11

Collective bargaining on social protection in the context of welfare state retrenchment: the case of unemployment insurance

Alexandre de le Court

## Unemployment Insurance and Recent Trends in Collective Bargaining on Social Protection.

Recent research increasingly shows that collective bargaining plays a role in social protection schemes, and that it should be taken into account when analysing the evolution of the programs and structures of European welfare states.[[1]](#footnote-1) Trampusch, for example, on the basis of a study of collectively-bargained benefits in occupational pensions, early retirement and further training, argues that there is a growing tendency towards the integration of welfare issues in collective agreements. This contradicts the general view that the role of social partners in the management of welfare is decreasing, and suggests that welfare state retrenchment does not necessarily need to be analysed in terms of privatisation or individualisation of social risks.[[2]](#footnote-2) Johnston, Kornelakis and d'Acri have provided additional evidence that unions and employers have filled gaps in welfare provisions or regulation through collective bargaining.[[3]](#footnote-3) In addition to compensation through collective agreements for disability benefit cuts in the Netherlands, their study also describes the successful creation, without state intervention, of a training fund by Greek social partners, who decided on their own initiative to extend the fund to the unemployed despite a lack of any effective state policy in that field. This move occurred without the social partners having any strong involvement in the design and management of unemployment protection policies.

The case of unemployment insurance benefits has so far received little study, perhaps because it is not intuitively associated with collective bargaining. In general, the role of social partners seems to be limited to weaker forms of involvement in the design of unemployment protection systems.

A comprehensive report published in 2013 by the European Observatory of Working Life, ‘Social partners' involvement in unemployment benefit regimes in Europe’, shows that the involvement of social partners varies from systematic, institutionalised, tripartite and/or bipartite participation in most EU Member States, to informal or occasional consultation in countries like Italy, Sweden, Norway and the United Kingdom and an absence of involvement (except through lobbying) in the Republic of Ireland and Malta.[[4]](#footnote-4) However, even in a country like Spain, which the report classifies as demonstrating an institutionalised participation of social partners in tripartite bodies, consultation has in reality been limited, including because of a consolidated tendency to regulate the system through urgent legislative governmental decrees.[[5]](#footnote-5) Moreover, in Spain, as a result of negative press coverage, the role of unions and employers in the design and management of training policies for employed and unemployed workers has been limited in favour of the state-driven market of private providers, with whom social partners must compete. This does not mean that unions have no recourse to other strategies to reinforce unemployment protection. In Spain over the past few years this has occurred through consultations with government regarding the consolidation of a (still very partial and insufficient) system of unemployment subsidies, or via participation in the promotion of a popular legislative initiative on a universal social assistance benefit system in the Catalan Parliament. Although the latter initiative is apparently not directly connected to protection against unemployment, it should be noted that protection of unemployed workers who have exhausted their insurance benefits is fragmentary and insufficient, as seems to be confirmed by the European Commission's 2017 European Semester Country Specific Recommendations for Spain.[[6]](#footnote-6)

Social partners do not play a specific role in the management and administration of unemployment benefit programmes in most Member States (with the exception of those where a Ghent system exists) even if they have a certain institutional presence in the organs administering the schemes.[[7]](#footnote-7) In this context, it does not seem straightforward that aspects of unemployment protection would be determined through collective bargaining agreements.

It is against this background that this chapter seeks to identify and conduct a legal analysis of cases where involvement of social partners in the governance of unemployment protection has taken the form of collective bargaining. In addition to the French case, which demonstrates a system of unemployment insurance benefits that, since 1958, have been created, designed and reformed through inter-professional collective agreements, the following sections also analyse collective agreements related to supplementary benefits in Sweden as well as the recent evolution in insurance benefits in the Netherlands.

## The French Case as a System of Collectively-Bargained Unemployment Insurance

The French system of unemployment insurance governance can be viewed as an exception within the EU. Since 1958, contributions, benefits and access conditions have been the object of an inter-professional collective agreement that is renegotiated between employers’ associations and representative trade unions every two or three years. This agreement is commonly referred to as the Unedic agreement in reference to the bipartite institution managing the system. The relevant law (*Code du travail*) limits itself to the establishment of a right to unemployment insurance, as opposed to the 'contractual' system,[[8]](#footnote-8) by defining basic conditions (an unemployed worker; the minimum duration to be fixed by governmental decree; the obligation of the Unedic agreement to take into account 'unused' benefit periods; reference to previous remuneration for the calculation of benefits; the contributory character of the system and the possibility of adapting contribution levels with respect to contractual circumstances). Article L5422-20 of the *Code du travail* explicitly reserves the execution of legal provisions to inter-professional agreements. Such agreements must, however, be authorised by the government—and this authorisation, like decisions regarding the extension of collective agreements, renders the agreement generally applicable. Conditions for authorisation relate to how representative those negotiating the agreement are, and also stipulate an absence of contradictions with legal provisions, in particular those related to the control of employment and unemployed workers and to the organisation of placement, orientation and retraining for unemployed workers.

