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**Title:**

Flexicurity between Europeanization and Varieties of Capitalism? A comparative analysis of employment protection reforms in Portugal and Greece

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## **Abstract**

The article examines the adoption of Flexicurity principles in Portugal and Greece during 2006-2009. Despite the similar conditions between the two cases and common EU stimulus, the process and final outcomes in the reform of their employment protection systems differed. In Portugal, the government persevered and implemented a reform in line with Flexicurity principles. By contrast, the Greek government initially favoured Flexicurity and initiated a reform process of the legal framework; however the reform was halted. The article explains this divergence by combining the insights of Europeanization and Varieties of Capitalism literatures. It is argued that in cases of Mixed Market Economies, 'misfit' with EU stimuli is a necessary, but not sufficient condition for institutional change. Instead, reforms depend on union structure and existence of policy entrepreneurs favouring reform, which explain the divergent reform paths.

## Introduction

Flexicurity is one of the policies that the European Commission put forward as a means to ‘modernize’ the European Social Model (Klindt, 2011). The objective of striking ‘the right balance between flexibility and security’ appeared first in the 1997 Green Paper ‘Partnership for a new organization of work’ of the European Commission. The adoption of Flexicurity as best practice signified an effort by the EU to ‘square the circle’ by reconciling the previously antithetical concepts of flexibility and security. This neologism did not assume flexibility and security as mutually exclusive but a precondition for each other, Therefore, it deviated from the traditional pro-flexibility stance of other international organisations – especially the OECD (Commission, 2007b, pp. 10-11; Klindt, 2011). Flexicurity was introduced as an EES stimulus in 2007 and immediately overshadowed other EES goals (Bolton et al., 2015). The European Commission’s published its ‘Communication on Flexicurity’ in June 2007. The policy had four main pillars: flexible and reliable contracts in labour law; life-long learning; effective active labour market policies; and social security systems which provide adequate income support (Commission, 2007a, pp. 12).

Thus, the policy of Flexicurity became the new mantra of the European Employment Strategy (EES) and member-states were asked in 2007 to examine ways of incorporating Flexicurity into their national employment systems. This effort was successful in some cases (Jessoula *et al.*, 2010; Peeters *et al.*, 2008) but stumbled upon several obstacles in others. One of the key obstacles included the vast institutional diversity of European models of capitalism (Hall and Soskice, 2001; Amable, 2003) and welfare/social models (Sapir, 2006), which made the implementation of Flexicurity difficult. To overcome these obstacles the Commission stressed that it was not aiming towards ‘a one-size-fits-all’ policy and suggested four different ‘pathways’ for EU member-states (Commission, 2007a; 2007b).

In Southern Europe, the Flexicurity pathway envisaged either extending a series of rights to outsiders (e.g. equal pay, health and social security rights to workers on fixed-term/part-time/on-call contracts) or redesigning their open-ended contracts by making them more flexible (e.g. companies giving all employees open-ended contracts with progressive build-up of job protection) (Commission, 2007a, p. 29). In other words, the main focus was on the component of Flexicurity that was predominantly linked to the reduction of strictness in Employment Protection Legislation (EPL) (see: Commission, 2007a, p. 38; Auer, 2011, pp. 374-375). According to the OECD, EPL refers to ‘all types of employment protection measures, whether grounded primarily in legislation, court rulings, collectively bargained conditions of employment and customary practice’ (1999, p. 50). This was the only issue discussed in the relevant section of the Commission’s Communication on Flexicurity as the main factor behind low labour mobility and employability (Commission, 2007a; Bolton et al., 2015). The Commission also highlighted the negative effect on vulnerable groups ‘such as young people, women, older workers and the long-term unemployed’ which results in the ‘segmentation of the labour market which Flexicurity seeks to address’ (Commission, 2007a, p. 12).

The article focuses on Greece and Portugal, which constitute the ‘antipode’ of the Flexicurity principles in terms of their domestic labour market and welfare institutions. Therefore, they are construed as two critical cases for institutional change in this area. Additionally, the Commission outlined a similar Flexicurity pathway for both countries, namely tackling labour market segmentation between insiders and outsiders. Hence, the focus of this article is on EPL reform and not the other constituents of Flexicurity. As will be shown below, despite the similar conditions and common stimulus, the process and final outcomes in the adoption of Flexicurity principles differed. The Portuguese government persevered and reformed the employment protection system in accordance with the

Flexicurity principles. By contrast, the Greek government initially favoured Flexicurity as a policy goal, but the reform process was halted.

The article seeks to answer the question of whether, how and to what extent the EES influenced domestic institutional change in the specific areas of EPL with regard to Flexicurity. It attempts to explain an empirical puzzle observed in two countries of the Southern European periphery, and answer critical questions related to employment policy in Europe. More specifically, the article seeks to explain the observed divergent paths of institutional change by combining the insights of the Europeanization and Varieties of Capitalism (VoC) frameworks (see Thatcher, 2007; Menz, 2005). Contrary to earlier studies, this article focuses on EPL, which constitutes a key part of VoC institutional spheres and one of the prominent policy areas of the EES. Thus, this policy area is a prime field of application for both frameworks. It is argued that in cases of Mixed Market Economies, ‘misfit’ with EU stimuli is a necessary, but not sufficient condition for institutional change. Instead, reforms depend on union structure and existence of policy entrepreneurs favouring reform. The latter are the critical factors that explain the diverse outcomes in employment protection reforms in the cases of Greece and Portugal.

