leder till längre arbetslöshetstider, medför lägre produktivitet och färre innovationer, och bidrar till en tudelning av arbetsmarknaden.

I huvuddrag kan den empiriska forskningen om anställningsskyddets effekter på arbetslösheten sammanfattas enligt följande:

- Graden av strikthet i anställningsskyddet har ingen effekt på arbetslöshetsgraden. Striktare anställningsskydd minskar alltså inte arbetslösheten.
- Striktare anställningsskydd leder till längre arbetslöshetstider.[1]
- Empiriska studier baserade på disaggregerade data visar att ett striktare anställningsskydd leder till lägre sysselsättning.

Den empiriska litteraturen antyder också att anställningsskyddet har negativa effekter på produktiviteten genom att minska de anställdas engagemang i sina arbeten och genom att minska arbetsgivarnas möjligheter att styra sin arbetskraft på ett effektivt sätt.

I praktiken skapar anställningsskyddet en tudelning mellan osäkra jobb med dåliga anställningsvillkor och stabila jobb med bättre anställningsvillkor. Detta beror på att företag använder sig av fler tillfälliga jobb för att kunna anpassa sig till förändrade förutsättningar när de fasta jobben omgärdas av ett striktare regelverk. Mer specifikt kommer företag att vara mer försiktiga med att erbjuda nyanställda personer tillsvidaretjänster om det är dyrt att säga upp personer som har sådana tjänster. Istället anställs de nyanställda på tillfälliga kontrakt så att deras produktivitet kan bedömas innan de erbjuds en tillsvidareanställning. De nyanställda är oftare unga, kvinnor och invandrare. Dessutom ger sam-

[1]Detta beror på den negativa effekt som anställningsskyddet har på skapandet av nya arbetstillfällen. Eftersom anställningsskyddet leder till minskningar av både skapandet och förstörandet av arbetstillfällen utan att påverka arbetslösheten får de som är arbetslösa vänta längre innan de hittar ett arbete vilket leder till längre genomsnittliga arbetslöshetstider.

existensen av ett strikt skydd för tillsvidareanställda och flexibla tillfälliga anställningar upphov till en ineffektiv personalomsättning eftersom företag kan vara ovilliga att omvandla tillfälliga anställningar till tillsvidaretjänster när de bedömer att kostnaden för att ha anställda på tillsvidaretjänster är hög. Andelen unga som har tillfälliga anställningar är till exempel högre i Sverige än i de flesta andra OECD-länder. Dessutom är Sverige, tillsammans med Italien, det OECD-land som har den största skillnaden i arbetslöshet mellan de unga och övriga i arbetskraften. I Sverige var ungdomsarbetslösheten 19,4 procent 2008 samtidigt som arbetslösheten för personer mellan 25 och 54 var 5,4 procent.

Den tudelning av arbetsmarknaden som blir ett resultat av ett strikt anställningsskydd för de tillsvidareanställda skapar trygghet för dem som har fasta jobb men detta sker till en kostnad av ökad osäkerhet för dem som har tillfälliga jobb. Därför är anställningsskyddets effekt på den genomsnittliga tryggheten i ekonomin oklar. Empiriska studier visar att både tillfälligt anställd och tillsvidareanställd personal uppfattar jobbtryggheten som större om arbetslöshetsförsäkringen är mer generös. Sambandet med anställningsskyddets strikthet är det motsatta: de anställda känner sig mindre trygga i länder där jobb är mer skyddade. Även om vi inte vet om detta samband verkligen beror på anställningsskyddet eller på andra faktorer antyder resultatet att ett striktare anställningsskydd inte är det bästa sättet att minska den upplevda otryggheten på arbetsmarknaden.

5 Finns det behov av att reformera det svenska anställningsskyddet?

Det svenska anställningsskyddet ger ett starkt skydd för tillsvidareanställd personal. Den ekonomiska forskningslitteraturen visar att ett anställningsskydd kan motiveras utifrån behovet att skydda anställda från godtyckliga uppsägningar och utifrån från en vilja att förmå företag att internalisera de samhälleliga kostnaderna som följer av alla uppsägningar. Anställningsskyddet är dock förknippat med kostnader i termer av minskad sysselsättning, produktivitet, innovationer och ekonomisk tillväxt.

Från detta perspektiv finns det två aspekter av det svenska regelverket som bör diskuteras. Den första aspekten är den tydliga tudelningen mellan reglerna för tillfälliga anställningar och tillsvidareanställningar som är positiv för vissa anställda men negativ för andra delar av arbetskraften. Den andra aspekten är att skyddet för de tillsvidareanställda är utformat på ett sätt som inte på ett effektivt sätt uppnår anställningsskyddets två mål: att skydda de anställda mot godtyckliga uppsägningar och att internalisera de samhällsekonomiska kostnaderna för uppsägningar.

5.1 Faran med att reformera på marginalen

De svenska reglerna för tillfälligt anställda har blivit betydligt mer flexibla under de senaste 25 åren medan regelverket för de tillsvidareanställda har förändrats mycket lite. Även relativt ett genomsnitt av OECD-länder har regelverket för tillfälliga anställningar öppnats upp betydligt medan regelverket för tillsvidareanställningar utvecklats precis som i andra länder. I Sverige har med andra ord anställningsskyddet reformerats på *marginalen* under de senaste 25 åren: fast anställda har omfattats av samma regelverk under hela tidsperioden, medan det blivit allt enklare att använda sig av tillfälliga anställningar.

Sverige är inte det enda landet som har följt denna reformstrategi. Även ett antal andra europeiska länder har reformerat regelverket för de tillfälligt anställda istället för att ändra reglerna för tillsvidareanställda. De studier som har analyserat denna utveckling visar att reformer som gjort arbetsmarknaden mer flexibel på marginalen har varit ineffektiva och i vissa fall haft negativa konsekvenser: Marginalreformer tenderar att skapa en

artificiell personalomsättning för de nyanställda och samtidigt endast ha en marginell effekt på jobbskapandet samtidigt som välfärdseffekterna kan vara negativa.

Sammantaget tycks det som att partiella reformer av anställningsskyddet, vilka inneburit att regelverket för tillfälliga anställningar gjorts mer flexibelt medan regelverket för tillsvidareanställningar har varit oförändrat, inte har varit framgångsrika. Den stora nackdelen är att de har skapat ineffektiva incitament för personalomsättning genom att öka skillnaden mellan de anställda beroende på typ av anställningskontrakt. Empiriska studier visar att dessa reformer saknar långsiktiga effekter på sysselsättningen samtidigt som de har negativa effekter för ungdomar, låg-kvalificerade och invandrare. Dessa resultat visar att det antagligen finns skäl att tänka om vad det gäller den reformstrategi som gällt i Sverige under den senast 25-årsperioden – genomgripande reformer kan vara mer fruktbara än partiella reformer.

5.2 Ökad flexicurity

Ovan har det betonats att det finns två motiv för ett anställnings-skydd: För det första skyddande av anställda från godtyckliga uppsägningar. För det andra att de samhällsekonomiska kostnaderna för personalomsättning ska internaliseras. Från detta perspektiv ger analysen av det svenska anställningsskyddet upphov till två observationer:

Avskaffa de regler som gynnar insiders

Vissa delar av det svenska anställningsskyddet kan egentligen inte motiveras utifrån de skäl som finns för att ha ett anställningsskydd. Delar av regelverket skyddar de tillsvidareanställda som är över-representerade inom fackföreningsrörelsen relativt de tillfälligt anställda och de arbetslösa. Reglerna skyddar dock inte de anställda mot godtyckliga uppsägningar och de tvingar inte heller företagen att internalisera kostnaderna för personalomsättning på ett effektivt sätt. Detta gäller turordningsreglerna vid uppsägning på grund av arbetsbrist, återanställningsrätten och kraven på att undersöka möjligheterna till omplacering innan uppsägning. Det är visserligen vanligt med avvikelser från turordningsreglerna efter

överenskommelse mellan fack och arbetsgivare men existerande prejudikat tyder på att det finns begränsningar i denna rätt: En överrenskommen turordningslista får inte strida mot god sed eller på annat vis vara otillbörlig. Dessutom kommer även regler som kan kringgås genom avtal påverka det faktiska utfallet genom att lagstiftningen bestämmer vad som gäller om man inte kommer överrens. Dessa regler kan också fungera som koordineringspunkter som de förhandlande parterna utgår från under förhandlingarna.

Naturligtvis kan man argumentera för att regelverket hindrar arbetsgivare från att göra sig av med besvärliga anställda, till exempel de som klagar på ohälsosamma arbetsvillkor, de fackligt aktiva eller de som kritiserar sina överordnade. Detta är visserligen sant, men på ett indirekt ineffektivt och kostsamt sätt. För att uppnå ett effektivt utfall bör arbetsgivaren få bestämma vilka som ska sägas upp, möjligen tillsammans med fackföreningen om det finns ett kollektivavtal som stipulerar detta. Arbetsdomstolen bör istället avgöra om det förekommer felaktiga uppsägningar eller inte. Det är uppenbart att de nuvarande reglerna är svåra att förändra eftersom reglerna gynnar de tillsvidareanställda. Men det kan ändå vara värt att beakta möjligheten till mer genomgripande reformer eftersom de empiriska studierna tyder på att det nuvarande regelverket leder till minskad produktivitet, lägre sysselsättning, hindrar innovationer och leder till en tudelad arbetsmarknad, samtidigt som unga, lågkvalificerade och invandrare missgynnas.

Internalisering av de samhälleliga kostnaderna för personalomsättning.

Det svenska anställningsskyddet är inte utformat på ett sätt som gör att arbetsgivarna har någon anledning att ta hänsyn till de samhällsekonomiska kostnaderna för sin personalomsättning. Även här skulle man kunna argumentera för att turordningsreglerna, återanställningsrätten och kraven på att söka efter omplaceringsmöjligheter fyller denna funktion genom att de leder till färre uppsägningar och därigenom minskar personalomsättningen. Detta argument är dock felaktigt av två anledningar: För det första så innebär reglerna i praktiken bara att omsättningen av de tillsvidareanställda minskar, medan omsättningen av de tillfälligt anställda istället ökar. Effekten på den totala personalomsättningen

är därför oklar. För det andra förhindrar dessa regler arbetsgivaren från att behålla de mest produktiva anställda men reglerna leder inte nödvändigtvis till att det blir färre uppsägningar totalt sett. De förändrar istället sammansättningen och minskar produktiviteten eftersom kvaliteten på matchningen mellan arbetstagare och arbetsuppgifter försämras. Faktum är att genom att kvaliteten på matchningen försämras, och att produktiviteten därigenom faller, så kan löner och skatteinkomster (som beror på inkomstnivån) minska så att de samhälleliga kostnaderna i slutändan ökar.

Ett sätt att åtgärda det faktum att jobben inte alltid värderas till sina fulla samhällsekonomiska värden är att ”fiskalisera” anställningsskyddet. Detta kan göras genom att integrera anställningsskyddet i finansieringen av arbetslöshetsförsäkringen och det generella välfärdssystemet. Den princip som skulle motivera en sådan fiskalisering används i många faktiska situationer där försäkringar är inblandade. En oförsiktig bilförare riskerar sitt eget liv och andras och hennes inställning kan därför kosta samhället stora resurser, inte minst i vårdkostnader. Av denna anledning beror försäkringspremierna på varje förares personliga historik, framförallt antalet olyckor personen har gett upphov till. Samma princip kan tillämpas på avslutandet av ett anställningsförhållande. En sådan ”bonus-malus”- mekanism som innebär att företagen bidrar till arbetslöshetsförsäkringen i proportion till antalet uppsägningar kan göra att färre arbeten förstörs när det inte är önskvärt från samhällets perspektiv. Ett sådant regelverk innebär nämligen att arbetsgivare får incitament att ta hänsyn till de kostnader som uppstår inom till exempel arbetslöshetsförsäkringen, och därmed tvingas de ta välfärdskonsekvenserna på allvar i samband med uppsägningar.