Consideration of the reference to the placement, orientation and retraining of unemployed workers should take into account the fact that, until 2008, Active Labour Market Policies (ALMPs) for unemployed workers in receipt of insurance benefits were also managed by Unedic under the Unedic agreements. Unedic shared these responsibilities with the Agence Nationale pour l'Emploi (ANPE), a state-run institution that was responsible for activation policies for all unemployed workers, whether or not they were in receipt of insurance or assistance benefits. In 2005, legislation was passed requiring the negotiation and conclusion of a tripartite convention between the state, ANPE and Unedic, to establish rules for coordinating the activities of the various institutions and to ensure communication flow between them. In 2008, most of Unedic's services (ALMPs and the recognition and payment of benefits) and ANPE itself were taken over by the new state-run body Pôle Emploi*,* a tripartite institution that centralised all aspects of unemployment protection regulations and ALMPs.[[9]](#footnote-9) It seems that, even though social partners are for the most part present on the board of Pôle Emploi, in reality they have not been left a great deal of room within the framework of the decisions already taken by the government and introduced in the laws on the State budget. This is perhaps because the competence of this new body to take strategic decisions is more formal than real.[[10]](#footnote-10) Ten percent of Unedic's budget (which comes from the contribution agreed upon in the inter-professional agreement) goes toward the financing of Pôle Emploi.

Further, even if the procedure for authorising and extending the cross-branch Unedic agreement is to be construed as a matter of routine, on critical occasions it has threatened the autonomy of the social partners. In 2000 for example, the government refused to authorise the agreement (which had not been signed by all the representative unions) on several grounds. These included the fact that the agreement did not guarantee the sustainability of the system; that it attempted to introduce definitions of the employment that benefit-holders must accept that were stricter than the legal definitions; that it introduced a compulsory reintegration plan; and that it introduced a new sanctions regime for the insurance scheme that differed from the legal sanctions regime. The agreement was authorised following further negotiations (formally bipartite, but in reality tripartite) in which government and unions shared common objectives, and which recognised the role of the state (and the *Code du travail*) in defining and applying infractions and sanctions.[[11]](#footnote-11) Prior to this, in 1982, the government had intervened in the financial crisis by issuing a decree setting out conditions for access to insurance benefits for previous contribution periods, as well as an assistance track for unemployed workers whose contribution periods were insufficient.[[12]](#footnote-12) These principles were confirmed in the subsequent inter-professional agreement of 1984, thus establishing the improper bipartite character of the system.[[13]](#footnote-13) Further, following its move to preserve its responsibilities around activation strategies for unemployed workers during the 2000 crisis, the state gradually brought the design and implementation of ALMPs and activation strategies under its control via a tripartite institution with state dominance.

This context is also important when considering the reforms proposed by the recently-elected French President, which tend toward a universalisation of the system and the suppression of its financing through social contributions, which should pass through a 'nationalisation' of the system, admittedly by the implementation of tripartism in its design and management.

## The Swedish Case: Collective Agreements as AN Aspect of CollectiviSation

While not directly involved in establishing the conditions, level and regulation of benefits and contributions, Swedish social partners have a long tradition of supplementing unemployment benefits[[14]](#footnote-14) in both amount and duration, not only through collective bargaining but also via collective and individual insurance provided by unions.

While complementary insurance does not generally extend to industries with high unemployment risks, around 80 percent of workers are covered by Job Security Agreements (now also known as Transition Agreements).[[15]](#footnote-15) These are collective agreements that institute Job Security Councils, which are responsible for providing support to unemployed workers in their transition between jobs. From that point of view, these agreements could be said to embody a vision of unemployment protection that goes beyond guaranteeing income security to focus on labour market reintegration. The first of these agreements was created in the seventies in the context of mass unemployment amongst white-collar workers, who were considered to be insufficiently supported by public employment services.[[16]](#footnote-16) After a pause during the nineties, new Job Security Agreements were created in 2004 (for blue-collar workers),[[17]](#footnote-17) and were strongly linked to the reintegration of workers in restructuration processes (collective redundancies), as compensation for the fact that PES focus above all on the reintegration of those already unemployed, and above all on the long-term unemployed.[[18]](#footnote-18) From that perspective, Job Security Agreements can also be seen as instruments of a preventive ALMP, as their provisions begin to apply even before redundancies are effective.

In reality, these agreements are not directly connected with supplementing unemployment protection as part of social security or social protection, but were negotiated within the framework of employment protection legislation.[[19]](#footnote-19) However, in addition to a series of services related to placement and outplacement provided through the Job Security Councils, the Job Security Agreements also provide supplementary benefits on top of basic or insurance benefits,[[20]](#footnote-20) and even include salary complements for a certain duration in cases where workers accept a new job with a lower salary than their previous salary.[[21]](#footnote-21) For example, in 2014, the Job Security Agreement for government employees provided for top-up payments to unemployment benefits up to 80 percent (70 percent after 200 days) of salary for permanent workers included in collective redundancies, as well as for fixed-term workers who had been working for at least three of the last four years and whose contracts had not been renewed. The Job Security Agreement for local authority workers provides the same benefits plus an additional lump sum payment when the benefit period expires. The oldest agreement, for white collar workers, instituting the *Trygghetsrådet*, only applies to redundant workers over the age of 40, and provides top-ups to basic unemployment benefits up to a level of 70 percent of salary (dropping to 50 percent after six months), as well as unemployment benefit extensions for older workers. For private sector blue-collar workers, the Job Security Agreement provides redundant workers over the age of 40 with a one-time lump sum depending on their age.[[22]](#footnote-22)

The financing of Job Councils and benefits are the responsibility of the employer. This is linked to the formal character taken by the Job Security Agreements of complementary protection in the event of redundancy. These agreements apply to all workers within their scope, not only trade union members.[[23]](#footnote-23) As the Swedish legal system does not have a system of extending collective agreements,[[24]](#footnote-24) the comprehensive applicability of the Job Security Agreements is agreed upon in Agreements themselves.