The remainder of the article proceeds as follows. The first section sets out the study’s analytical framework grounded in the VoC and Europeanization literatures. The second section outlines the research design of this article, specifying the case selection criteria and provides details on data sources. The third section presents empirical evidence from two cases of employment protection reform in Portugal and Greece. The fourth section discusses the findings of this article, while the final section concludes considering the contribution and limitations of the study.

## **I. Institutional Change in Europe: Europeanization, Varieties of Capitalism or both?**

Recent scholarly work that examined institutional change in European labour markets draws heavily on the theoretical frameworks of Europeanization and VoC (Graziano, *et al.*, 2011; Lallement, 2011; Van Rie and Marx, 2012). The two frameworks seem to be evolving in parallel, as only few studies have attempted to combine them (Featherstone, 2008). Conventionally, the VoC framework focused on the pressures that stem from wider processes of globalization and global intensification of competition. Hall and Soskice (2001) suggested that there are two models of capitalism that appear ‘fit’ for globalization; the Coordinated Market Economies and the Liberal Market Economies. Subsequent studies sought to extend this dual typology by incorporating cases from Southern European countries (Amable, 2003; Hall and Gingerich, 2009). Much of the VoC literature was attuned on examining the pressures that global competition brought towards institutional convergence by means of mimetic processes of isomorphism. As a result, there has been very little work looking into supranational pressures for convergence in institutional arrangements, stemming from policies of the EU. The notable exception to this, are the studies that consider the EU impact on domestic product markets regulation (Menz, 2005; Thatcher, 2007). The present article seeks to extend this literature, by looking at the EU’s impact on domestic EPL.

The VoC literature offered several insights to explain the prospect for divergent outcomes in institutional reforms. First, it is broadly accepted that EU member states belong to different models of capitalism. This implies that member states have categorically different institutional configurations in their employment protection systems due to historical path-dependencies (Amable, 2003). Additionally, the VoC framework suggests that different models of capitalism exhibit different ‘institutional complementarities’, and thereby, comparative advantage in different domains (Hall and Soskice, 2001, pp. 19-20). A priori, if the EU stimulus was not internally consistent to fit a particular institutional model, the

efficacy of the pursued institutional reform is expected to be limited (Amable, 2009). The observable implication is that the most likely outcome is path-dependent change or stability making divergent outcomes not only possible, but also likely.

In order to explain path-dependent change, attention has been accorded to domestic actors' coalitions (Hall and Thelen, 2009; ). Instead of similar outcomes across member states, the process of adjustment is expected to differ according to the pre-existing institutional constellation of actors (Thatcher, 2007). This line of reasoning suggests that the key factors explaining domestic change include the 'shared understandings' and 'common knowledge' (Culpepper, 2008) that actors hold and underpin such coalitions in favour of (or against) institutional change. Especially in the institutional context of Mixed Market Economies, the state assumes an important role for pushing reforms and shaping the direction of institutional change (Hall and Gingerich, 2009).

More recently, a body of literature shifted the focus away from path-dependence and stability, towards the different mechanisms of institutional change that may be observed across political economy settings. Notably, Streeck and Thelen (2006, p.19-29) distinguished between five modes of change: *displacement*, *layering*, *drift*, *conversion*, and *exhaustion*. The different modes of change imply that path-dependent and transformative elements may co-exist in different degrees and levels. In other words, what may appear as stability and continuity on the surface; may entail slow and incremental processes of change that cumulatively lead to institutional corrosion or transformation.

Conversely, the Europeanization literature developed a number of causal mechanisms and conditions under which Europeanization is likely (cf. Featherstone, 2003; Moumoutzis, 2011; Moumoutzis and Zartaloudis 2016). Börzel and Risse argue that most of the causal mechanisms share two main propositions: first, in order for Europeanization to take place 'there must be some degree of 'misfit' or incompatibility between European-level processes,



policies, and institutions, on the one hand, and domestic-level processes, policies and institutions on the other' (2003, p. 58). Although the necessity of misfit has been persuasively challenged,—especially regarding its applicability to soft law areas (Radaelli, 2003), scholars have applied the concept to employment policy by mainly referring to the difference between EU and domestic levels with regard to policy/institutional content (Graziano *et al.*, 2011).

The Europeanization literature relies significantly on new institutionalism to develop and highlight causal mechanisms and intervening/mediating factors that respond to the adaptational pressures and either enable or prohibit change to explain domestic adaptation and outcomes. Admittedly, convergent pressures may not necessarily lead to convergence in processes and outcomes. Instead, the outcomes should generally be considered to be differential (Börzel and Risse 2003). This study follows recent studies on the impact of the EES on member states' employment policies (Zartaloudis, 2013, p. 1181; Zartaloudis 2015), where Europeanization can occur via three key mutually exclusive channels: (1) policy learning (Europeanization occurs after a new, EES-inspired governmental agenda which differs from the previous one with regard to the content of national employment policy); (2) domestic empowerment (Europeanization occurs from policymakers who exploit the EES in order to promote their own agenda); and (3) financial conditionality (Europeanization occurs from attempts to meet the conditions for ESF funding).