Det är värt att notera att ett liknande system redan finns i USA, där kostnader från uttagen a-kassa belastar arbetsgivaren i form av erfarenhetsbaserade premier. Arbetsgivare som säger upp många anställda, och därmed belastar arbetslöshetsförsäkringen med högre kostnader får betala högre premier till arbetslöshetsförsäkringssystemet än de arbetsgivare som säger upp färre anställda. Erfarenheterna från delstaten Washington belyser effekterna av ett system med erfarenhetsbaserade premier. Under 1985 införde delstaten ett sådant system till skillnad från grannstaterna Oregon och Idaho. Resultatet blev att arbetsgivare i Washington i mindre utsträckning än i grannstaterna sa upp sina anställda.

En fiskalisering av anställningsskyddet istället för turordningsreglerna återanställningsrätten och kraven på att undersöka möjligheten till omplaceringar fungerar som ett sätt att öka arbetsgivarnas möjligheter att leda och organisera sin arbetskraft på ett effektivt sätt och att samtidigt få arbetsgivarna att beakta de samhällsekonomiska kostnaderna av uppsägningar. Intäkterna från avgifterna kan användas för att finansiera arbetslöshetsförsäkringen och arbetsförmedlingen. Logiken bakom en fiskalisering av anställningsskyddet bygger på idén om att en beskattning av förstörda arbetstillfällen kan kombineras med en mer generös och mer effektivt uppbyggd arbetslöshetsförsäkring. Därför kan en fiskalisering tillvarata såväl arbetstagarnas som arbetsgivarnas behov: trygghet och flexibilitet. Arbetstagarnas behov av trygga övergångar inom arbetsmarknaden kan tillgodoses samtidigt som arbetsgivarna kan tillåtas att behålla och öka sin effektivitet. Dessutom kan fiskaliseringen vara ett sätt att bli av med den tudelning av arbetsmarknaden som skapats av det nuvarande rigida regelverket kring uppsägningar av ekonomiska skäl. Genom att låta uppsägningsavgiften växa steglöst med anställningstiden, oavsett om anställningsformen är tillfällig eller tillsvidare, är det möjligt att ta bort de skillnader mellan jobb med olika anställningsformer som skapar ineffektiva incitament till personalomsättning.

Det är viktigt att notera att det föreslagna systemet kan utformas så att arbetsmarknadens parter spelar en viktig roll vid implementeringen. Uppsägningsavgiften måste väljas tillsammans med nivån på arbetslöshetsförsäkringen och andra omfördelningsverktyg. Av denna anledning är det naturligt att parterna deltar i utformningen av systemet i ett land som Sverige där parterna administrerar arbetslöshetsförsäkringen. Utformningen av ett sådant system bör tillåta parterna att konstruera sammanhängande arbetslöshetssystem som tillsammans med uppsägningsavgiften också innefattar försäkringsnivån men även omfattningen av arbetsförmedlande insatser såsom till exempel mängden jobbsökarassistans och praktikåtgärder. Eftersom uppsägningsavgiften ska sättas så att företag beaktar de samhällsekonomiska kostnaderna för förstörda jobb kan avgifterna differentieras med avseende på region, bransch, företagsstorlek och andra karaktäristika som kan definieras av parterna.

Att uppnå såväl flexibilitet som trygghet (”flexicurity”) är en viktig del i en strävan att öka både arbetstagarnas välfärd och den ekonomiska tillväxten i en värld där globalisering och teknologisk

utveckling har en direkt effekt på vår vardag, något som snabbt förändrar såväl de anställdas som företagens behov. Företag måste vara innovativa om de vill överleva; arbetstagare måste vara flexibla om de vill hitta och behålla sina jobb. Från detta perspektiv är det rimligt att rekommendera en genomgripande reform av det svenska anställningsskyddet som ersätter turordningsreglerna, återanställningsrätten och omplaceringskraven med en uppsägningsavgift som växer steglöst med anställningstiden oavsett anställningsform.

1 Introduction

Evidence from international data on movements of manpower suggests that each year on average around one third of all workers are hired and/or separate from their employer in the OECD countries. These reallocations of workers and jobs appear to be productivity enhancing: employment grows faster in younger and more efficient firms than in older and less efficient firms.

The permanent flux of job destruction and creation produces gains for the collectivity as a whole, but they are not automatically shared out according to the merits and responsibilities of each individual. The worker in a traditional manufacturing factory who loses her job due to competition from low-wage countries is not to blame for her situation. The process of job destruction and job creation inevitably produces this type of random outcome which entails the need for social insurance. Employment protection legislation, which comprises the rules governing the firing of workers and the use of temporary contracts, can be seen as a means to reduce the risk of job loss which can result from adverse economic conditions but also from arbitrary dismissals of employers. Nevertheless, by restricting labor turnover, employment protection restricts the ability of employers to select and to manage their manpower and to adapt to changes in technology and changes in the demand for their products. Accordingly, such restrictions can have negative effects on employment, productivity and growth. They also generate inequalities between workers employed on permanent contracts, who benefit from job protection, and those employed on temporary contracts. Finally, the choice of a good legislation is a matter of tradeoff between the benefits and the costs of job protection.

This report begins by presenting the main features of employment protection legislation in Sweden and in the OECD countries (section 2). This presentation sheds light on the

specificities of the Swedish legislation, which appears to exhibit an exceptional contrast between the stringency of protection of permanent jobs and the weakness of restrictions on the use of temporary jobs. Then, sections 3 and 4 are devoted respectively to the analysis of the benefits and costs of job protection.[2] This analysis shows that the Swedish employment protection legislation induces labor market segmentation which creates strong inequalities in the access to jobs between young workers and older workers. Section 5 discusses reforms of the Swedish employment protection legislation that could improve the efficiency of the labor market.

[2] The recent book of Per Skedinger (2010) provides a thorough economic analysis of employment protection legislation.

2 An overview of the Swedish system and an international comparison

2.1 The Swedish system

General legislation on employment protection legislation in Sweden nowadays consists of the 1982 Employment Protection Act, which represents a further development of original legislation from 1974.

The statutory protection regulated by the Act is essentially designed to ensure that the normal case is for employees to be employed on a permanent basis. An employee in such permanent employment cannot be dismissed by way of termination with notice unless the employer is able to prove just cause. An employee who has been dismissed without proof of just cause can take legal action to have the dismissal ruled invalid, which means that the employment relationship continues as if no notice had been given.

A fixed-term contract of employment can only be entered into in accordance with specific regulations amended in 2007. The Act previously had contained a detailed listing of different situations in which such a contract of employment could be entered into. Now, an agreement referred to as general fixed-term employment can be entered into without specific reason, but such employment becomes permanent if the employee, during a five-year period, works for the same employer for more than a combined two years. Probationary employment is lawful provided that the period of probation does not exceed six months. In addition, fixed-term employment is lawful under certain conditions for substitute and seasonal employment.

According to the Employment Protection Act, a permanent job may be ended by either party through termination with notice.

When it is the employer who wishes to do so there must be just cause. Where an employee has committed a serious breach of contract, there are special provisions whereby the employer is able to terminate the contract of employment with immediate effect by way of summary dismissal. In accordance with the Act, no just cause for dismissal exists if the employer can reasonably be required to find the employee concerned alternative work within the company. The Act distinguishes between two main categories of reasons for dismissal with notice: redundancy/shortage of work and reasons relating to the individual employee concerned.

Redundancy

Shortage of work (arbetsbrist) constitutes just cause for dismissal as a matter of principle. There is shortage of work when there is no work for employees but also when dismissals are occasioned by decisions made by virtue of the employer's right to manage the business, for economic, organizational and other reasons. The courts do not examine business assessments made by employers which lead to decisions to reduce their workforce, unless there is reason to suspect that a dismissal is due not to business considerations in the sense envisaged by the Act but to reasons which in reality relate to the individual employee concerned. In situations constituting redundancy the employer cannot arbitrarily decide who is to be dismissed but must follow a specified order of selection. A separate selection category is normally defined for each production unit and each area of collective agreement coverage, which means that manual workers and white-collar workers normally belong to different selection categories. Within each selection category, the position of individual employees in the order of priority in selection for redundancy is based on seniority, i.e. their personal length of service with that employer. If employees can be provided with continued employment only by being transferred (and thereby supplanting others with a shorter length of service), the criterion for giving them preference is that they must possess adequate skills for the alternative job concerned. A different order of priority may be chosen by collective agreement, but case-law indicates that there are limits to bargaining freedom in this respect: a collectively agreed redundancy list must not be contrary to good practice or otherwise improper. Under an

amendment to section 22 of the Act introduced in January 2001, in the interests of retaining necessary skills in small businesses employers may exempt from the procedure of selection for redundancy a maximum of two employees who are of particular significance to the company.

Those who are made redundant retain, for the following nine months, a preferential right to re-employment in the enterprise in which they were formerly employed.

Reasons relating to the individual employee concerned

Generally speaking, dismissal for reasons relating to the individual employee is justified only if the employee is guilty of a breach of or failure to fulfill a contractual obligation which is of material interest to the employer and whose existence or importance has been made known to the employee. The Court's assessment is based not merely on the course of events in the situation giving rise to dismissal but, more particularly, on the inferences that can be drawn from what has happened as regards the employee's suitability for continued employment in the future. Accordingly, isolated instances of misconduct, provided they do not involve gross negligence, have in many cases been deemed not to constitute grounds for dismissal, whereas in cases of repeated offences the Court has not infrequently taken a sterner view, especially if the culprit has already been reprimanded by the employer. Theft and other forms of dishonesty are viewed severely by the Court.

As a rule, illness does not constitute just cause for dismissal unless it permanently reduces an employee's capacity to work to such a degree that he or she is no longer able to perform any really useful job. Employers are under an extensive obligation to assist in the rehabilitation of employees suffering from ill health. The Court treats chronic alcoholism as an illness. Where an employee's capacity to work is impaired for reasons other than illness, the employer must make efforts to solve the problem by, for example, transferring the individual concerned, but if all reasonable efforts fail the situation may constitute just cause for dismissal, particularly if the costs incurred by the employer are demonstrably greater than the value of the employee's contribution to the business. Serious problems affecting cooperation in the workplace

can constitute grounds for dismissal, but only if a less drastic solution such as transfer has been tried first.

Normally, an employer who wishes to dismiss an employee for reasons falling within this category may not invoke events dating back more than two months.

Procedural rules

The Act contains a number of procedural rules on dismissal whose infringement by an employer incurs liability in damages. An employer contemplating dismissal for reasons relating to the individual employee concerned must inform the latter at least two weeks in advance. If the employee is a union member the relevant local union must be informed at the same time. Following this, the employer is obliged to engage in consultation if the union or the individual concerned so requests. In cases where the action contemplated involves redundancy, the employer must enter into negotiations on managerial decisions with the trade union with which he is bound by collective agreement. The implementation of European Union directives in 2001 imposes that an employer not bound by any collective agreement must negotiate with all the trade unions involved, i.e. all unions having at least one member employee affected by the measure under consideration before a decision on collective dismissals or transfer of an undertaking can be made.

Dismissal must be effected by giving written notice stating, among other things, the procedure to be followed by the employee if he or she wishes to claim that it is invalid. At the employee's request, the employer is obliged to specify the circumstances being invoked as grounds for dismissal.

Sanctions and remedies

A dismissal is ruled invalid by the court at the employee's instance if the employer is unable to prove just cause, but this does not apply where a dismissal is merely in breach of the rules on order of selection for redundancy. Short limitation periods are imposed within which an employee must inform the employer of the intention to lodge a claim and initiate legal proceedings. When a

dispute has arisen over the validity of a dismissal, the employment relationship continues to exist until it has been finally settled. While negotiations are in progress and then during any legal proceedings the employer may not normally exclude the employee from work. Nor is exclusion permissible after a dismissal has been ruled invalid by the court. The normal outcome here is for the employer to accept the judgment and take back the employee into employment. As a last resort, however, employers are able to extricate themselves from an employment relationship by paying compensation ranging from 6 to 48 months' pay depending on the employee's length of service and age.