In Sweden, an element of unemployment protection can be seen to have been developed through collective bargaining, even if the scope of protection by collective agreement is limited to restructuring processes. This limitation is also connected to the tradition of supplementary unemployment protection through individual, and above all collective, insurance provided by the unions. The latter development can be explained by the fact that, since the nineties, the generosity of the income-related unemployment insurance system has been gradually reduced. Replacement rates decreased (with some reversal) from 90 percent to 80 or 70 percent (depending on duration of employment), as did the maximum level of benefits. This, in addition to the scrapping of an automatic benefit indexation system, has meant that the system has moved away from income-related insurance towards a system of basic benefits,[[25]](#footnote-25) or a 'basic security model'.[[26]](#footnote-26)

In this context, union strategies (increasing or maintaining members), combined with favourable taxation of private insurance, has led to the growth of collective (and individual) insurance to top-up the dwindling maximum benefits and restore the income-related character of unemployment protection.[[27]](#footnote-27)

In conclusion, it should be said that the regulation of certain aspects of unemployment protection through collective agreements in Sweden does not constitute Welfare State retrenchment as such. Rather, it is more a collective response to the new needs of workers within the context of a changing and more volatile labour market. Retrenchment in unemployment protection has been answered autonomously by unions, without negotiations with employers, through the reinforcement of supplementary, collective private insurance for their members.

## ‘Repairing’ Retrenchment in Unemployment Insurance in the Netherlands

In the Netherlands, the participation of social partners in the development of social legislation has been well established since the end of the previous century. This occurred mainly through bipartite and tripartite institutions like the *Stichting voor de Arbeid* and the *Sociaal Economische Raad*.

Moreover, until the nineties, these social partners participated in the administration and execution of social insurance programmes, including unemployment benefits. Through the *Bedrijfsverenigingen*—the bipartite, sectorial organisations that administered the various schemes—social partners also assessed individual cases directly.[[28]](#footnote-28) In 1993, a Parliamentary investigation was conducted in response to a report by the Public Audit Office (*Rekenkamer*) regarding failing control over the execution of Social Security programmes. The investigation concluded that priority to rapid and fair recognition of benefits was being granted at the detriment of control over the total volume of benefits. Further, it seemed that unemployed workers were also being funnelled into the more generous disability benefit system as a way to defend workers' interests and prevent conflict through creative solutions to workforce management problems.[[29]](#footnote-29)

As a result, between 1995 and 2002, the *Bedrijfsverenigingen* were forced to merge into fewer structures and cooperate with private insurers, before they were finally abolished altogether. Their role in public local job placement services was terminated and the those services centralised and nationalised. Since that time, the involvement of social partners in unemployment protection seems to have been limited to the policy development level, through formulating recommendations to the government as well as involvement in tripartite consultation and agreements which led to the reforms of 1998[[30]](#footnote-30) and 2006.[[31]](#footnote-31)[[32]](#footnote-32) This trend, to be inscribed in the traditional dynamics of the Dutch *Poldermodel*, was continued with the reforms embodied in the 2013 *Wet werk en zekerheid,* which were based on a bipartite agreement agreed in the *Stichting voor Arbeid* in April of the same year and which were, in reality, negotiated with the government.

Continuing with the Dutch comprehensive 'flexicure' approach to labour market reform that had begun in the nineties,[[33]](#footnote-33) the law provided for the a number of changes in the Law on Unemployment (*Werkloosheidswet*). The obligation of unemployed workers to seek suitable employment was sharpened and the law also introduced a compensation system for cases where an unemployed worker accepted employment at a lower salary than her previous salary. Above all, the law stipulated a gradual reduction, starting from 2016, in the maximum duration of benefits from 38 to 24 months, which mostly affected workers with long employment tenure. As a 'compensation' (concession to the unions during the negotiation of the agreement), the law, in line with the agreement, expressly provides that collective bargaining can 'repair' the reduction in salary via private insurance coverage.

Negotiation between social partners regarding the design of the scheme following the 2013 social agreement and reform law remained inconclusive, despite agreements that the principle of 'repairing' salary reductions would be included in collective agreements in the construction, agricultural, local government and youth/child protection sectors. In 2017, the government seemed to have resolved the situation by providing proposals for the basic principles of the 'repair' scheme (which consisted of general collective agreements, applicable to entire economic sectors, that would create *ad hoc* funds as well as financing by workers) and by reaffirming its 2013 promise that such collective agreements would be generally applicable.[[34]](#footnote-34) After an ultimate refusal in April 2017, employers finally agreed to the scheme, with certain conditions: that the scheme would not serve as a precedent for future 'repair' of social security retrenchments; that administrative costs for the scheme's management would be kept to a minimum; and a guarantee that worker contributions would not lead to salary compensation claims in further collective bargaining.