## **II. Research Design and Methods**

The study gathered qualitative data to examine in comparative fashion the impact of EU stimuli on two country cases selected on the basis of theoretically informed selection criteria (Moumoutzis and Zartaloudis, 2016, pp. 344-46). Greece and Portugal are considered as two least-likely or critical cases of EES-induced Europeanization with regard to Flexicurity. First, they both share characteristics identified in the literature that prohibit Europeanization -

including weak administrations, fragmented social partnership, lack of cooperation between different actors and a culture showing neglect of EU policies (Hartlapp and Leiber, 2010). Second, both cases have residual and underdeveloped welfare states that differ markedly from Denmark or the Netherlands which are considered as the archetypes of Flexicurity (Auer 2011). Third, they are both close to the ideal-types of Mixed Market Economies (Hall and Gingerich, 2009). Finally, both cases exhibit a very high level of strictness in OECD's EPL (OECD, 1999). This also suggests a high level of 'misfit' between the EU stimuli and the Greek and Portuguese employment systems that created 'adaptational' pressure in their models of capitalism.

The article follows the 'most similar cases/different outcomes' comparative research design (Berg-Schlosser and De Meur, 2009, p.21). Despite the fact that the two cases are very similar, the process and final outcomes in the implementation of Flexicurity principles differed. The timeframe of the case studies is set during 2006-2009, in order to capture the reform dynamics following the publication of the Commission's Communication on Flexicurity. The article does not examine the period after the eruption of the European sovereign debt crisis (2010 onwards), because both Portugal and Greece implemented a series of externally imposed reforms as a result of the financial assistance they received in order to remain into the Eurozone and avoid financial collapse (cf. Johnston and Aidan, 2015; Kornelakis and Voskeritsian, 2014; Theodoropoulou, 2015; Zartaloudis 2014).

Data collection followed a qualitative bottom-up process tracing approach whereby the research examines the chain of events and temporal sequences between the key outcomes of interest. It examines domestic policies and agendas before and after the introduction of the EES stimuli and 'goes up' to find whether the EES can explain the examined cases (Exadaktylos and Radaelli, 2009, p. 510). The article uses North's definition of institutions whereby 'institutions are the rules of the game in a society or, more formally, are the

humanly devised constraints that shape human interaction' (1990, p. 3). According to North formal institutions include statute law, common law and contracts.

Process tracing is usually supported by the following tools: qualitative content analysis of official documents, media, academic and specialist publications; the examination of temporal sequencing of events and decisions; and interviews with key informants. Hence this study collected and triangulated different types of evidence, including: (i) 44 qualitative semi-structured non-attributing interviews with key informants; (ii) EU and national official documents relevant to the policy areas under examination (for example, National Action Plans, evaluation reports, laws, party manifestos, parliamentary debates and speeches); (iii) secondary evidence from the policy literature, including reports from the European Industrial Relations Observatory (EIRO) database; and (iv) newspaper articles. Within groups of informants the triangulation took place by collecting a variety of perspectives from actors with divergent interests (social partners, government officials, policy and academic experts).

Purposive sampling was used to select the sample of interviewees from the population of individuals involved in the policy process. The sample was identified by using the snowballing technique. This technique is suitable to locate subjects belonging to concealed and hard-to-reach populations (Atkinson and Flint 2004) and was deemed appropriate to penetrate the unknown and rather close-knit ministerial elites involved in Greek and Portuguese policy making. The fieldwork stage took place in Lisbon and Athens in the period between March 2009 and September 2010. The length of interviews varied from 1 hour to 2 hours. All interviews were conducted in person and were recorded using a voice recorder. The interviewees gave their consent for the use of their quotes and attributing the quotes to them. The interview instrument was an interview guide with broad thematic questions that investigated the interests, positions and perceptions of key actors with regard to the examined

case studies. The questions focused especially on how interviewees perceived the examined policy change/stability and what was their role in the examined case studies.

The research was conducted in three main stages. Firstly, a preliminary review of the existing academic and policy literature led to the identification of a significant research gap in the cases of Greece and Portugal. To address this gap primary data was collected through interviews with key informants. Thirdly, empirical evidence was also collected through an extensive online search for secondary and primary sources as well as documents cited by the interviewees in this study. All data were combined to establish the reasons behind policy change/inertia whereby any interview data had to be corroborated with other sources (documents, media, policy reports) and vice versa. The results of this research are presented below.