In cases of unjustified dismissal the employer also incurs liability in damages towards the employee. Damages may be awarded both for financial losses and for the non-material injury suffered. An unlawfully dismissed employee who chooses to let the dismissal stand is entitled to receive, in addition to the normal pay due up to the expiry of the notice period, compensation for financial losses possibly suffered as a result of a reduction in income following dismissal, subject to certain restrictions. In calculating the amount of such compensation, deductions are made to allow for any sum which the employee has since earned from employment elsewhere or could reasonably be expected to earn. Compensation for the non-material injury caused, known as general damages, is assessed on a case-by-case basis but at present normally amounts to around 5 000 Euros.

Coverage

The Employment Protection Act applies to all employees, except managerial executives, employer's family members, employees who are employed specifically to work in their employer's personal household, and individuals who are given a job under certain government-funded schemes to fight unemployment.

The Act also applies to employers of all kinds. However, since 2001 a new rule has been introduced for small businesses in relation to the order of selection for redundancy. The Act likewise applies to public authorities and other employers in the public sector, although there are certain statutory rules for the state sector.

Most of the provisions of the 1982 Employment Protection Act constitute mandatory rules in the employee's favor, meaning that

any contract or agreement which removes or limits the employee rights they establish is invalid. However, certain provisions listed may be derogated from by collective agreement, some only through sectoral agreements but others also through local agreements provided other matters at the workplace concerned are covered by an industry-wide agreement.

This brief description of Swedish employment protection legislation shows that permanent contracts benefits from a strong protection. Labor market flexibility relies on the wide possibility of using temporary jobs.

2.2 International comparisons: the strong duality of the Swedish labor market

Since the seminal paper of Lazear (1990) which highlighted a positive correlation between severance payments[3] and unemployment for 22 OECD countries over the period 1956–1984, many studies have been devoted to the international comparison of employment protection legislations.[4] The most comprehensive analysis has been provided by the OECD. Its main advantage is to cover various aspects of employment protection legislations.[5] The OECD employment protection indicators are compiled from 21 items quantifying the costs and procedures involved in dismissing individuals or groups of workers or hiring workers on fixed-term or temporary work agency contracts. The overall summary indicator takes values from 0 to 6; a higher value indicates a more stringent regulation. It is made up of three sub-indicators quantifying different aspects of employment protection:

- Individual dismissal of workers with regular contracts. This incorporates three aspects of dismissal protection: (i) procedural inconveniences that employers face when starting the

[3] More precisely, severance payments were defined as the number of months of severance pay or notice a blue collar worker with 10 years of service received upon termination without cause.

[4] See among many contributions, Heckman and Pages (2004), World Bank (2008) and the two syntheses of Addison and Texeira (2003) and Venn (2009).

[5] See Venn (2009) who discusses the most recent updates of the OECD indicators and their relations with other indicators. Venn shows that the indicators provided by various institutions and authors may differ because they are focused on different aspects of legislations (i.e. protection of permanent jobs versus restrictions on temporary jobs). However, these various indicators yield converging measures of employment protection legislations when they deal with the same aspects of employment protection legislations.

dismissal process, such as notification and consultation requirements; (ii) notice periods and severance pay, which typically vary by tenure of the employee; and (iii) difficulty of dismissal, as determined by the circumstances in which it is possible to dismiss workers, as well as the repercussions for the employer if a dismissal is found to be unfair (such as compensation and reinstatement).

- Additional costs for collective dismissals. This focuses on additional delays, costs or notification procedures when an employer dismisses a large number of workers at one time. This measure includes only additional costs which go beyond those applicable for individual dismissal. It does not reflect the overall strictness of regulation of collective dismissals, which is the sum of costs for individual dismissals and any additional cost of collective dismissals.
- Regulation of temporary contracts. This quantifies regulation of fixed-term and temporary work agency contracts with respect to the types of work for which these contracts are allowed and their duration. This measure also includes regulation governing the establishment and operation of temporary work agencies and requirements for agency workers to receive the same pay and/or conditions as equivalent workers in the user firm, which can increase the cost of using temporary agency workers relative to hiring workers on permanent contracts.

Figure 1 shows the stringency of employment protection in all OECD countries as in force on 1 January 2008 evaluated according to the OECD employment protection index. The strictest employment protection is in Turkey, Luxembourg and Mexico, while the least strict is in the United States, the United Kingdom, Canada and New Zealand. Sweden is below OECD average. However, the aggregate measure of the stringency of job protection hides strong disparities in regulations of permanent jobs and fixed-term jobs, especially for Sweden.

Figure 1 OECD employment protection index

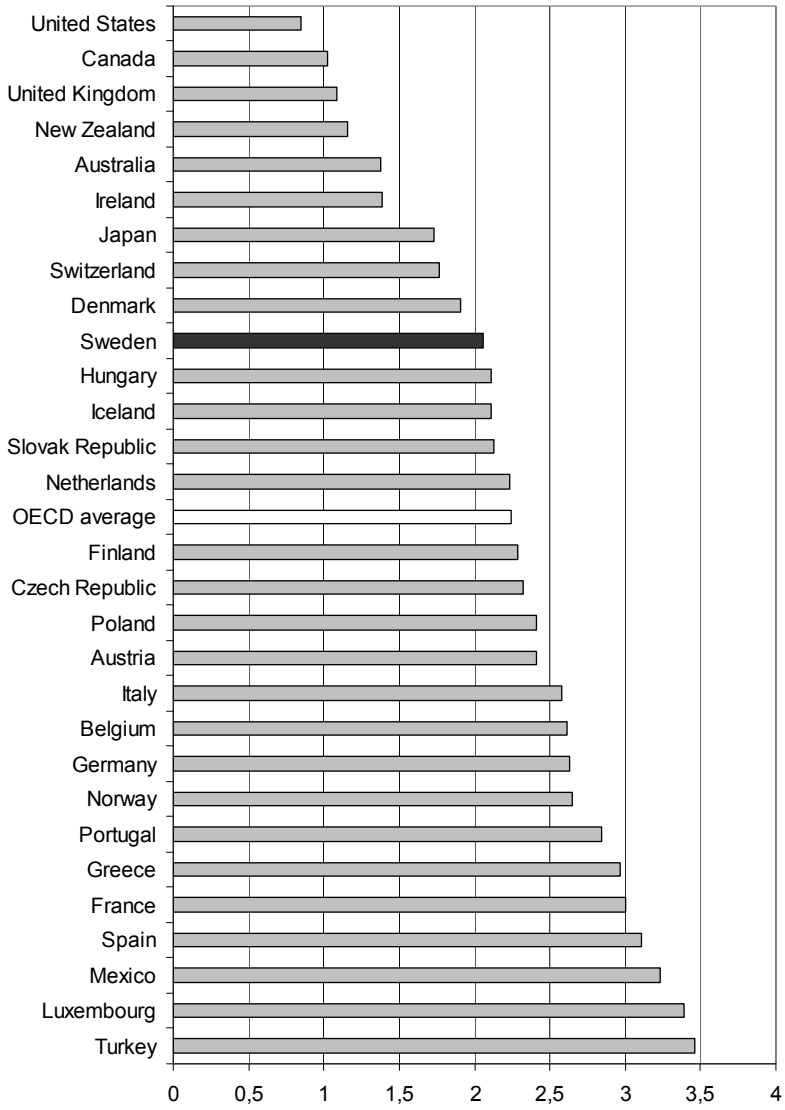

Figure 1: OECD employment protection index in 2008. The indicator goes from 0 for the weakest regulation to 6 for the strongest.

Source: OECD.

Figure 2 shows that protection of permanent workers against individual dismissal is rather stringent in Sweden. Sweden is in

fourth position together with the Netherlands, after Portugal, the Czech Republic and Germany. Figure 3 shows that Swedish workers also benefit from many requirements for collective dismissals relative to workers living in most other OECD countries. All in all, it turns out that the protection of permanent jobs, through protection of individuals and collective dismissals, is quite strong in Sweden relative to other OECD countries.

Figure 2 Protection of workers against individual dismissal

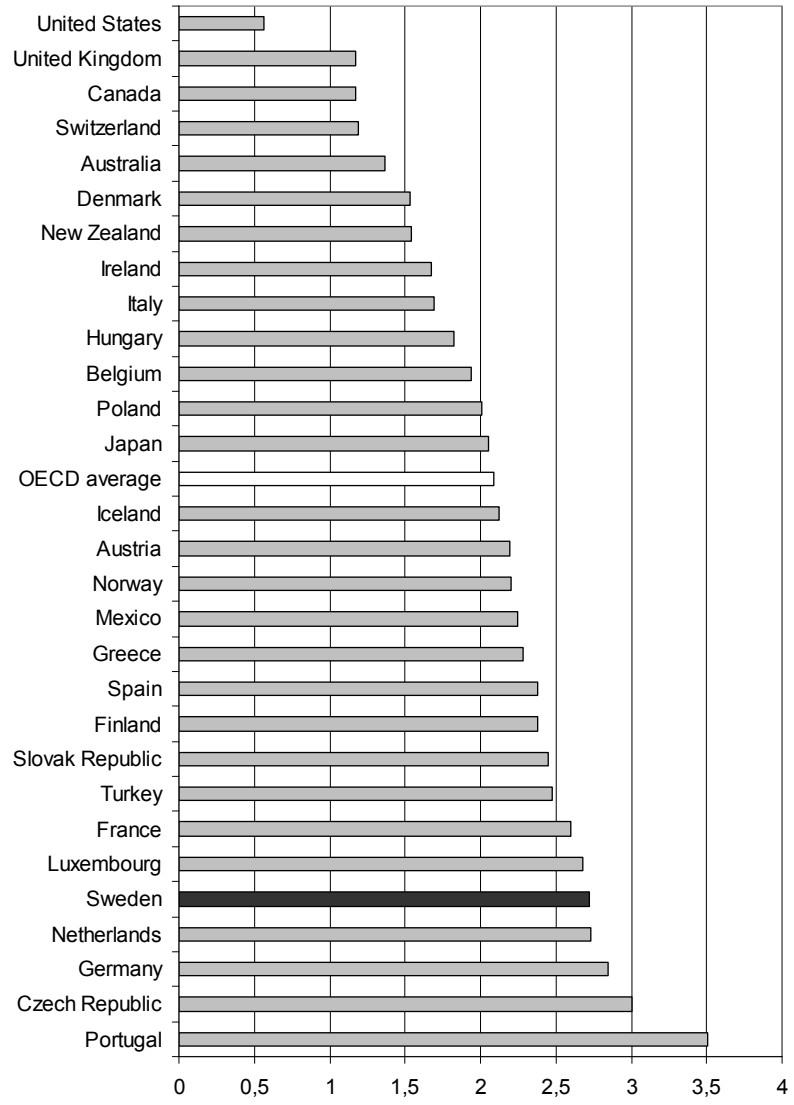

Figure 2: Protection of permanent workers against individual dismissal in 2008. The indicator goes from 0 for the weakest regulation to 6 for the strongest.

Source: OECD.