It is important to note that this evolution did not come out of the blue. There was already a certain trend of recourse to collective agreement to complement the existing unemployment benefit regime. In 2012 for example, 38 percent of the most important (branch level) collective agreements contained provisions for complementary protection to 'public' unemployment benefits in the form of complementary benefits,[[35]](#footnote-35) which covered around 2.6 million workers at a cost of €170 million (in 2011), or 3.7 percent of legal benefits.[[36]](#footnote-36) The sectors in which complementary benefits seem to be most present are industry (11.4 percent of legal benefits), health care (10.1 percent), the public sector (8 percent) and education (6 percent).[[37]](#footnote-37)

The clauses of the agreement regulate the level of the supplementary benefits (generally guaranteeing from 75 to100 percent of the previous salary); its duration (coinciding with the duration of legal benefits, or a certain duration depending on the age of the unemployed person)[[38]](#footnote-38) or conditions (generally, minimum employment period in the company).[[39]](#footnote-39) The systems are administered by private pension fund administrators for a whole sector,[[40]](#footnote-40) but also by companies themselves or their salary administration contractors.[[41]](#footnote-41) Also, it seems that financing generally occurs at the expense of the employer, or is shared between employer and worker. Financing by the worker only does not seem to be significant.[[42]](#footnote-42)

The inclusion of supplementary unemployment benefits in collective agreements should also be viewed from the perspective of the greater tradition of complementary protection by collective agreement in other branches of social security, in particular temporary and permanent disability, as a response to the trend of privatisation in these areas.[[43]](#footnote-43) The example of disability insurance reform of is particular interest in this context, not only because alleged misuse by social partners was the basis for their expulsion from the management of unemployment benefits, as detailed above. Following the 'unilateral' imposition of a disability insurance system reform, which basically narrowed access criteria and reduced benefit levels (and which social partners strongly opposed), unions managed to 'repair' some of the cuts through worker and employer contributions to funds negotiated in several sectoral collective agreements. However, this provoked a conflict with the government, which tried to impose limitations on the rules on extending collective agreements.[[44]](#footnote-44) When the government conducted reforms to the system for a second time in 2002 and then again in 2004—which resulted in a reduction of the level of benefits—those were again 'repaired', as two years later, 71 percent of collective agreements contained supplementary benefits.[[45]](#footnote-45)

The new development, however, demonstrates considerable differences with other cases of collectively-bargained supplementary benefits, in that, as decided from the outset of the negotiations between social partners following the 2013 bilateral agreement, the 'private' extension of unemployment benefits would be financed exclusively by workers' contributions. Despite this early agreement by the unions to exempt employers from financing the system, employers’ associations blocked a final agreement and then delayed its implementation until May 2017, likely in part because they perceived the 'repair' of welfare state retrenchment through collective bargaining as a consolidating trend in the evolution of Dutch social protection.

It was government intervention that finally persuaded employers to agree to collaborate to 'repair' retrenchment. In contrast to the 'repair' of the first disability insurance reforms, here the state had a supporting role. Moreover, state involvement in the negotiations from the outset, as well as the power conferred on the state by its role in the extension mechanism required to make the repairs comprehensive, nuanced the bipartite character of the collective bargaining. It is also interesting to note the inclusion in the law of a reference, or rather an authorisation, to 'repair' the reduction in the duration of benefits. Given that some collective agreements already extended benefit periods for certain categories of workers (mainly older workers) without express legal habilitation,[[46]](#footnote-46) it is not clear that this reference was necessary. On the other hand, the reference is a clear indication of the role of the state in this particular process of privatisation (and collectivisation) of unemployment insurance.

## Fragmented contractual welfare and supplementing active labour market policies: the Italian case

In Italy, the collectivisation of welfare through collective bargaining is often cited in the context of the development of social protection for atypical workers, in particular temporary agency workers.[[47]](#footnote-47) Central to what is referred to by some authors as contractual welfare,[[48]](#footnote-48) which for the purpose of this chapter can be included in the idea of collectivisation, are the *Enti Bilaterali*, the bilateral bodies instituted by sectorial or inter-professional agreements. Their development can be associated with the general evolution of the system of industrial relations from a lack of a formalised framework for collective interest negotiations towards a system of collaborative corporatism.[[49]](#footnote-49) Since the nineties, bilateral bodies have emerged whose aim is to mutualise the provision of benefits related to employment contracts (e.g. severance pay, illness) in economic sectors whose characteristics (such as an important presence of SME) do not favour such advantages. Even if their inclusion of unemployment-related benefits has been marginal,[[50]](#footnote-50) these bilateral bodies are worth mentioning because they have started to take on key functions related to the active support of unemployed workers—including services related to professional and lifelong training—that would normally be carried out by public employment services. This has also been promoted by the law via the creation of special funds financed in part by unemployment protection contributions.[[51]](#footnote-51) This response to the lack of services offered by public institutions has further been promoted by the law through a legal integration of the role of the bilateral bodies. Law 276/2003 seems to be a turning point, in that it explicitly recognises these bilateral bodies as privileged for the regulation of the labour market, not only in terms of health and safety or income security, but also in promoting 'standard employment of quality' through various services to employers and workers. These include intermediary services and job placement for unemployed workers, aimed at promoting matching between job offers and the supply of work. In so doing, the bilateral bodies have above all begun to collaborate with public employment services by exchanging information, via signing agreements with the various territorial public actors involved.[[52]](#footnote-52) It is also important to note that the bilateral bodies have created funds for sectors and workers not covered by Wage Guarantee Funds, which provide financial support in case of redundancies and short-time work schemes.[[53]](#footnote-53)

## COLLECTIVISATION OF UNEMPLOYMENT PROTECTION: COLLECTIVE BARGAINING BETWEEN TRIPARTISM AND VERTICAL DE-MUTUALISATION.

With the exception of a few cases, protection against unemployment (or at least unemployment benefits) has not been much the object of collective bargaining. Nevertheless, this chapter has identified both existing and new cases where welfare benefits have been provided through collective bargaining, contributing to the existing literature on the subject. However, with the exception of the French system, which for historical reasons rests in great part on periodically-renegotiated inter-professional collective agreements, collective bargaining seems to be limited to supplementing existing systems of unemployment insurance.