### **III. Flexicurity and Employment Protection Legislation Reform**

#### *The successful reform in Portugal*

The Portuguese reform started with the appointment of an Expert Committee by the centre-left Socialist party (PS) – shortly after its victory in the 2005 elections. The Committee concluded its work in April 2006 by producing the Green Paper on Labour Relations. The paper included the concept of Flexicurity in its final chapter as ‘an issue that was currently debated at EU level’ (EIRO, 2007a). When it was presented to the social partners, the Green Paper did not cause any serious controversy (EIRO, 2008a), but the largest trade union, the Communist-leaning CGTP-IN, argued that the document favoured flexibility (Cerdeira, 2007, p. 48). Following the publication of the Commission’s Communication, the PS government initiated a public debate on Flexicurity in late 2006 (EIU, 2007, p. 20), by organising several conferences with representatives from the social partners, academia and civil society (EIRO,

2007b). Moreover, the Labour Minister Vieira da Silva took an active role in the Flexicurity debate. Indeed, as a key informant noted:

“... his role was a balancing act between promoting Flexicurity at the EU level - as Portugal held the EU Presidency during June-December 2007 - and avoiding the provocation of domestic reactions by appearing too one-sided in its policy direction”.<sup>1</sup>

Hence, in his early speeches, da Silva was cautious about adopting the Flexicurity model and emphasised that importing foreign models was impossible (EIRO, 2007b; Michalaki, 2009). Additionally, he argued that ‘the final solution had to be found by the Portuguese social partners’. Gradually, however, he started to express a more favourable stance towards adopting Flexicurity as he maintained that this would be equally advantageous for both employers and employees (Michalaki, 2009, pp. 13-14).

The social partners appeared sceptical about the possibility of Portugal adopting the EU Flexicurity model given the: (i) stark differences between Northern Europe (especially Denmark which was used by the government as a model) and Portugal in economic and labour market conditions; (ii) Portugal’s weakness in implementing effective life-long learning policies; (iii) its inability to increase unemployment benefits to the Scandinavian standards (EIRO, 2009b). For Portuguese trade unions the intention of the government was to promote flexibility in order to satisfy employers (Cerdeira, 2007; EIRO, 2009b). Although Portuguese employers’ associations were also sceptical of the Flexicurity policy,<sup>2</sup> some of them supported the idea of adopting the model. For instance, the Vice-President of the Confederation of Portuguese Industry, Heitor Salgueiro, and the President of the Portuguese Trade and Services Confederation, José António Silva publicly supported Flexicurity as the

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<sup>1</sup> Interview, Portuguese Labour Ministry (PT-LM) no.1, Lisbon, June 2010.

<sup>2</sup> Interviews, PT-LM no.2 and 3, Lisbon, June 2010.

way forward for Portugal's economy (see EIRO, 2007b). When the President of the Republic declared that he also favoured Flexicurity as a model for Portugal (Michalaki, 2009), the trade unions responded with a full-blown attack on the European Commission's 'neo-liberal project' emphasising the detrimental effects to workers' rights (Cerqueira, 2007, p. 48).

In spite of this reaction, the government persevered in its labour market reform agenda and appointed an Expert Committee with the task of making concrete proposals for the upcoming labour market reform.<sup>3</sup> The work of the Committee was finalised with the publication of the 2007 White Paper on Labour Relations. As a key member of the White Paper Committee noted:

“...due to the backlash against the concept of Flexicurity, the Committee decided to remove the term ‘Flexicurity’ from the final draft of the White Paper’s recommendations.”<sup>4</sup>

Nonetheless, it adopted very similar recommendations to the earlier 2006 Portuguese Green Paper and favoured a combination of internal flexibility and security (EIRO, 2008b). As one high-level official involved in the authorship of the White Paper and the entire reform process put it:

“The White Paper followed an identical approach to the 2006 Green Paper. Although the term Flexicurity was completely abandoned to avoid further confrontation with the social partners, it was certainly a guiding principle of the policy suggestions since there was continuity between the Green Paper, the White Paper and the final labour market reform law.”<sup>5</sup>

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<sup>3</sup> Interviews, PT-LM no.4 and 5,; independent experts no.1-3, Lisbon, June 2010.

<sup>4</sup> Interview, White Paper Committee member, Lisbon, June 2010.

<sup>5</sup> Interview, PT-LM no.6, Lisbon, June 2010.

In essence, the White Paper included proposals tackling all aspects of labour law legislation. It aimed at undoing the 2003 labour market reform of the centre-right PSD-PP (Social Democratic Party and People's Party) government and reducing the Portuguese EPL, which was a goal in line with the Flexicurity pathway. The most controversial recommendations concerned the favourability principle in collective bargaining, the regulation of fixed-term contracts, and the limits to individual and collective dismissals. The unions were against these measures, while the employers welcomed those proposals.<sup>6</sup> The employers also asked for: more flexibility in individual dismissals; the complete abolition of compulsory reinstatement for workers found to have been unlawfully dismissed (which, in most cases, is allowed by the White Paper's recommendations); and relaxing restrictions on collective dismissals, working time duration, length of force and lapsing of collective agreements (*sobrevigência*) (see EIRO, 2008c).

The next step of the labour market reform was initiated on the 22nd of April 2008 when the Labour Minister da Silva presented his draft law proposal to all social partners. The law aimed to adopt a Flexicurity approach by promoting both flexibility and security in order to reach consensus from all social partners and promote the goal of EPL reduction as the government intended.<sup>7</sup> To promote flexibility the draft proposed: to increase working-time flexibility and decentralise collective bargaining as the new working time rules and pay agreements could be decided at firm level; remove maximum limits of working time; reduce penalties on illegal dismissals and redundancy costs (EIRO, 2008d). To promote security the draft law: proposed new sanctions for labour offences; made dependent work eligible for

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<sup>6</sup> Interviews, PT-LM no.7 and 8; UGT member; independent experts no.2 and 4, Lisbon, June 2010.