Figure 3 Specific requirements for collective dismissal

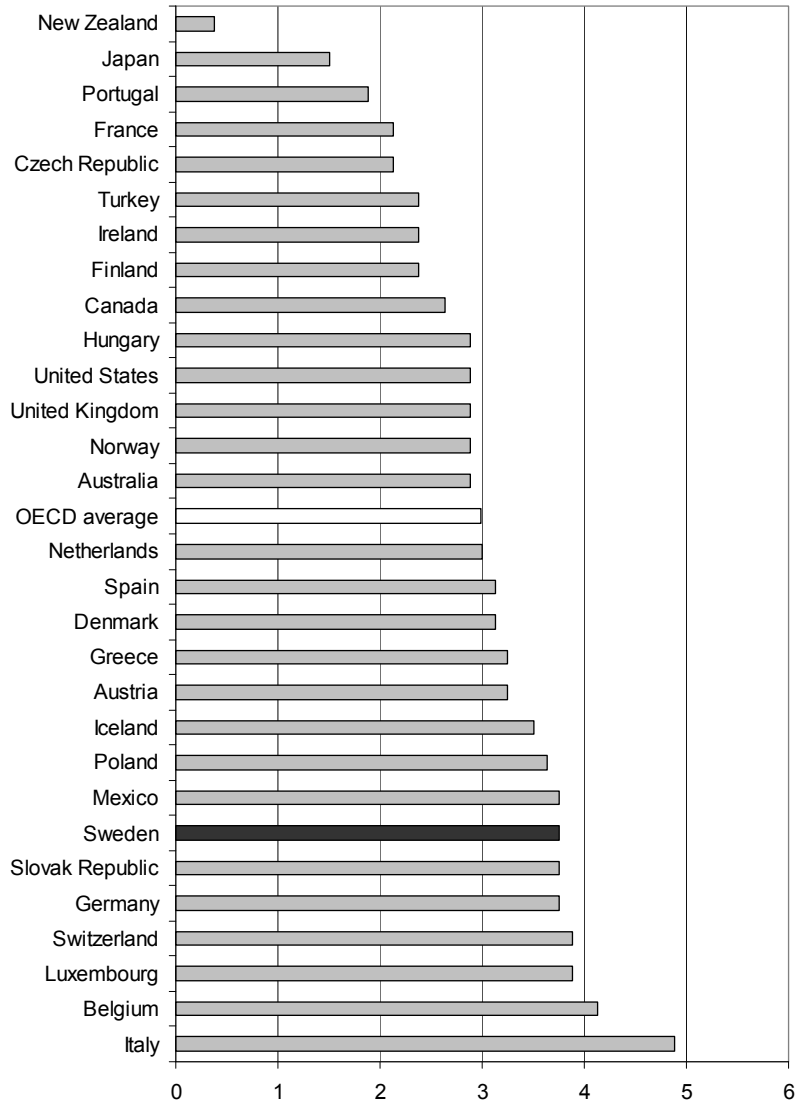

Figure 3: Specific requirements for collective dismissal in 2008. The indicator goes from 0 for the weakest regulation to 6 for the strongest.

Source: OECD.

When we look at the stringency of regulation of fixed-term jobs, the picture is quite different. As shown by Figure 4, Sweden has a relatively weak regulation of temporary forms of employment. In

this matter, Sweden ranks not far from the bottom, far below the OECD average, at the same level as Ireland, just above the United States, the United Kingdom and Canada. The regulation of temporary jobs comprises the regulation of temporary work agency employment and the regulation of fixed-term contracts. Let us look more precisely at these two forms of regulation of temporary jobs.

Figure 4 Regulation on temporary forms of employment

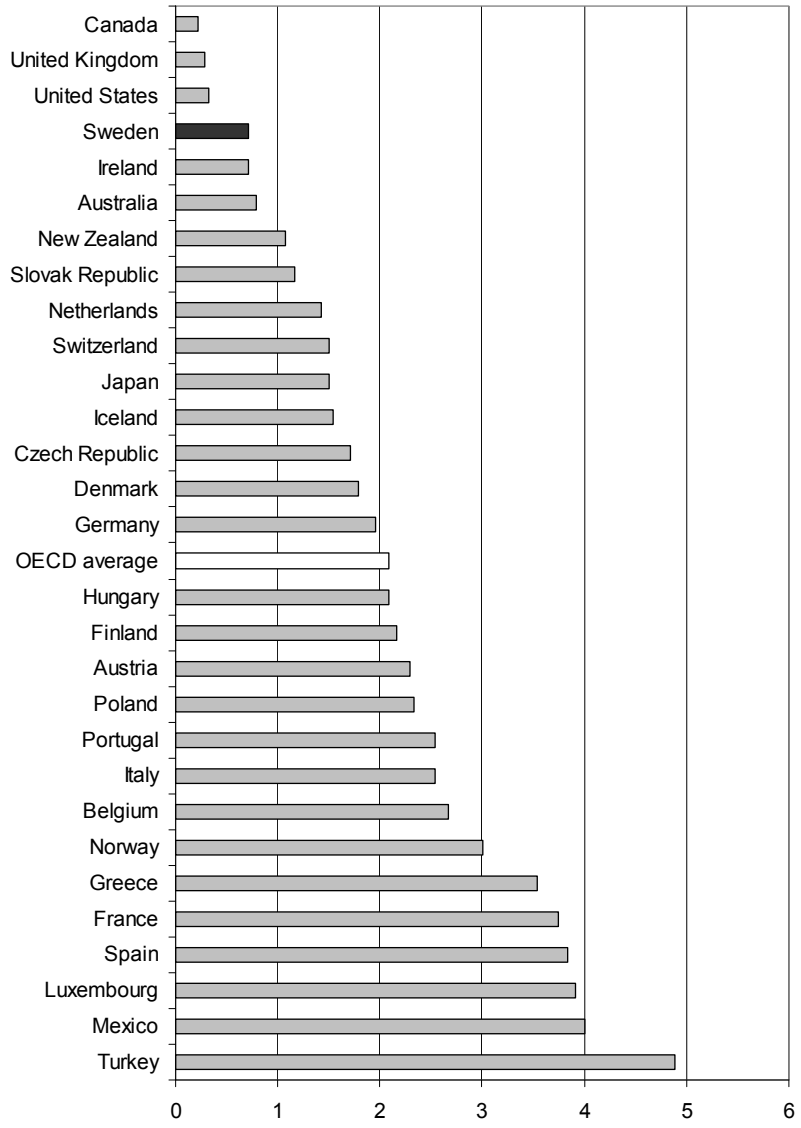

Figure 4: Regulation of temporary forms of employment in 2008. The indicator goes from 0 for the weakest regulation to 6 for the strongest.

Source: OECD.

Figure 5 reports the stringency of regulation of temporary work agency employment in 2008. The indicator covers five aspects of this regulation: i) the types of work for which temporary work agency employment is legal; ii) the restrictions on number of renewals of temporary work agency contracts; iii) the maximum cumulated duration of successive temporary work agency contracts; iv) the authorizations and reporting requirements for temporary work agencies; v) the regulations requiring equal treatment of regular and agency workers at the user firm. For each dimension, there is a sub-index which takes values from 0 (least restrictions) to 6 (most restrictions). The indicator reported in Figure 5 is a weighted average of these sub-indexes. It turns out that the regulation of temporary work agency employment is weak in Sweden relative to most OECD countries. Sweden is far below the OECD average, at the level of the United States. In particular, there is no special requirement regarding equal treatment with regular employment. However, there is an authorization system which is administered by the social partners.

Figure 5 Regulation of temporary work agency employment

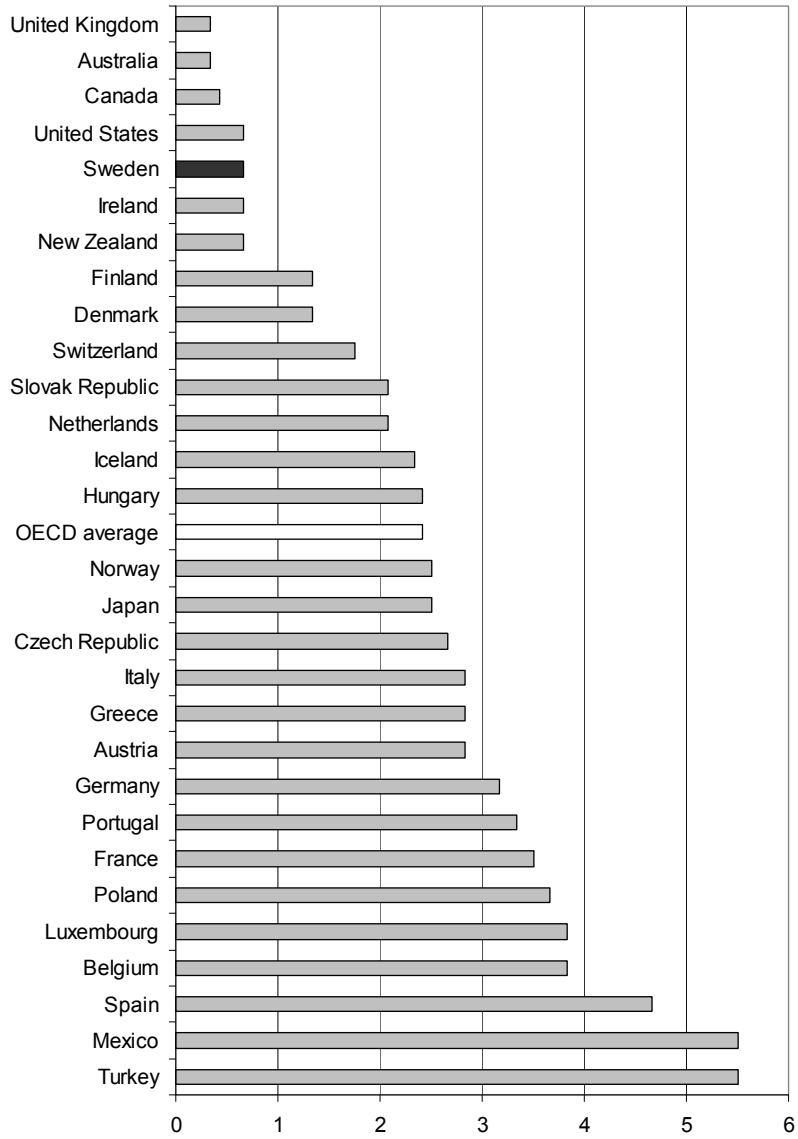

Figure 5: Regulation of temporary work agency employment in 2008. The indicator goes from 0 for the weakest regulation to 6 for the strongest.

Source: OECD.

Figure 6 displays the stringency of regulation of fixed-term contracts. The indicator presented in Figure accounts for three dimensions of this regulation: i) the valid cases for use of fixed-term contracts; ii) the maximum number of successive fixed-term contracts; iii) the maximum cumulated duration of successive fixed-term contracts. As previously, for each dimension, there is a sub-index which takes values from 0 (least restrictions) to 6 (most restrictions). The indicator reported in Figure 6 is a weighted average of these sub-indexes. It turns out that the regulation of fixed-term contracts is rather weak, relative to other OECD countries in Sweden. In particular, the list of valid cases for use of fixed-term contracts is not very restrictive relative to many other countries since fixed-term contracts are permitted for temporary replacement of absent employees, seasonal work, employing persons above 67 years of age, but also for general fixed-term employment, a category which can comprise a large set of situations. Also, contrary to many other countries, there is no limit on the number of renewals of successive fixed-term contracts. For instance, in Spain, where the share of temporary jobs is very high, the regulation of fixed-term contracts is more stringent. The list of valid cases for use of fixed-term contracts is more restrictive, it is not allowed to have more than three successive fixed-term contracts and workers become permanent when they have been under contract for more than 24 months within a period of 30 months (instead of five years in Sweden).