Even in a Ghent country, like Sweden, which has a strong tradition of union involvement in the management of unemployment insurance, collective agreements that also implied employer financing of benefits have only been concluded within the framework of support for workers made redundant during restructuring. Even if such collective agreements are related more to the employer's (social) responsibility regarding redundancies than to protection against unemployment, they are still the product of the reaction of social partners to gaps in state-provided social protection, and in this particular case on the emergence of new needs, or new social risks.[[54]](#footnote-54)

On the other hand, the Swedish case demonstrates that collective bargaining is not the only instrument of collectivisation of unemployment protection through benefits in the context of welfare state retrenchment. In Sweden, cutbacks in the generosity of the system have been addressed through the establishment of collective insurance for union members. This can be partly explained by the fact that the Swedish unemployment protection system is considered a Ghent system, and that also (and partly linked to this) Sweden has a high union density. On the other hand, despite taking the form of collective agreements, the Dutch 'reparation' that addresses the decrease in duration of unemployment insurance benefits does not involve sharing responsibility for the risk of long-term unemployment between workers and employers, since financing of the scheme will come exclusively from workers’ contributions.

From this perspective, these developments could be characterised as a one-sided collectivisation of a social risk (as opposed to a collectivisation where employers also contribute), or also, to use the approach of Freedland and Countouris, a 'vertical demutualisation'[[55]](#footnote-55) of that risk; since in the past, mutualisation of the risk via state intervention rested on a system that had been financed through employer contributions as well as those of workers.

Another aspect characteristic of the Dutch evolution and the French system that emerges from this analysis is that, despite taking the bipartite form of collective bargaining, the role of the state in the negotiation and further development of agreements is important, even if sometimes informal. This brings us to a certain contradiction, in that while there is a reduction of state accountability that occurs through retrenchment of unemployment benefit programmes (at least in the Dutch system), any subsequent collectivisation of risk is almost impossible without the involvement of the self-same state. As the Dutch case shows, (one-sided) collectivisation seems not to have been possible without state participation, technically through the promised extension of the relevant collective agreement, and—more politically—through its role in persuading employers. Common to both cases also is the legal integration of collective bargaining, through the recognition (necessary or not) of the importance of collective bargaining in the field. The Italian case also shows an important degree of legal (and financial) integration in the functions of bilateral bodies, not only in unemployment protection but also in terms of training and other work-related benefits. A certain interplay between social dialogue, law and collective bargaining can also be observed in the Dutch and French cases, given the legal recognition of the 'repair' system in the Netherlands, or through legal integration and posterior legal reforms to permit the legality of the agreements in France.[[56]](#footnote-56)

Further, some divergence between France and other states should be noted. In France, the state has removed the competence of collective bargaining in terms of activation and management of benefits, as the Netherlands did in the early nineties, by expelling social partners from the design and implementation of unemployment protection. However, the Netherlands does not seem to have challenged the social partners' control of supplementary and 'repair' benefits in unemployment protection, and does not seem to intend to do so in the case of the generalised extension of the reduced duration of benefits (which might reflect, at the start of the twenty-first century, a shift of responsibility onto employers for the reintegration of workers receiving disability benefits). Moreover, current French proposals around the universalisation of unemployment insurance threaten this model, and an even weaker involvement of social partners in the system is to be expected. On the other hand, the importance of these changes could be put into perspective when considering the *de facto* quasi-tripartite character of the governance of unemployment insurance benefits. This argument confirms previous research, which has indicated the important role played by the state in industrial relations when determining the extent of social solidarity that can be provided by collective agreements.[[57]](#footnote-57)

This aspect, however, is not as relevant in the case of Sweden. From a technical point of view, this might be related to the fact that Sweden lacks the system of extending collective agreements through state intervention that is a defining element of the French and the Dutch systems. However, from a more systemic point of view, and taking the strategies of social partners into account, other factors come to mind. One is the importance of the autonomy of social partners in Sweden. Another is the fear of decreasing union membership in cases where such membership is not required for a worker to be covered by complementary collective solidarity. With regard to this, it could be said that there is tension between the extension of collectivised solidarity and the use of such solidarity as a power resource. This tension is also visible in the Dutch case, where unions seem to have constrained themselves to accept extended unemployment protection as a bargaining tool, without employers having to participate in its financing—a move that in principle should weaken the bargaining position of the unions.