<sup>7</sup> Interviews, PT-LM no.3 and 4; independent experts no.1 and 3, Lisbon, April 2010.

labour inspection and judicial control aiming to combat spurious self-employment; limited fixed-term contracts to three years; introduced an open-ended contract allowing part-time employees to enjoy full employment rights; and banned unpaid extra-curricular training. Finally, the labour law proposal included amendments of the social security legislation aiming at the reduction or exemption of social security contributions for some workers to reduce non-wage labour costs (EIRO, 2008d).

Portuguese social partners expressed strong disagreement with most aspects of both the White Paper and the subsequent draft Law: employers asked for further time, pay and contractual flexibility, whereas the unions asked for more security (cf. EIRO, 2007a). The reaction of the trade unions to the White Paper was so negative that there were hardly any hopes of an agreement between the social partners and the government (EIRO, 2007b).

Nevertheless, the government was resolved to proceed<sup>8</sup> and presented a revised draft proposal. After almost a month of intense negotiations, da Silva submitted his final proposal to the social partners for discussion. Surprisingly, agreement was reached the next day between social partners in the Social Concertation Committee between the employers and the centre-left trade union UGT (*Unión General de Trabajadores*), while the CGTP-IN denounced the deal (EIRO, 2008e). The agreement was reached through specific concessions by the government towards the social partners (EIRO, 2008e). The concessions made towards the trade unions' demands were as follows: (1) contrary to the White Paper's recommendations to ease restrictions on firing and individual dismissals, only some minor changes concerning disciplinary procedures were made – an amendment that granted the agreement of the UGT; (2) contrary to the White Paper's recommendations, the final draft of the law removed most provisions for a significant change concerning time-flexibility related to firm-level collective bargaining; (3) although the law introduced new forms of time-

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<sup>8</sup> Interviews, PT-LM no. 1-10, Lisbon, April and June 2010.



flexibility, the final draft maintained numerous limits (see EIRO, 2008e); (4) the final draft of the law (in accordance with the White Paper) altered a provision of the 2003 Labour Code, which allowed collective agreements to provide lower standards for workers, and made minimum legal provisions inapplicable to contracts where collective agreements provide more favourable rules only for ‘core’ parts of employment relations (see EIRO, 2008e). The only concession to employers was that the final draft of the law did not abolish the basic provisions of the 2003 Labour Code on the duration and expiration of collective agreements, whereas the second draft included a completely new provision on extension of collective agreements to individual non-unionised workers (EIRO, 2008e).

The final text of the law was approved on 7 November 2008 after three months of discussion in the parliament. The CGPT-IN union challenged this law by appealing to the Portuguese Constitutional Court. At the end of December 2008, the Constitutional Court decided unanimously to reject the law on the grounds that it violates the right to secure employment and the principle of proportionality. The government responded with amendments (changing the trial period for all workers from 180 to 90 days) and the parliament voted again for a revised version of the law on 21 January 2009. The law finally became effective as of 17 of February 2009. Overall, the social dialogue process lasted approximately three years after the publication of the initial Green Paper on Labour Relations and required lengthy and intense negotiations and iterations between the government, the social partners and the Constitutional Court. This signifies the importance of domestic coalitions for institutional change based on the shared understandings between different actors, namely trade unions, business associations and the government.

The Portuguese case also suggests the importance of governmental policy entrepreneurs who persevered for the labour law reforms, in spite of resistance from social partners. According to the evidence collected in interviews, the government’s main motive for the

reform of labour law included a reduction of Portugal's EPL score, so that Portugal would be no longer classified as the country with the highest EPL score in the OECD.<sup>9</sup> Reducing EPL became a pressing issue since the early 2000s when Portugal started to experience rising unemployment levels. This development was quite unprecedented in Portugal's recent history: Portugal was one of the few EU countries with very low unemployment levels combined with high employment rates for both men and women.

The rising unemployment needs to be understood in the context of the 2004 EU enlargement, which weakened Portugal's comparative advantage within the EU. Before the accession of Central and Eastern European countries, Portugal retained a 'comparative advantage' as a low labour cost region within the EU's Single Market (EIU, 1997, pp. 12-13). With the 2004 EU enlargement, many EU members in Eastern and Central Europe could offer more competitive environments in terms of labour market regulation and costs to foreign companies that now could set up business there instead of Portugal. This was a development that increasingly became an issue of concern for Portuguese policy makers.<sup>10</sup> As a key informant involved in the reform put it:

“...Portugal's economic model is 'dead' after the EU 2004 enlargement due to competition from countries with cheaper labour in Eastern Europe.”<sup>11</sup>

Evidence from interviews suggested that the PS government tried to make sure that the upcoming reform would surely reduce the country's EPL in order to stop being labelled as

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<sup>9</sup> Interviews, PT-LM no.1-5, Lisbon, June 2010.

<sup>10</sup> Interviews, PT-LM no.1-10; independent experts no.1-3; Green Paper members 1 and 2, Lisbon, April and June 2010.