Figure 6 Regulation of fixed term contracts

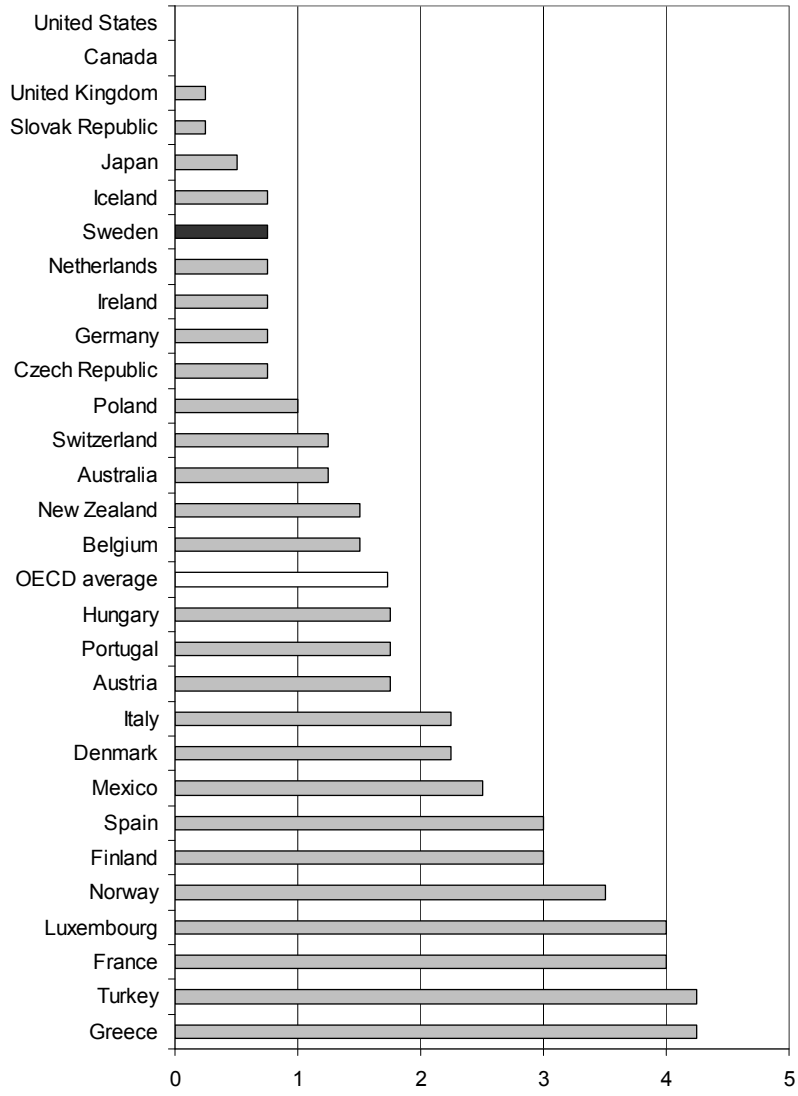

Figure 6: Regulation of fixed term contracts in 2008. The indicator goes from 0 for the weakest regulation to 6 for the strongest.

Source: OECD.

Overall, there is a relatively weak regulation of temporary work agency employment and of fixed-term contracts in Sweden. This

weak regulation of temporary jobs contrasts with the stringent regulation of permanent jobs. As shown by Figure 7, Sweden is the OECD country which exhibits the highest difference between the stringency of regulation of permanent jobs and the stringency of regulation of temporary jobs. In other words, there is a strong labor market segmentation in Sweden. On one hand, firms must comply with many stringent rules to manage permanent jobs. On the other hand, employers have many possibilities to use temporary jobs.

Figure 7 Protection permanent jobs – regulation temporary jobs

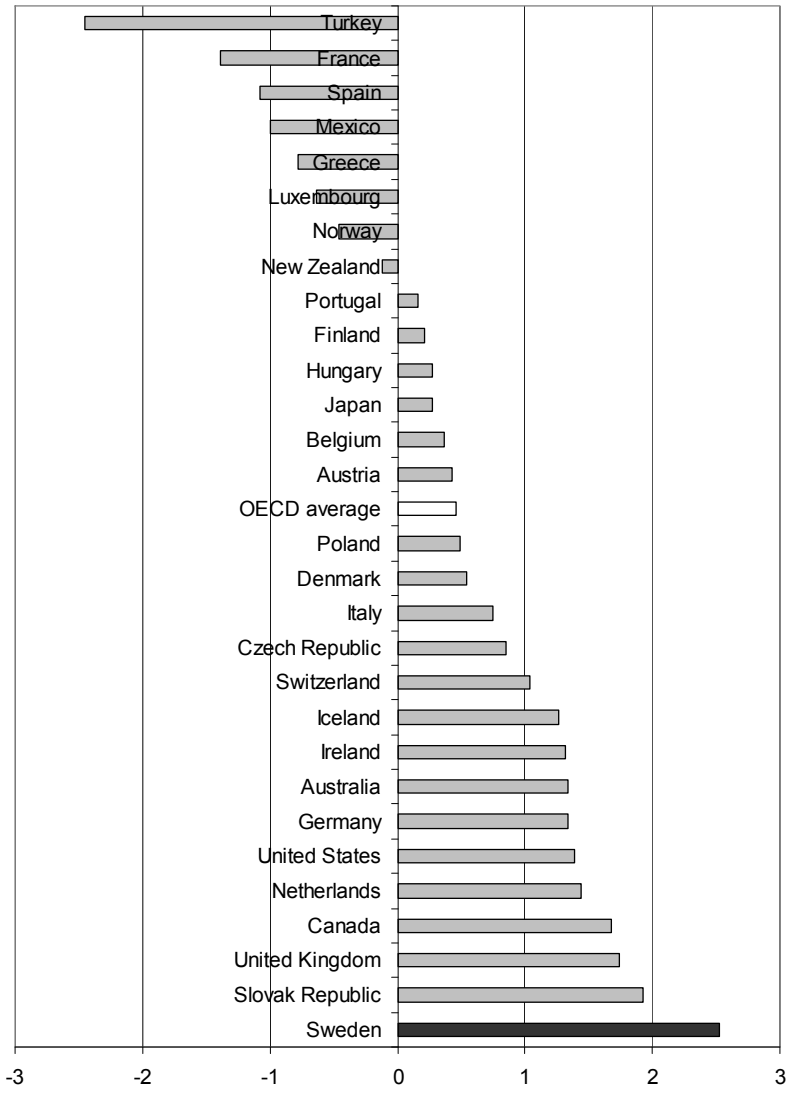

Figure 7: Difference between protection of permanent workers (average of protection against individual dismissal and specific requirements for collective dismissal) and the stringency of regulation of temporary forms of employment in 2008. Each indicator goes from 0 for the weakest regulation to 6 for the strongest.

Source: OECD.

In conclusion, international comparisons show that the duality between flexible rules for temporary contracts and strict protection for open-ended contracts is particularly strong in Sweden relative to other OECD countries.

3 The benefits of job protection

Employment protection legislation can be justified by the need to protect workers from arbitrary dismissals and have firms internalize at least some of the social costs of labor turnover.[6] In an ideal world, every worker should be able to keep his job as long as he wishes and to quit whenever he wants. Nevertheless, by restricting labor turnover, employment protection restricts the ability of employers to select and to manage their manpower and to adapt to changes in technology and changes in the demand for their products. Such restrictions can have a negative impact on employment, productivity and growth. Accordingly, the choice of a good legislation is a matter of trade-off between the benefits and the costs of job protection. In this section, we look at the benefits of job protection. The next Section will be devoted to the costs of job protection.

3.1 The protection of workers from arbitrary dismissals

The need to protect workers from arbitrary dismissals is covered by the regulation of individual dismissals, according to which dismissal for reasons relating to the individual employee is justified only if the employee is guilty of breaking or failing to fulfill a contractual obligation. This is the just cause doctrine, adopted in European countries, which states that firms cannot dismiss employees without showing just cause.

[6] It is sometimes argued that employment protection legislation improves employment and reduces income uncertainty of wage earners because employment protection legislation decreases layoffs. The next section shows that employment protection does not improve employment. Moreover, unemployment insurance is a more efficient instrument to insure wage earners against income fluctuations than employment protection legislation. Actually, section 5 discusses how employment protection legislation and unemployment insurance can be conceived together in a consistent way.

This protection is not granted in such a way in all countries. In the US, the employment at-will doctrine implies that either party can break the employment relationship with no liability, provided there was no express contract for a definite term governing the employment relationship or that the employer does not belong to a collective bargain (i.e., has not recognized a union). Under this legal doctrine, any hiring is presumed to be at-will; that is, the employer is free to discharge individuals for good cause, or bad cause, or no cause at all, and the employee is equally free to quit, strike, or otherwise cease work. There are several exceptions to the doctrine, especially if unlawful discrimination is involved regarding the termination of an employee. More generally, the Equal Employment Opportunity laws serve primarily to protect employees against violations of their work contract that do not respect the fundamental rights of the person. The basic argument put forward in favor of employment at-will is that if just cause protection were worth more to employees than it costs firms, it would already have been implemented. If just cause is imposed from outside, wages would be lowered to compensate for the higher job security and the wage decrease would be worth less to the workers than the employment security. Thus, imposition of just cause policies will not help workers, but will merely reduce the surplus from the worker-firm relationship.

This reasoning is valid when labor markets are perfectly competitive. When labor markets are perfectly competitive, employers compete to attract workers and the competition between firms allows the workers to benefit from the best combinations of wages and working conditions available in the economy. In this context, the employment at-will doctrine grants perfect protection to employees and there is no need for further employment protection legislation. However, labor markets are not perfectly competitive. Mobility costs, imperfect information, myopic behaviors, contract incompleteness, do not allow workers to fully benefit from competition between firms. When market are not perfectly competitive, employment protection legislation can be useful to protect workers against the arbitrary decisions of employers. For instance, an employer who does not comply with health and safety regulations in the workplace may fire workers who complain. The employer may have an interest to do so if he has monopsony power which allows him to replace those workers

at low cost. Enacting a regulation which protects workers against such layoffs may improve efficiency.

However, even if there are justifications for just cause, job protection legislations should be elaborated cautiously because they can have perverse effects. For instance, Acemoglu and Angrist (2001) have studied the consequences of the Americans with Disabilities Act, which requires employers to accommodate disabled workers and outlaws discrimination against the disabled in hiring, firing, and pay. Although the Americans with Disabilities Act was meant to increase the employment of the disabled, the net theoretical effects are ambiguous, because employers have may ways to avoid recruiting disabled employees. Actually, it seems that the Americans with Disabilities Act has had an effect exactly opposite to its goal: for men of all working ages and women under 40, Acemoglu and Angrist find a sharp drop in the employment of disabled workers after the Americans with Disabilities Act went into effect.

Another example is given by Wasmer (2006) who finds, using Canadian data including details on work-related stress and the consumption of various medications, that harassing workers in order to induce a quit appears to be a substitute for greater dismissal freedom. Wasmer finds positive links between individual employment protection and some dimensions of stress, and positive links between the stringency of employment protection, depression and the consumption of various psychotropic drugs.

It should be noted that the benefits of job protection are generally unevenly distributed and can deteriorate the well-being of workers who do not benefit from job protection. In particular, temporary workers are generally disadvantaged by protection of permanent jobs, because employers are more reluctant to transform temporary jobs into permanent jobs when it is more costly to fire permanent workers. Therefore, a stronger protection of permanent workers may help permanent workers to keep their job, but at the expense of the unemployed and temporary workers whose opportunities to get stable jobs are reduced by this form of job protection. This mechanism explains why insiders, who occupy permanent jobs, can sustain stringent employment protection legislation at the expense of the outsiders, who do not occupy permanent jobs. The youth, the less skilled workers and the immigrants are those who are the most frequently outsiders. The skilled prime age males typically belong to the group of insiders.

The just cause doctrine, which aims at protecting workers against arbitrary dismissals, justifies some aspects of the Swedish employment protection legislation, such as controls by the courts and the existence of mandatory notice, which allows the employees to organize their defense. However, the last-in first-out rule, which defines the order of selection for dismissals, can hardly be justified by the protection of workers from arbitrary dismissals. Actually, the last-in first-out rule emerges as the consequence of the strong relative power of insiders with the highest seniority, who are able to impose such a rule at the expense of other workers. As a matter of fact, the last-in first-out rule is often circumvented by agreements between the union and the firm. This fact makes the rules less stringent, but also strengthens the power of the union. Importantly, the last-in first-out rule, is the fallback if no agreement can be made. These features allow the insiders to protect their jobs at the expenses of the outsiders. In the same vein, the rehiring priority of dismissed workers and the principle that no just cause for dismissal exists if the employer can reasonably be required to find the employee concerned alternative work within the company, which benefit the insiders, can also hardly be justified by the protection of workers from arbitrary decisions of employers.

3.2 The internalization of social costs of labor turnover

Modern economies are subjected to a permanent flux of technological innovations and changes in the preferences of individuals, necessitating the disappearance of some jobs and the creation of others. This incessant process of job creation and destruction contributes to growth. When a job vanishes for these reasons, it is thus not a loss for the collectivity, although it generally is for the person who held that job. Legislation that prevented the destruction would by the same token have prevented a collective advantage from being realized. But conversely there are other reasons that weigh in favor of preserving certain jobs which firms might want to destroy. They spring from the difference between the private value and the social value of a job.