Finally, to be complete, a study of the regulation of unemployment protection should take into account activation and ALMPs (including training). From this point of view it seems that, in terms of further training of workers and of unemployment, there are some cases where collective bargaining has played a role. These include Greece, as shown above, but also France, Sweden, the Netherlands and, though not studied here, Denmark.[[58]](#footnote-58) A survey of employers in Denmark found that collective bargaining coverage was a positive factor in the systematic participation of employers in ALMP schemes.[[59]](#footnote-59) In France, as noted above, there is an apparent tendency toward increased state control over these matters. On the other hand, in Italy, the evolution of the *Enti Bilaterali* towards assuming tasks that public employment services do not effectively fulfil reveals the emergence of a different trend, which, though it echoes the emergence of Job Security Agreements in Sweden, is different in that its evolution seems to be promoted by the state. Due to the conceptual shift in the notion of unemployment protection to include worker activation and non-monetary benefits to support workers in labour market reintegration (or, depending on the perspective, to support a more rapid reintegration),[[60]](#footnote-60) more research on the role of collective bargaining in these areas is needed in order to gain a more complete picture of how it interacts with gaps and retrenchment in unemployment protection policies.

1. Trampusch, C., ‘Industrial Relations as a Source of Solidarity in Times of Welfare State Retrenchment’, *Journal of Social Policy*; Johnston, A., Kornelakis, A. and Rodriguez d’Acri C., ‘Social Partners and the Welfare State: Recalibration, Privatization or Collectivization of Social Risks?’, (2011) 4 *European Journal of Industrial Relations* 349; Yerkes, M and Tijdens, K, ‘Corporatism and the MEdiation of Social Risks. The Interaction between Social Security and Collective Labour Agreements’, in van der Veen, R., Yerkes, M., Achterberg, P. (eds.) (2012), *The Transformation of Solidarity. Changing Risks and the Future of the Welfare State,* Amsterdam University Press, 115-168; [↑](#footnote-ref-1)
2. Trampusch, C (2007)., ‘Industrial Relations as a Source of Solidarity in Times of Welfare State Retrenchment’*Journal of Social Policy*, Vol. 36, nº 2, 197-215 [↑](#footnote-ref-2)
3. Johnston, A., Kornelakis, A. and Rodriguez d’Acri C., ‘Social Partners and the Welfare State: Recalibration, Privatization or Collectivization of Social Risks?’, (2011) 4 *European Journal of Industrial Relations* 349 [↑](#footnote-ref-3)
4. Regalia, I. and Gasparri, S. ‘Social partners’ involvement in unemployment benefit regimes in Europe’ (Dublin, European Foundation for the Improvement of Living and Working Conditions, 2013), 32-34 [↑](#footnote-ref-4)
5. de le Court A. (2016), *Protección por desempleo y derechos fundamentales. El caso español en contexto*, Tirant lo Blanch; de le Court, A. (2014); de le Court, A. (2014), ‘Decommodifying social rights: Welfare State policies in a comparative perspective’, Ph.D. thesis [↑](#footnote-ref-5)
6. European Commission, 'Recommendation for a Council Recommendation on the 2017 National Reform Programme of Spain and delivering a Council opinion on the 2017 Stability Programme of Spain', COM (2017) 508 final [↑](#footnote-ref-6)
7. Regalia, I. and Gasparri, S., *‘*Social partners’ involvement in unemployment benefit regimes in Europe’(Dublin, European Foundation for the Improvement of Living and Working Conditions, 2013), 38 [↑](#footnote-ref-7)
8. Supiot, A. ‘Un faux dilemme : la loi ou le contrat ?’ (2003) 1 *Droit Social* 58, 64 [↑](#footnote-ref-8)
9. Alduy, J.-P., ‘Rapport d'information No.n° 713 (2010-2011) fait au nom de la Mission commune d'information relative à Pôle emploi, déposé le 5 juillet 2011’ (Paris, Sénat, 2011) [↑](#footnote-ref-9)
10. Jamme, D., ‘Pôle emploi et la réforme du service public de l’emploi: bilan et recommandations’, (Paris, Conseil économique, social et environnemental, 2011) 15 [↑](#footnote-ref-10)
11. Supiot, A. ‘Un faux dilemme : la loi ou le contrat ?’ (2003) 1 *Droit Social* 58, 64-66 ; Freyssinet, J. ‘La réforme de l’indemnisation du chômage en France’, (2002) 38 *Revue de l'IRES* 1; Tuchszirer, C., ‘La nouvelle convention d’assurance-chômage: le PARE qui cache la forêt’ (2001) 14 *Mouvements* 2, 15 [↑](#footnote-ref-11)
12. Actually, the law provides for the competence of the government to ‘execute’ its provisions in matters of unemployment insurance in case of the absence of collective agreement. [↑](#footnote-ref-12)
13. Daniel, C. and Tuchszirer, D. *L’État face aux chômeurs, l’indemnisation du chômage de 1884 à nos jours*  (Paris, Flammarion, 1999). [↑](#footnote-ref-13)