<sup>11</sup> Interview, Green Paper Committee member 1, Lisbon, June 2010.

the one with the highest EPL in the world.<sup>12</sup> As a key policy maker involved directly in the drafting of the labour law for the PS reform suggested:

“A huge amount of effort when making our proposals - especially when drafting the labour law - was devoted to having a perfect match between the OECD criteria for the EPL measurement and our reform. The efforts, especially when writing the law, was immense as we wanted to fully meet the OECD criteria for a low EPL score. The target was very specific: we had to stop having one of the highest EPL scores in the OECD and the law had to provide a fairer evaluation of our labour market situation. And I believe that we succeeded in achieving this as Portugal’s EPL score was dramatically reduced after our reform”.<sup>13</sup>

This view was not shared by everybody in Portugal - and especially from suspicious trade unions who perceived the government's efforts to reduce EPL as a direct attack to established labour regulation which protected Portuguese workers. As one trade unionist opposing the reform argued:

Reducing EPL sounds good in theory to attract foreign investment. But we need to remember that this would mean less protection for workers in Portugal. What kind of economic model is relying on growth out of human insecurity and misery? [...] We have already a very cheap labour force here. What we need is more investment in skills and education. Because

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<sup>12</sup> Interviews, PT-LM no.1-10; independent experts 1 and 2; Green Paper Committee members 1 and 2, Lisbon, April and June 2010.

<sup>13</sup> Interview, PT-LM no.11, Lisbon, June 2010.

you can be competitive on price but you can also be competitive on quality. We felt that quality was not part of the Flexicurity debate.<sup>14</sup>

However, the government persevered and tried to incorporate the supranational pressures towards adopting contractual flexibility did not only come from the EU policy of Flexicurity, but also from OECD. This, however, appeared as necessary but not sufficient for institutional change. Instead, the reform was finally successful because Portuguese government appeared to be committed and the final draft was an effective compromise supported by a broad coalition of collective actors, satisfying their divergent interests and preferences.

#### *The failed reform in Greece*

Similarly to Portugal, the Greek centre-right New Democracy government welcomed the call from the EU to examine ways of incorporating Flexicurity principles into Greek labour law. In March 2007, the Minister of Labour, Savvas Tsitouridis, established an Expert Committee with the task to ‘answer the specific questions included in the Commission’s Flexicurity Communication (Makedonia, 2008).

It appeared that both the Committee members and Tsitouridis, constituted a group of policy entrepreneurs with similar backgrounds, beliefs and a unified agenda:<sup>15</sup> (i) all of them had studied abroad; (ii) most of them had a long experience with the EU and its policies; (iii) some of them were employment policy and labour market experts with practical experience; and (iv) key people of the group had a personal involvement in Greek policy making. According to the interview data, these characteristics were important in the formation of a

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<sup>14</sup> Interview, CGTP-IN member 1, Lisbon, June 2010.

<sup>15</sup> Interviews, Greek Labour Ministry (GR-LM) officials no.1-5, Athens, April 2009.

group of policy entrepreneurs that would try to promote a labour market reform in accordance to the EU's Flexicurity principles. It appeared that for these policy entrepreneurs the EES call on Flexicurity was a window of opportunity to promote their pro-reform/modernisation agenda as all actors involved in the group shared the belief that Greece's labour market needs urgent and drastic reform.<sup>16</sup> Similarly to Portugal, therefore, Greece had a considerable 'misfit' with the EU stimuli and a group of policy entrepreneurs promoting reform.

Another similarity between the Greek and Portuguese cases is that the Greek unions (represented through the peak trade unions of the private sector 'GSEE' and public sector 'ADEDY') were quite sceptical on how realistic the transfer of the Danish model of Flexicurity was, as there were very few similarities between Greece and Denmark (Michalaki, 2009, p. 11). This became evident in 2007 when GSEE withdrew twice from the social dialogue on Flexicurity in fear that even participation in a debate on Flexicurity would imply acceptance of the term (Kwiatkiewicz, 2011, p. 13; Michalaki, 2009, p. 12). In particular, Greek trade unions - similarly to their Portuguese counterparts - perceived Flexicurity as synonymous with flexibility and as serving the interests of employers. They argued that flexibility should be reduced and the provision of security for workers and the unemployed increased (Kwiatkiewicz, 2011). In other official documents the unions argued that Flexicurity was an example of the EU's insistence 'on a model of production according to which labour is taken to be a cost' (EIRO, 2009a). Moreover, the unions insisted that expanding the definition of 'dependence' to include part-time workers, who hold spurious self-employment contracts, should be a fundamental pre-requisite for any debate on Flexicurity. The government also faced opposition from the main centre-left PASOK party. This is particularly evidenced by the statement of PASOK MP Maria Damanaki, and Head of

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<sup>16</sup> Interviews, GR-LM no.1-8; Expert Committee members no.1-3; independent experts no.1-3, Athens, April-June 2009.

her party's group in the Parliamentary Committee on Social Affairs where she argued that '...the Green Paper and the Flexicurity issues it brings up are an extension of neo-liberal policies on employment and the responsibility for this issue was entirely up to the ND government' (OBES, 2007, p.1).