A worker is engaged by a firm to produce goods or services. This production represents the private value of the job, and is split

between a wage for the worker and profit for the firm. But in a modern economy a firm and its workers are not insulated from the rest of the world, and the decisions they take affect the well-being of other persons who have nothing to do with the firm. This influence of the decisions of some persons on what happens to others who are extraneous to the taking of the decision is called an externality; pollution is a well-known example. Now the decision to destroy a job can have repercussions going well beyond the interests of the firm and the worker alone. It can also be a source of externalities. In this case, the value of a job for the collectivity (its social value) does not coincide with its private value. The social value is measured by the sum of the private value plus the value of the externalities.

One important cause of the gap between the social value and the private value of a job lies in the overall conception of the fiscal system. The largest portion by far of receipts to the fiscal system comes from persons who hold jobs. Unemployed and inactive persons contribute very little to the financing of collective goods and transfers. It follows that there is a gap between the social and the private value of a job, measured by the loss of compulsory payroll taxes, and by extra costs in the form of social transfers that are triggered when someone moves from the status of wage-earner to that of unemployed or inactive person. In most OECD countries this difference is considerable, and justifies a form of employment protection.

The mode in which unemployment insurance and all forms of welfare are financed is another cause, perhaps more important than the previous one, of a divergence between the social and the private value of a job. In most industrialized countries, unemployment insurance is financed by a tax based on wages, which is paid in varying proportions by both employees and employers; it is one component of what are collectively called payroll taxes. Under an efficient system of unemployment insurance, an employer who lets an employee go would have to take into account the externality arising from the financing of the unemployment insurance benefit then paid to that worker by other wage-earners and other employers through their contributions to unemployment insurance. Under an efficient unemployment insurance system, the employer would also have to take into account the fact that the job she has destroyed will no longer contribute to financing the system. Absent such efficiency, every firm relies on all the other

firms and wage-earners to pay the unemployment benefits of the workers it lets go. The social value of a job exceeds its private value by an amount equal to the cost for society of the person laid off while he is unemployed. In neglecting the externalities occasioned by their behavior when they let someone go, firms are reckoning only the private cost to themselves, not the real cost of this separation to society. In situations in which this real cost exceeds the individual cost to the firm, firms will have a tendency to destroy too many jobs.

The distortions induced by compulsory payroll taxes are not the only reasons for a gap between the social value and the private value of employment. Unemployment exerts a negative effect on one's state of health, and it can increase criminality and undermine civic spirit (Fougère et al. 2009). As well, persons who have jobs frequently redistribute a part of their material resources to their families and to those close to them. Hence employment contributes to ameliorating the general state of health and reducing criminality; it forms part of a web of social bonds which ensure a certain redistribution of resources. All these factors should be taken into account in judging the collective advantage resulting from decisions about job destruction.

Absent a set of rules making it costly to fire, a firm that decides to separate from one of its employees takes account only of the private value of the job it is destroying; it estimates that this private value is too low to make the job worth keeping. But this layoff generates externalities such that the social value is higher than the private value. So the firm makes a decision efficient from its own point of view, but which does not conform to the collective interest. The state must then intervene in order to realign the interest of the firm with that of the collectivity.

In the last analysis, a policy of protecting employment can be justified by the goal of achieving this realignment. This justification of job protection implies that job protection should be stronger in countries where the welfare state is more generous, because the costs of unemployment are more mutualized when unemployment benefits, health insurance and taxes are higher. Therefore, the difference between the social and the private value of a job is larger when the welfare state is larger. Cultural aspects can also play a role. In cultures with strong family ties or strong local social capital, moving away from home is costly. Thus, individuals with strong family ties prefer regulated labor markets to avoid moving,

even though regulation generates lower employment and income. Accordingly, countries with stronger family ties or stronger local social capital may rationally choose more stringent job protection legislation in order to avoid geographical mobility that may erode family ties and local social relations.

4 The costs of job protection

Recent research on the consequences of employment protection has found that the stringency of regulations has a negative impact on employment for some groups of workers (notably youth), increases unemployment duration, hinders productivity and innovations, and encourages labor market segmentation.

4.1 Unemployment

Legislation making layoffs more difficult has an ambiguous effect on the volume of employment. It certainly cuts back on job destruction, but it also diminishes job creation, since firms fear being unable, in the future, to destroy unprofitable jobs protected by the legislation. Employment protection is therefore favorable to employment if it reduces job destruction more than it does job creation. More precisely, protection of permanent jobs has ambiguous effects on employment and permanent employment: on the one hand, more stringent protection reduces creation of permanent jobs because it increases the cost of offering permanent jobs; on the other hand, more stringent protection makes it more difficult to fire workers from permanent jobs, increasing employment and the relative incidence of permanent jobs. Also, making it more difficult to create temporary jobs reduces their relative incidence but has ambiguous effects on overall employment. The ambiguity is due to the opposing factors of the higher cost of offering jobs on the one hand and a lower exit rate from employment on the other hand. Theoretical analysis gets us this far and no farther.

So assessment of the impact of employment protection remains primarily an empirical question. Much research has tackled this problem since the 1990s. As a general rule, it tries to show a

correlation, positive or negative, between the "rigor" of employment protection and the rate of unemployment, taking care to bracket all the other forces that might affect unemployment and employment. Empirical studies of the impact of employment protection on unemployment and employment can be classified in two groups.

A first group of contributions analyze cross-country correlations between unemployment and various indicators of employment protection legislation. The contributions of Lazear (1990), Nickell and Layard (1999), Blanchard and Wolfers (2000), Addison and Texeira (2003), Botero et al. (2004) among others analyze this type of correlation. They generally find positive correlations between employment protection and unemployment. However, these results should be interpreted cautiously because changes in employment protection legislation and changes in unemployment can be co-determined by common factors. For instance, it is possible that negative macroeconomic shocks, which increase unemployment, also lead insiders to demand more job protection. Then, positive correlations between job protection and unemployment do not reflect the positive impact of job protection on unemployment, but the common impact of macroeconomic shocks on unemployment and employment protection legislations.

A second group of contributions at the level of the industry, or at the level of the firm, or at the individual level, allows for better identifications of the impact of labor market regulations on employment outcomes. In some cases, reforms of employment protection legislations were targeted at subgroups in the labor force, providing researchers with a natural experiment in which outcomes can be compared across subgroups. These studies find negative effects of job protection on employment and labor flows. For instance, Autor et al. (2006) estimate the effects on employment and wages of wrongful discharge protections adopted by U.S. state courts during the last three decades. They find that wrongful discharge protections reduced state employment rates by 0.8 percent to 1.7 percent. The initial impact is largest for female and less-educated workers, while the longer-term effect is greater for older and more-educated workers. Using manufacturing data for India, Ashan and Pages (2009) study the economic effects of legal amendments on two types of labor laws: employment protection and labor dispute resolution legislation. They find that laws that increase employment protection or the cost of labor

disputes substantially reduce registered sector employment and output. Almeida and Carneiro (2009) find that stricter enforcement of labor regulations constrains firm size and reduces the use of informal labor in Brazil. Micco and Pagés (2006) examine manufacturing data for a number of developed and developing countries and find that employment protection legislation constrains output and employment growth. The Spanish reforms of 1997, which reduced dismissal costs for permanent jobs for workers under 30 years old and for those over 45 years old but not for those 30–44, were associated with a relative increase in permanent employment for these groups (Kugler et al., 2005). Similarly, in Colombia in 1990, dismissal costs were lowered for jobs in the formal sector but not for the informal sector. This was associated with higher labor market turnover into and out of unemployment in the formal sector relative to the informal sector (Kugler, 1999). Increasing employment protection in the UK in 1999 lowered the probation period during which workers may not sue for unfair dismissal from two years to one year. This was associated with a decrease in the firing hazard for workers with up to two years of tenure relative to those with more tenure (Marinescu, 2007). The Italian reform of 1990 raising dismissal costs for firms with fewer than 15 workers was associated with reduced accessions and separations for these firms relative to larger firms (Kugler and Pica, 2008). Besley and Burgess (2004) isolate the effect of a labor reform in a given state in India. They find labor regulations to have important adverse effects on output and employment, particularly in the registered manufacturing sector.

To summarize: the principal conclusions arrived at by the empirical research on the impact of employment protection legislation on unemployment are as follows:

- The rigor of employment protection has no significant effect on the rate of unemployment. Hence more rigorous employment protection does not help to reduce the rate of unemployment.

- More rigorous employment protection increases the duration of unemployment.

- Empirical studies, which rely on disaggregated data, find that more rigorous employment protection reduces employment.

4.2 Productivity

From a theoretical point of view, job protection has ambiguous effects on productivity. Job protection may induce workers to invest more in specific skills and to put more effort into cooperation within the firm because they anticipate that their long employment spell will allow them to get the returns of such investments (Wasmer, 2006a, Belot et al. 2007). However, it should be stressed there is no need to impose job protection from outside the employment relationship to achieve such goals. Workers and employers can enhance job stability by contractual means, like, for instance, severance payments. It is hard to believe that the legislator is able to do a better job than workers and employers in this dimension.

Actually, job protection is likely to decrease productivity for several reasons. First, job protection makes it more difficult for firms to react quickly to rapid changes in technology or product demand that require reallocation of staff or downsizing, slowing the flow of labor resources into emerging high productivity firms, industries or activities (Hopenhayn and Rogerson, 1993). For instance, Saint-Paul (2002a) argues that stringent job protection may induce secondary innovations that improve existing products rather than introducing new products, more efficient but also riskier. Bartelsman et al. (2004) suggest that stringent employment protection legislations discourage firms from experimenting with new technologies, with higher mean returns but also higher variance. Pierre and Scarpetta (2005) provide some empirical evidence showing that innovative firms are the most negatively affected by stringent employment protection legislation.

Second, job protection can reduce productivity by lowering the effort of workers because there is less threat of layoff in response to poor work performance or absenteeism. Ichino and Riphahn (2005) show that the hike in job security at the end of the probation period induces a significant increase in absenteeism for white collar workers in Italy. Similar findings are obtained by Riphahn (2004) using German data. Olsson (2009) analyzes the consequences of an exemption in the Swedish Employment Protection Act (LAS) in 2001 which made it possible for employers with a maximum of ten employees to exempt two workers from the seniority rule at times of redundancies. Using this within-country enforcement variation, the relationship

between employment protection and sickness absence among employees is examined. The average treatment effect of the exemption is found to decrease sickness absence by more than 13 percent at those establishments that were treated relative to those that were not and this was due to a behavioral, rather than a compositional, effect. The results suggest that the exemption had the largest impact on shorter spells and among establishments with a relatively low share of females or temporary contracts.

The empirical literature dealing with the relationship between job protection and productivity can be classified into two types of contributions.

First, some contributions rely on aggregate cross-country data. These contributions do not provide clear cut conclusions. DeFreitas and Marshall (1998) find that stricter job protection has a negative impact on labor productivity growth in the manufacturing industries of a sample of Latin American and Asian countries. Nickell and Layard (1999) and Koeniger (2005) find weak positive relationships between the stringency of job protection, total factors productivity growth and research and development intensity for OECD countries. These results are difficult to interpret because correlations observed with aggregate cross-country data do not allow us to exhibit a causal impact of employment protection legislation on productivity.