14. The system is composed of a basic, relatively low, universal tax financed benefit, and an alternative income-related benefit for members of unemployment insurance funds (closely linked with unions as an expression of the ‘Ghent’ character of the system. On the Ghent system and its connection with union membership, see Lind, J. ‘The end of the Ghent system as trade union recruitment machinery?’ (2009) 40 *Industrial Relations Journal* 510 [↑](#footnote-ref-14)
15. OECD, *Back to work: Sweden: Improving rhw Re-employment prospects of displaced workers* (Paris, OECD Publishing, 2009), 103 [↑](#footnote-ref-15)
16. Bergström, O. and Diedrich, A. ‘The Swedish model of restructuring’, in Cazier, B. and Bruggeman, F. (eds.), *Restructuring Work and Employment in Europe. Managing change in an era of globalisation*, (Cheltenham, Edward Elgar Publishing, 2008), 160 [↑](#footnote-ref-16)
17. Bergström, O. and Diedrich, A. ‘The Swedish model of restructuring’, in Cazier, B. and Bruggeman, F. (eds.), *Restructuring Work and Employment in Europe. Managing change in an era of globalisation*, (Cheltenham, Edward Elgar Publishing, 2008), 160 [↑](#footnote-ref-17)
18. Diedrich, A. and Bergström, O., *The Job Security Councils in Sweden* (IMIT, 2006), 8 [↑](#footnote-ref-18)
19. The 1974 Employment Protection Act (*Lagen om anställningsskydd, LAS*); Diedrich, A. and Bergström, O., *The Job Security Councils in Sweden* (IMIT, 2006), 9 [↑](#footnote-ref-19)
20. OECD, *Back to work: Sweden: Improving rhw Re-employment prospects of displaced workers* (Paris, OECD Publishing, 2009), 103-104. [↑](#footnote-ref-20)
21. Diedrich, A. and Bergström, O., *The Job Security Councils in Sweden* (IMIT, 2006), 12 [↑](#footnote-ref-21)
22. OECD, *Back to work: Sweden: Improving rhw Re-employment prospects of displaced workers* (Paris, OECD Publishing, 2009) [↑](#footnote-ref-22)
23. Lindquist, G.S. and Wadensjo, E. ‘Social and occupational security and labour market flexibility in Sweden: The case of unemployment compensation’ (2006) IZA Discussion Paper2943, 10 https://ssrn.com/abstract=1006195. [↑](#footnote-ref-23)
24. Kerckhofs, P. ‘Extension of collective bargaining agreement in the EU’ (2011) EUROFOUND background paper, EF/11/54/EN, https://www.eurofound.europa.eu/sites/default/files/ef\_publication/field\_ef\_document/ef1154en.pdf [↑](#footnote-ref-24)
25. Rasmussen, P. ‘Privatizing unemployment protection – The rise of private unemployment insurance in Denmark and Sweden’ (2014) Centre for Comparative Welfare Studies Working Paper 2014/38, 34-38; the research shows that, while in the beginning of the 90s, ‘net replacement rate of average earners more or less corresponded to the maximum replacement rate of 90% stipulated in the insurance … by 2009 it had dropped to below 60% of former wage’. [↑](#footnote-ref-25)
26. Korpi, W. and Palme, J. ‘New Politics and Class Politics in the Context of Austerity and Globalization: Welfare State Regress in 18 Countries, 1975-95’ (2013) 97 *American Political Science Review* 425 [↑](#footnote-ref-26)
27. Rasmussen, P. ‘Privatizing unemployment protection – The rise of private unemployment insurance in Denmark and Sweden’ (2014) Centre for Comparative Welfare Studies Working Paper 2014/38, 63-64 [↑](#footnote-ref-27)
28. While the social insurance funds themselves were tripartite institutions; Bekke, H. and van Gestel, N., *Publiek Verzekerd, Voorgeschiedenis en start van het Uitvoeringsinstituut Werknemersverzekeringen (UWV 1993-2003)* (Antwerpen, Garant, 2004), 23 [↑](#footnote-ref-28)
29. Goudswaard, K.P., ‘Gedonder in de Polder: een beknopte geschiedenis van de veranderingen in de uitvoeringsstructuur sociale zekerheid’ in Albergste, D.A., Bovenberg, A.L., Stevens, L.G.M. (eds.) *Er zal geheven worden!: Opstellen, op 19 oktober 2001, aangeboden aan prof. dr. S. Cnossen ter gelegenheid van zijn afscheid als hoogleraar aan de Erasmus Universiteit Rotterdam* (Deventer, Kluwer, 2001). [↑](#footnote-ref-29)
30. Law on Flexibility and Security , with only limited impact on protection against unemployment. [↑](#footnote-ref-30)
31. Law on revision of the Unemployment Law, which shortened maximum duration to 3 years and 2 months, and modified unemployment benefits system for those with short qualifying periods. [↑](#footnote-ref-31)
32. EurWORK, ‘The Netherlands: social partners’ involvement in unemployment benefit regimes’ (2012) Report, https://www.eurofound.europa.eu/fr/observatories/eurwork/comparative-information/national-contributions/netherlands/the-netherlands-social-partners-involvement-in-unemployment-benefit-regimes [↑](#footnote-ref-32)
33. de le Court, A. ‘Decommodifying social rights: Welfare State policies in a comparative perspective’ (Ph.D. thesis, Pompeu Fabra University, 2014) 253-254, www.tdx.cat/handle/10803/283752 [↑](#footnote-ref-33)