Greek employers' associations appeared indifferent to Flexicurity. More specifically, the Federation of Greek Industry (SEV) never discussed Flexicurity in detail.<sup>17</sup> In response to the trade unions' harsh critique of 'EU policies', SEV argued for more flexibility, less bureaucracy and fewer administrative hurdles for businesses, as well as more time flexibility in the labour market. In other words, SEV took a rather similar stance to the Portuguese employers who favoured flexibility instead of Flexicurity. The National Confederation of Hellenic Commerce agreed that Flexicurity should be discussed, but it aligned itself with SEV's position to focus on reducing the bureaucratic burdens that companies face as well as the non-wage labour costs of workers. Surprisingly, the employers' associations that represented SMEs joined the trade unions in criticising the EU and its policies by arguing that 'in the case of Greece, the broader flexibility laid down during the last 15 years has had an insignificant or adverse impact on the employment front' (EIRO, 2009a).

Overall, the positions between different collective actors appeared markedly different throughout the consultation period and the associations launched attacks on each other and the government.<sup>18</sup> Unsurprisingly, Greek social partners never managed to reach a consensus

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<sup>17</sup> Interviews, former SEV member; Economic and Social Committee member; independent experts 1-3, Athens, May 2009.

<sup>18</sup> Interviews, GR-LM no.1-8; Expert Committee members no.1-3; independent experts no.1-3; Greek trade unionist no.1 and Social and Economic Committee member no.1, Athens, April-June 2009.

on what Greece's response should be on the EES Flexicurity policy (Kwiatkiewicz, 2011, p. 13). As a result, the Greek Economic and Social Committee decided that instead of attempting to make a synthesis of the social partners' views, it would simply outline their two divergent positions on modernising labour law along the European Commission's line of argumentation (Predosanu and Pirciog, 2008, p. 3). In this context, the Greek government disregarded the report of the Expert Committee and halted the whole process without ever initiating a discussion over a draft law. As key member of the Expert Committee suggested:

“...we [the Greek Expert Committee] faced significant opposition from within the government, sometimes even stronger than the opposition parties”.

Although scepticism or rejection of Flexicurity from the side of trade unions is observable in both countries, the Greek case differed substantially in the existence/absence of policy entrepreneurs advocating the reform of the employment protection framework. In particular, the loss of governmental support sealed the Committee's fate. The key figures of the government - including the Prime Minister at the time, Costas Karamanlis, were indifferent or hostile to the idea of Flexicurity.<sup>19</sup> On 28 April 2007, the Minister of Labour, Tsitouridis was forced to resign from his position. Tsitouridis was the most significant government member of the group of policy entrepreneurs. The Minister's forced resignation took place at about the time that the Expert Committee was ready to publish its results in 2009. The new Minister of Labour, Fani Petralia, ignored the final report of the Expert Committee, and this marked the end of the episode with no institutional change in the EPL framework. The Greek government hardly ever referred to the concept of Flexicurity in its public policy discourse

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<sup>19</sup> Interviews, GR-LM no.8-12; Expert Committee members no.1-4; independent experts no.1-3, Athens, April-September 2009.

(EIRO, 2009a). As a result, there was no meaningful public debate of the concept and its implications for Greece.

#### **IV. Portugal and Greece in comparative perspective**

In Portugal, the evidence demonstrated that after several iterations, there was a reform of EPL, gathering consensus between the government, the trade unions and the employers' associations. The direction of this institutional change was broadly in line with the expectation to tackle labour market segmentation along the Flexicurity pathways, although the discourse that was used abandoned the concept. Drawing on Streeck and Thelen's typology of mechanisms of institutional change, the reform in Portugal seems to parallel the mode of 'displacement'; whereby actors 'work creatively with institutional legacies', but these are 'submerged by more dominant or recent practices' (2006, p.20). The domestic actors in Portugal abandoned the controversial discourse of Flexicurity, but in essence displaced earlier regulations and merged the labour law with the dominant practices that stem from the Commission's pathway to tackle labour market segmentation and reducing protection for insiders. This process required tactical manoeuvres from the governmental policy entrepreneurs and a balancing act between the employers' associations and the reform-friendly trade union.

By contrast, the effort to reform the EPL in Greece was halted after a promising start. This is partly explained by lack of government perseverance with the reform making the Greek government appearing less committed on going ahead with the institutional changes in labour law than its Portuguese counterpart. Drawing on insights from the VoC literature we argue that the role of the state is expected to carry special weight in Mixed Market Economies. Additionally, drawing on insights from Europeanization literature we argue that role of policy entrepreneurs appeared to be critical in domestic empowerment from EU



stimuli. In conjunction, the perseverance of governmental policy entrepreneurs on the objective of reforming the EPL framework seems to partly explain the variation in reform outcomes. However, this does not seem to explain the whole variation in outcomes as policy entrepreneurs appeared in both cases.

Hence, we contend that the presence or absence of actors' coalitions in support of the institutional change (Hall and Thelen, 2009) mediated the process and final outcome of the external stimuli. Again we draw on VoC insights to explain that the Portuguese government managed to attain a 'shared understanding' (Culpepper, 2008) with one of the two trade unions on how to move forward through social dialogue. The corresponding process in Greece failed. However, the willingness of actors to carve out 'shared understandings' seems to depend on permanent features that are integral to domestic institutional contexts.