A second set of contributions, using data at the industry, at the firm or at the establishment levels provides more conclusive and more convincing results. Autor et al. (2007) study the impact of adoption of wrongful-discharge protection norms by state courts in the United States using establishment-level data. They find that capital deepening is increased while employment flows, firm entry and productivity are reduced. Similar findings are provided by Cingano et al. (2008) using Italian data to examine a 1990 reform that raised dismissal costs for firms with fewer than 15 employees only. In a study on job protection and job flows, Micco and Pagés (2006) also provide some weak evidence of a relationship between job protection and productivity, using a difference-in-differences estimator on a cross-section of industry level data for several OECD and non-OECD countries. They find a negative relationship between layoff costs and labor productivity. Bassanini et al. (2009) examine the impact of employment protection legislation on productivity in the OECD, using annual cross-country aggregate data on the degree of regulations and industry

level data on productivity from 1982 to 2003. They adopt a difference-in-difference framework, which exploits likely differences in the productivity effect of dismissal regulations in different industries. Their identifying assumption is that stricter employment protection influences worker or firm behavior, and thereby productivity, more in industries where the policy is likely to be binding than in other industries. The advantage of this approach is that, in contrast to standard cross-country analysis, it can control for unobserved factors that, on average, are likely to have the same effect on productivity in all industries. They find that mandatory dismissal regulations have a depressing impact on productivity growth in industries where layoff restrictions are more likely to be binding. Martins (2007) studies a quasi-natural experiment generated by a law introduced in Portugal in 1989: out of the 12 paragraphs in the law that dictated the costly procedure required for dismissals for cause, eight did not apply to firms employing 20 or fewer workers. Using detailed matched employer-employee longitudinal data and difference-in-difference matching methods, Martins examines the impact of that differentiated change in firing costs upon several variables, measured from 1991 to 1999. The results suggest that firing costs of the type studied here hurt firm performance, decrease workers' effort and increase their bargaining power.

Overall, the empirical literature suggests that job protection has negative effects on productivity by lowering the involvement of workers in their job and by reducing the ability of employers to manage their manpower efficiently.

4.3 Labor market segmentation

In practice, employment protection legislation induces labor market segmentation between unstable jobs, with poor working conditions, and stable jobs, with better working conditions. This is because firms need to use more temporary jobs when protection of permanent jobs is stronger in order to adapt employment to changes in production. Specifically, when there are substantial firing costs for permanent jobs, firms are relatively reluctant to hire new entrants into such jobs. Instead, new entrants are placed in temporary jobs where their productivity can be assessed before a permanent offer is made. New entrants disproportionately include

the young, women and, possibly, immigrants. Moreover, the coexistence of strong protection of permanent jobs with temporary jobs induces an inefficient labor turnover because firms are more reluctant to transform temporary jobs into permanent jobs when they anticipate that the cost of termination of permanent jobs is higher.

Available empirical work does suggest that stringent regulation of permanent jobs increases labor market duality. Kahn (2007), using 1994–98 International Adult Literacy Survey microdata, investigates the impact of employment protection laws on the incidence of temporary employment by demographic group. His study covers Canada, Finland, Italy, the Netherlands, Switzerland, the United Kingdom and the United States, countries with widely differing levels of mandated employment protection. He finds that more stringent employment protection for permanent jobs (as measured by the OECD) increases the relative incidence of temporary employment for less experienced and less skilled workers, for young workers, native women, immigrant women and those with low cognitive ability. This outcome is important since temporary jobs tend to be lower paying, and offer less training, other things being equal, than permanent jobs; moreover, workers in temporary express lower levels of job satisfaction than comparable workers in permanent jobs (Booth et al., 2002). Thus, policies that lead to a substitution of temporary jobs for permanent jobs may actually worsen the welfare of the average worker, especially in the event that this policy does not lead to lower unemployment.

As shown by Figure 8 the share of temporary jobs tends to be higher in countries where protection of permanent jobs is more stringent. Figure 8 shows that Sweden is just above the OECD average when one looks at the share of temporary jobs. However, when we focus on youth, aged between 15 and 24 years old, it appears that the share of young workers occupying temporary jobs is high in Sweden relative to most other OECD countries, as shown by Figure 9. This suggests that the youth are disadvantaged by the combination of strong protection of permanent jobs and weak restrictions on temporary jobs. Indeed, Figure 10 shows that Sweden is, together with Italy, the OECD country with the highest difference between the unemployment rate of youth and the unemployment of prime age workers. In Sweden, the unemployment rate of young workers reached 19.4 percent in 2008

while the unemployment rate of prime age workers was 5.4 percent at that time.

Figure 8 Share of temporary jobs in total employment and protection of permanent jobs

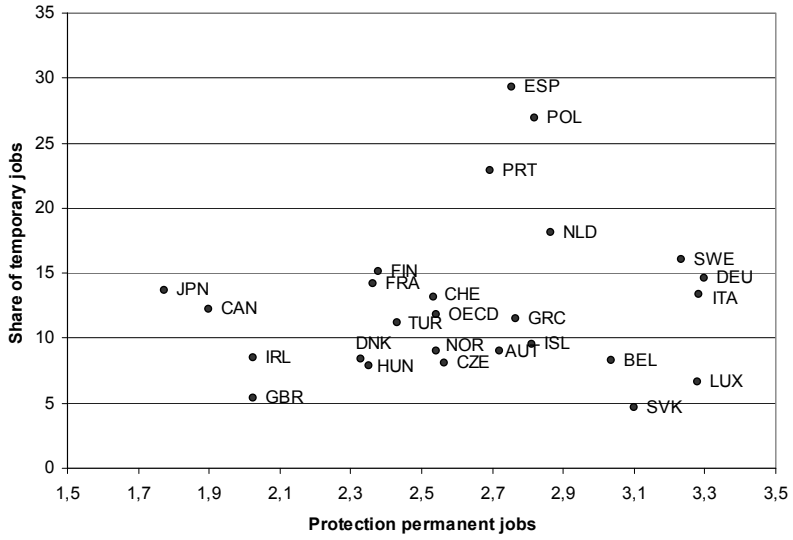

Figure 8: Share of temporary jobs in total employment and protection of permanent jobs (average of protection against individual dismissal and specific requirements for collective dismissal) in 2008.

Source: OECD.

Figure 9 Share of 15–24 year old workers in temporary jobs and protection of permanent jobs

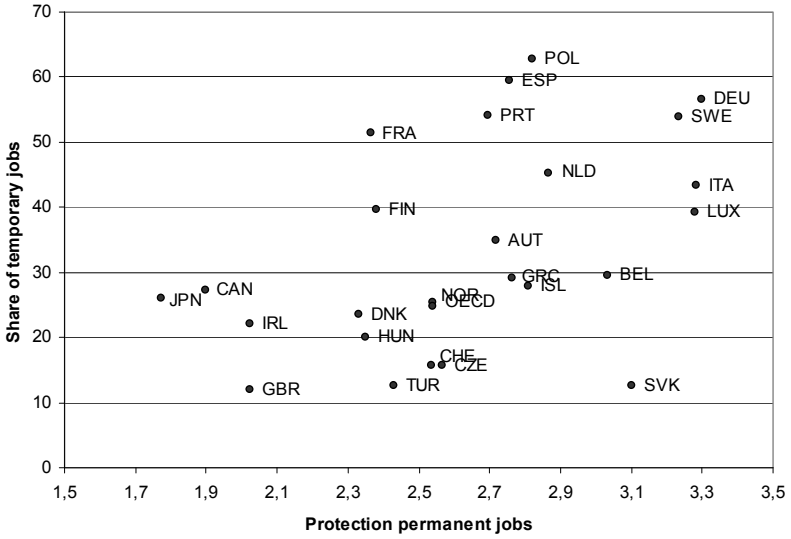

Figure 9: Share of 15–24 year old workers in temporary jobs and protection of permanent jobs (average of protection against individual dismissal and specific requirements for collective dismissal) in 2008.

Source: OECD.

Figure 10 The gap between employment protection of permanent jobs and regulation of temporary jobs

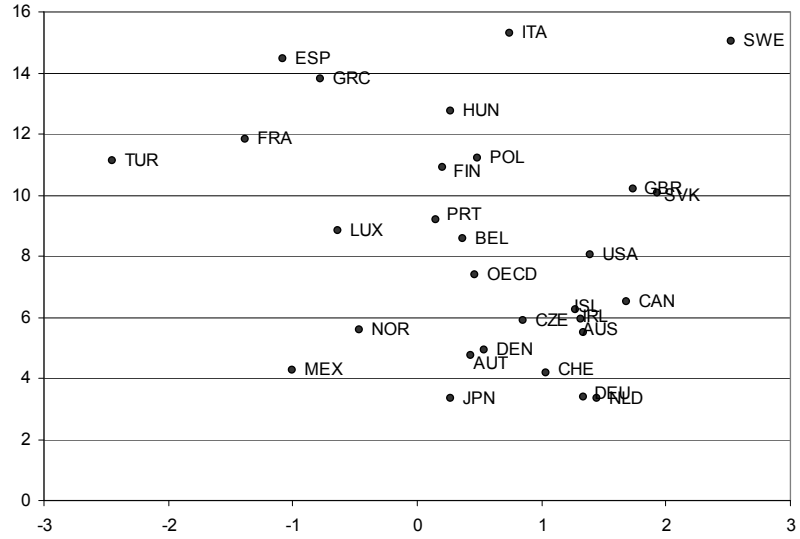

Figure 10: The gap between employment protection of permanent jobs and regulation of temporary jobs (horizontal axis) and the difference between unemployment rate of youth (15–24 years old) and unemployment rate of prime age workers (25–54 years old) (vertical axis). The protection of permanent jobs is equal to the average of protection against individual dismissal and specific requirements for collective dismissal.

Source: OECD.

The labor market segmentation induced by stringent regulation of permanent jobs improves the security of permanent jobs but at the expense of an increasing instability of temporary jobs. Therefore, the impact of protection of permanent jobs on overall job security is ambiguous. Actually, more stringent regulation of permanent jobs can be associated with stronger feelings of job insecurity not only for temporary workers but also for permanent workers as shown by the empirical study of Clark and Postel-Vinay (2009). Clark and Postel-Vinay construct indicators of the perception of job security for various types of jobs in 12 European countries using individual data from the European Community Household Panel. Then, they consider the relation between reported job security and OECD summary measures of employment protection legislation strictness on one hand, and unemployment insurance benefit generosity on the other. They find that, after controlling for selection into job types, workers feel most secure in permanent

public sector jobs, least secure in temporary jobs, with permanent private sector jobs occupying an intermediate position. They also find that perceived job security in both permanent and temporary jobs is positively correlated with unemployment insurance generosity, while the relationship with employment regulation strictness is negative: workers feel less secure in countries where jobs are more protected! These correlations are absent for permanent public jobs, suggesting that such jobs are perceived to be by and large insulated from labor market fluctuations. While care needs to be taken in establishing the causality of these correlations, this result suggests that job protection is not the best response to the problem of job insecurity.

5 Does the current Swedish employment protection legislation warrant reforms?

The Swedish employment protection legislation provides a strong protection to permanent workers. Economic analysis shows that the protection of permanent jobs can be justified by the need to protect workers against arbitrary dismissals and by the need to induce firms to internalize the social costs of layoffs. However, the protection of permanent jobs entails some costs because it reduces employment, productivity, innovations and economic growth.

From this perspective, two aspects of the Swedish employment protection legislation warrant special attention. First, the strong duality between flexible rules for temporary contracts and strict protection for permanent jobs. This duality is beneficial to some workers but is detrimental to others. Second, the protection of permanent jobs is conceived in a way that does not allow the Swedish regulation to properly achieve the two goals of employment protection legislation presented above: the protection of workers from arbitrary dismissals and the internalization of the social costs of labor turnover.

5.1 The dangers of reforms at the margin

Figure 11 and 12 show that the regulation of temporary jobs became much less stringent over the last 25 years in Sweden, whereas the regulation of permanent jobs decreased only a little. It can also be seen that the regulation of temporary jobs decreased greatly in Sweden compared to the average of OECD countries, whereas the regulation of permanent jobs evolved similarly for Sweden and for the average of OECD countries. In Sweden, for

the last 25 years, employment protection legislation has been reformed at the margin: permanent workers have been protected in the same way during this period, but it has become easier to use temporary jobs.