The difference in the structure of trade unions appears to explain their willingness to be part of reform coalitions. More specifically, the Portuguese trade unions were organisationally divided. Thus, the government was able to exploit this internal rift and play one actor against the other (cf. Afonso et al. 2015, pp. 319-22) to strike a coalition with UGT. The other key actor, the Portuguese employers' association, was easier to get on board as the reforms were in line with their long-standing agendas and interests. In this way, the Portuguese government could go ahead with the reform of the EPL, without the need to get the consent of the CGTP-IN. By contrast, a similar strategy of playing one actor against the other was not possible for the Greek government. Once the Greek government encountered resistance from the unitary union confederation, it abandoned the initiative altogether.

The above findings have important implications and amend our view of the Europeanization literature. Although the 'misfit' with EU stimuli appears as a necessary condition, it is not sufficient for institutional change. Empirically, we observed that in both countries the domestic actors did not seem to be learning from the EES. Instead, they

appeared more interested in pursuing their own agendas *vis-à-vis* their domestic opponents. The dissatisfaction and distancing from the discourse of Flexicurity would also exacerbate the limited potential for learning. Indeed, the interactions between domestic actors were focused on carving out a workable compromise with regard to domestic reform of employment protection, which would suit their needs and interests. Finally, there was little evidence of any ‘financial conditionality’ mechanisms facilitating domestic change. There was, of course, no EU funding attached to the reform of labour law, so this channel was out of scope anyway.

The findings have also implications for the VoC literature. First of all, the cases confirm the limits of abstract typologies that group similar countries into clusters of capitalism, and show that the internal dynamics of change may follow very different paths. In particular, the VoC framework has been criticised for being static, unable to account for change and an inclination to see all change as path-dependent (Hall & Thelen, 2009). While this seems to be confirmed by the case of Greece, which did not adopt any Flexicurity principles in the reform of labour law, in a genuinely path-dependent manner, the case of Portugal suggests that coalitions of actors centred on ‘shared understandings’ (Culpepper, 2008) may be able to implement reforms and provoke institutional change. The relaxation of EPL in Portugal denotes also a trajectory of change that injected LME elements in its institutional configuration. Overall, the article sought to synthesise insights and argue that the diverse reform paths and outcomes in EPL reforms may be explained by the existence of policy entrepreneurs favouring reform (Europeanization), and the variation in union structures (VoC). These two conditions provided opportunities for new coalitions and compromises.

Apart from the theoretical contribution in the Europeanization and VoC frameworks, , these research findings have also implications for employment policy research and practice. The findings confirm the argument that best practices (such as Flexicurity) cannot be

transplanted from one model of capitalism to another without paying attention to the configuration of the local institutional and political-economy context (cf. Kornelakis, 2014). The compatibility with the local institutional context has implications for the overall efficacy of employment policy interventions. Consequently, devising a government policy (especially when ‘downloaded’ from the EU) is not enough for reform and change. Instead, the inclusion and consultation with interested stakeholders/actors in the policy-making process can go a long way towards the successful adaptation and implementation of innovative/path-breaking employment policies.

## **V. Conclusions**

The article set out to explain the divergent paths of institutional change in the policy area of Flexicurity (Madsen, 2002; Auer, 2011) in Portugal and Greece during 2006-2009. In both Greece and Portugal there was a high level of ‘misfit’ between the EU policy and domestic institutional arrangements on EPL, but this was not sufficient to bring about institutional change. In both countries domestic policy entrepreneurs tried to exploit the European Commission’s 2007 Communication on Flexicurity. The comparative analysis of two under-researched and least likely cases shed light on the sequential and iterative process of change, the different actors’ interactions and the critical junctures that shaped the final outcomes. The findings suggested that apart from the importance of governmental policy entrepreneurs, the actors’ coalitions and the institutional structure of trade unionism helps to further explain in large degree the divergent paths. Along these lines the article synthesised insights from the VoC and the Europeanization theoretical frameworks. This suggests that the frameworks should not be treated as competing. Instead, synthesising insights might go a long way towards explaining divergent paths of institutional change in critical cases, such as those in Southern Europe.

One limitation of this study stems from its case studies. Although the argument might be applicable to other cases of welfare reform, they might not be extended to categorically different models of capitalism such as CMEs or LMEs. Therefore, further research is needed in order to assess the plausibility of the argument in other EU countries. Another limitation of this article is that it does not consider the most recent labour market reforms that have taken place in Portugal and Greece since the eruption of the Eurozone crisis. That is because the changed economic context has fundamentally altered the requirement of consensus and coalitions for reform of employment regulation (Kornelakis and Voskeritsian, 2014; Theodoropoulou, 2015). Instead, the financial conditionality attached to bailout packages provide governments with massive leverage to bring about institutional change in employment regulation, while supranational pressures for convergence originate not only from the European Union but also the International Monetary Fund.

Nevertheless, the article provides a historical example of the coalitional dynamics that underpin reform of employment protection systems in two critical / least-likely cases of MMEs and Southern European welfare states. In an era of ever-increasing external pressures for domestic change, these should not lead necessarily to harmonization and homogeneity, but domestic actors, agendas and institutional contexts shape the paths and direction of reforms.

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