Figure 11 Regulation of permanent jobs

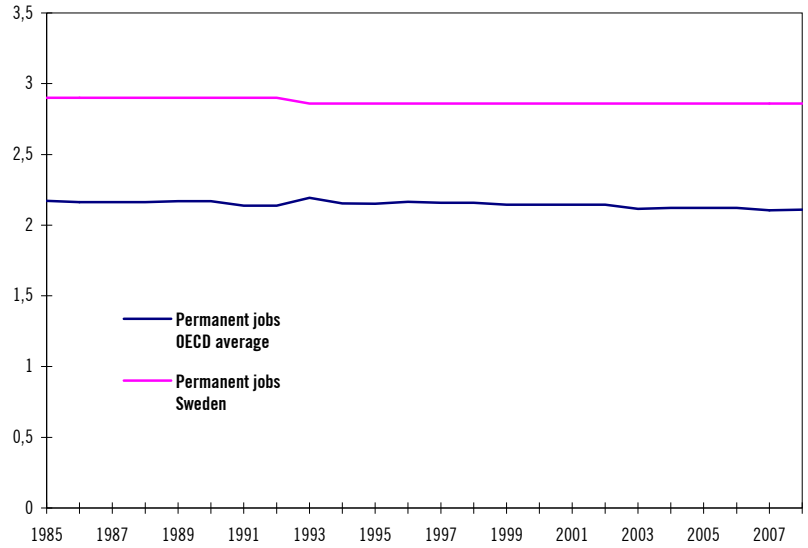

Figure 11: Regulation of permanent jobs in Sweden and in the OECD countries over the period 1985–2008. The indicators go from 0 for the weakest regulation to 6 for the strongest.

Source: OECD.

Figure 12 Regulation of temporary jobs

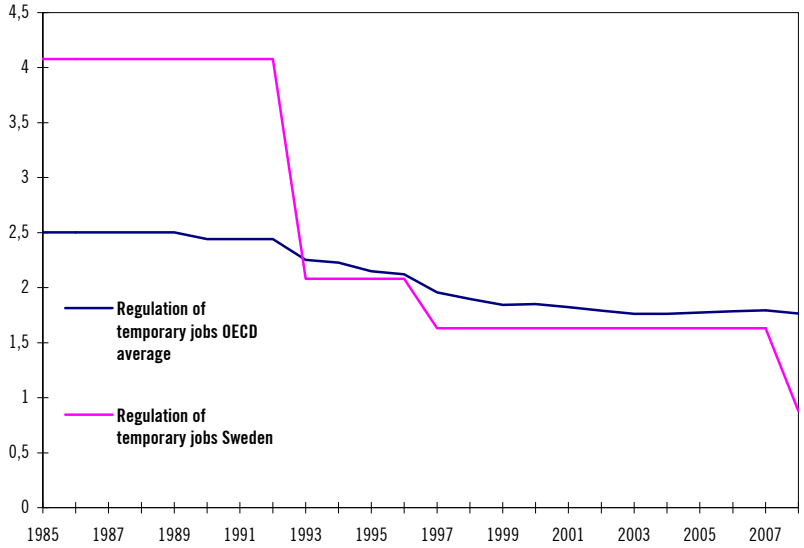

Figure 12: Regulation of temporary jobs in Sweden and in the OECD countries over the period 1985–2008. The indicators go from 0 for the weakest regulation to 6 for the strongest.

Source: OECD.

Rather than reduce permanent job protection, a number of European countries decreased the protection of temporary jobs in the 1990s. The studies devoted to these events show that policies which make the labor market more flexible at the margin are fairly ineffectual and may be perverse: marginal reforms tend to artificially increase the turnover rate and have a very modest effect on job creation, while having potentially harmful effects on welfare.

Blanchard and Landier (2002) and Cahuc and Postel-Vinay (2002) find that the high turnovers in fixed-duration jobs can lead to higher, not lower, unemployment. And, even if unemployment comes down, workers may actually be worse off, going through many spells of unemployment and fixed duration jobs, before obtaining a regular job. Looking at French data for young workers over the 1980s and the 1990s, Blanchard and Landier conclude that the reforms that eased the creation of temporary jobs without any change in the regulation of permanent jobs have substantially increased turnover, without a substantial reduction in

unemployment duration and that their effect on the welfare of young workers appears to have been negative.

Cahuc and Carcillo (2006) study the consequence of the implementation a new employment contract introduced in France in August 2005. This new contract applied exclusively to small businesses of no more than twenty employees. During the first two years, the new contract allows the employer to terminate the contract without having to provide an explanation. During those first two years, employers need only give their employees two weeks notice before dismissal, and after six months the notice period is extended to one month. Then, after two years, the contract is automatically transformed into a regular permanent contract. Using a dynamic model of the labor market, it is found that the introduction of the new contract has a very slight positive impact on employment. But the reform also increases job turnover because it induces firms to terminate contracts before the end of the two year period. In making jobs less secure for employees, the labor reform is expected to have a negative impact on job seekers' welfare. It is also found that the reform has bigger positive effects on employment in the short run than in the long run, because its first effect is to foster job creation, the impact of the hike in job destruction appearing afterwards. This transitional honeymoon, job creating effect, of two-tier labor market reforms has also been stressed by Boeri and Garibaldi (2007) who provide some evidence with Italian data.

Kahn (2010) uses longitudinal data on individuals from the European Community Household Panel over the 1996–2001 period to investigate the impact of reforms of employment protection systems in nine countries. A robust finding is that policies making it easier to create temporary jobs on average raise the likelihood that wage and salary workers will be in temporary jobs. This effect is felt primarily when the regional unemployment rate is relatively high. However, there is no evidence that such reforms raise employment. Thus, these reforms, while touted as a way of jump-starting individuals' careers in the job market, appear rather to encourage a substitution of temporary for permanent work. Regarding the impact of reforms of permanent employment protection, Kahn finds either positive effects or weak positive but insignificant effects on employment and on the incidence of permanent jobs among the employed depending on the different estimation techniques.

Overall, it appears that partial reforms of employment protection legislation, which consist of reducing regulation of temporary jobs without making any change in the regulation of permanent jobs, have not been successful. Their main drawback is to increase inefficient job turnover by raising the gap between the cost to terminate permanent jobs and the ease of using temporary jobs. Empirical studies show that these reforms have no significant long run effect on employment and that they are detrimental to the youth, the less skilled and the immigrants. These findings suggest that it could be worth considering changes in the reform strategy of employment protection regulation which has been adopted over the last 25 years in Sweden: comprehensive reforms may prove more fruitful than partial reforms.

5.2 Improving flexicurity

It has been stressed that there are two justifications for employment protection legislation: first the protection of workers from arbitrary dismissals, second, the internalization of the social costs of labor turnover. From this perspective, the analysis of the Swedish employment protection legislation gives rise to two observations.

Abolish the rules which favor the insiders

Some features of the Swedish employment protection legislation have hardly anything to do with the justifications of employment protection legislation that have been put forward. Some rules protect permanent workers, over-represented in trade unions relative to temporary workers and unemployed workers. However, these rules neither protect workers from arbitrary dismissals nor induce employers to internalize the social cost of layoffs in an efficient way. These rules comprise the order of selection of layoffs in case of redundancy, the rehiring priority and the obligations made on the internal reassignment of employees. A different order of priority may be chosen by collective agreement. But case-law indicates that there are limits to bargaining freedom in this respect: a collectively agreed redundancy list must not be contrary to good practice or otherwise improper. Moreover, even if some rules in the

current law can be circumvented by collective agreements, these rules influence the outcome of collective agreements through their effects on the fallback positions of the parties in the bargaining. These rules may also be used as focal points on which the parties coordinate their claims.

Obviously, it can be argued that these rules hinder managers from getting rid of troublesome workers, for instance those complaining about insalubrious working conditions, organizing union activities or simply criticizing their superiors. This is true. But applying these rules is an indirect and costly way to protect workers against arbitrary dismissals. In order to reach efficient outcomes, the manager should choose those who are dismissed, possibly with the trade unions if there is a collective agreement which stipulates that this should be the case. The court should be in charge to check that there are no arbitrary dismissals. It is clear that the current rules are not easy to change, because permanent workers benefit from them. But it is certainly worth considering such reforms because empirical studies indicate that such rules decrease productivity, reduce employment, hinder innovation, increase labor market segmentation, and that they are detrimental to the youth, the less skilled and the immigrants.

The internalization of the social costs of labor turnover

The internalization of the social costs of labor turnover is not ensured by the Swedish employment protection legislation. Here too, it can be argued that the mandatory order of selection of layoffs in case of redundancy, the rehiring priority and the obligations made on the internal reassignment of employees, by reducing layoffs, induce employers to reduce labor turnover and then to take into account the social cost of labor turnover. However, this argument is wrong for two reasons. First, in practice, these rules reduce the turnover of permanent workers, but they also increase the turnover of temporary workers. The effect on overall turnover is ambiguous. Second, these rules prevent employers from systematically keeping the most efficient workers. These rules do not necessarily reduce the number of layoffs. They change their composition and they decrease productivity because they lower the quality of the matches between workers and jobs. Actually, by reducing the quality of job matches, and then

productivity, wages and finally taxes (which are proportional to incomes), these rules are likely to increase the social costs of layoffs. One way to remedy the under-assessment of the social value of jobs by firms is to fiscalize employment protection by integrating it into the financing of unemployment insurance and the welfare system. The principle underlying this fiscalization applies in many life situations where insurance is used. A reckless driver puts her own life in danger, and those of others too. Her attitude may cost society dear in medical expenses alone. This is why automobile insurance premiums depend on the personal history of each driver, especially the number of accidents she has caused. The same principle can be applied to terminations of employment. A bonus-malus mechanism, by which firms pay into unemployment insurance at rates that rise with the number of jobs they have terminated, makes it possible to limit inefficient destructions of jobs. It constitutes a form of job protection which incentivizes employers to take the costs they impose on unemployment insurance and the welfare system into account when they destroy jobs.

It is worth noting that a bonus-malus mechanism exists in the United States, where charges associated with the payment of unemployment benefits are assigned to employers through experience rating. Employers who initiate comparatively more job separations and thus increase the burden on the unemployment insurance system must pay higher unemployment insurance contributions than those that initiate fewer separations. An event which occurred in the state of Washington sheds an interesting light on the effect of this mechanism of experience rating. In 1985 this state adopted the mechanism, while the neighboring states of Oregon and Idaho did not. It has been observed that employers in Washington have less tendency to fire their workers.

Substituting fiscalization of job protection for the set of rules which impose the order of selection of layoffs in case of redundancy, the rehiring priority and the obligations made on the internal reassignment of employees is a means to allow employers to manage their manpower efficiently, to induce them to take into account the social costs of layoffs, and also to provide funding to unemployment insurance and to public employment services. The logic of fiscalizing employment protection thus lies in taxing job destructions while providing more generous and more efficient unemployment insurance. This is why the fiscalization of

employment protection reconciles both employers' and workers' needs, flexibility and security, by ensuring the worker safe transitions inside the labor market, while maintaining and improving competitiveness of the companies. Moreover, the fiscalization of employment protection allows us to get rid of the labor market segmentation induced by rigid rules imposed on layoffs for economic reasons. By making firing taxes increase smoothly with seniority, whatever the form of labor contract, either temporary or permanent, it is possible to avoid the gap between jobs with different status, which gives rise to inefficient labor turnover.

It should be noticed that social partners can play an important role in the implementation of the fiscalization of job protection. The firing tax has to be chosen together with the unemployment benefits and other redistributive tools. Accordingly, social partners should naturally participate in the design of the fiscalization of job protection in countries where they manage social insurances. The design of this system should allow social partners to manage a consistent unemployment insurance in which the firing tax is used to finance not only unemployment benefits but also all aspects of coaching of job seekers, such as counseling and vocational training for instance. Since the firing tax has to take into account the social cost of job destruction, its level can differ according to region, industry, firm size and other relevant criteria which can be defined by social partners.

Achieving the reconciliation of flexibility and security (flexicurity) is an essential condition to improve workers' welfare and growth in a context where globalization and technological progress have an effect on our daily lives, rapidly changing the needs of workers and enterprises. Companies have to be innovative if they want to survive; workers have to be flexible if they want to keep or find a job. From this perspective, we recommend consideration of a comprehensive reform of the Swedish employment protection legislation, that substitutes firing taxes which increase smoothly with seniority for the current set of rules which impose the order of selection of layoffs in case of redundancy, the rehiring priority and the obligations made on the internal reassignment of employees.

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