34. In principle, Dutch Collective Agreements only bind those workers and employers affiliated to the organisations which concluded them, but the Government can make them generally binding in their scope of application by Decree. [↑](#footnote-ref-34)
35. *Bovenwettelijke aanvulling WW*, or complementary addition to legal benefits; also 61% of the agreements contained provisions for supplementary disability benefits (*Wet Werk en Inkomen naar Arbeidsvermogen*) [↑](#footnote-ref-35)
36. Cuelenaere, B., Zwinkels, W.S. and Oostveen, A.A. ‘Praktijk en effecten van bovenwettelijke CAO- aanvullingen ZW, loondoorbetalingbijziekte, WIA en WW’ (2014) Report for the Ministry of Social Affairs and Employment, 11 and 54, http://onderzoekwerkeninkomen.nl/rapporten/6vya47nr/praktijk-en-effecten-van-bovenwettelijke-cao-aanvullingen-zw-loondoorbetaling-bij-ziekte-wia-en-ww.pdf. [↑](#footnote-ref-36)
37. Cuelenaere, B., Zwinkels, W.S. and Oostveen, A.A. ‘Praktijk en effecten van bovenwettelijke CAO- aanvullingen ZW, loondoorbetalingbijziekte, WIA en WW’ (2014) Report for the Ministry of Social Affairs and Employment, 56, http://onderzoekwerkeninkomen.nl/rapporten/6vya47nr/praktijk-en-effecten-van-bovenwettelijke-cao-aanvullingen-zw-loondoorbetaling-bij-ziekte-wia-en-ww.pdf. [↑](#footnote-ref-37)
38. It seems that half of the studied collective agreements contain a right to complementary unemployment benefits until pension age for workers of a certain age, with the condition of having been employed for the company a certain time [↑](#footnote-ref-38)
39. Wilms, A.M., Feenstra, P.W., Houtkoop, A., Machiels-van Es, A., ‘Bovenwettelijke Aanvullingen Bij Ziekte,Arbeidsongeschiktheid En Werkloosheid. Een onderzoek naar cao-afspraken over bovenwettelijke aanvullingen bij ziekte, arbeidsongeschiktheid en werkloosheid’ (2013), Report for the Ministry of Social Affairs and Employment, http://cao.minszw.nl/pdf/174/2013/174\_2013\_13\_10797.pdf [↑](#footnote-ref-39)
40. ibidem; it seems that only the Collective Agreement for the construction sector provides for equal participation of employer and worker in the financing of the system. The benefit is, however, only a one-time lump sum of 450 € (suppressed since 2015) [↑](#footnote-ref-40)
41. Wilms, A.M., Feenstra, P.W., Houtkoop, A., Machiels-van Es, A., ‘Bovenwettelijke Aanvullingen Bij Ziekte,Arbeidsongeschiktheid En Werkloosheid. Een onderzoek naar cao-afspraken over bovenwettelijke aanvullingen bij ziekte, arbeidsongeschiktheid en werkloosheid’ (2013), Report for the Ministry of Social Affairs and Employment, 61 http://cao.minszw.nl/pdf/174/2013/174\_2013\_13\_10797.pdf [↑](#footnote-ref-41)
42. ibidem [↑](#footnote-ref-42)
43. Rommelse, A., ‘De arbeidsongeschiktheidsverzekering: tussen publiek en privaat. Een beschrijving, analyse en waardering van de belangrijkste wijzigingen in het Nederlandse arbeidsongeschiktheidsstelsel tussen 1980 en 2010’ (Ph.D. Thesis, Leiden University, 2014), https://openaccess.leidenuniv.nl/handle/1887/23081, or Trampusch, C., ‘Sozialpolitik durch Tarifvertrag in den Niederlanden. Die Rolle der industriellen Beziehungen in der Liberalisierung des Wohlfahrtsstaates’ (2004) MPIfG Discussion Paper 04 / 12, http://hdl.handle.net/10419/19914 [↑](#footnote-ref-43)
44. Johnston, A., Kornelakis, A. and Rodriguez d’Acri C. ‘Social Partners and the Welfare State: Recalibration, Privatization or Collectivization of Social Risks?’ (2011) 17 *European Journal of Industrial Relations* 349 [↑](#footnote-ref-44)
45. Yerkes, M. and Tijdens, K, ‘Corporatism and the Mediation of Social Risks. The Interaction between Social Security and Collective Labour Agreements’ in van der Veen, R., Yerkes, M., Achterberg, P. (eds.) *The Transformation of Solidarity. Changing Risks and the Future of the Welfare State* (Amsterdam, Amsterdam University Press, 2012) 125-126 [↑](#footnote-ref-45)
46. For example, the *WOPO*, collectively bargained regulation of supplementary unemployment benefits in the sector of basic education. [↑](#footnote-ref-46)
47. Johnston, A., Kornelakis, A. and Rodriguez d’Acri C., ‘Social Partners and the Welfare State: Recalibration, Privatization or Collectivization of Social Risks?’, (2011) 4 *European Journal of Industrial Relations* 349; [↑](#footnote-ref-47)
48. Tiraboschi, M., ‘Bilateralism and Bilateral Bodies: The New Frontier of Industrial Relations in Italy’ (2013) 1 *E-Journal of International and Comparative Labour Studies* [↑](#footnote-ref-48)
49. Johnston, A., Kornelakis, A. and Rodriguez d’Acri C., ‘Social Partners and the Welfare State: Recalibration, Privatization or Collectivization of Social Risks?’, (2011) 4 *European Journal of Industrial Relations* 349, 355; [↑](#footnote-ref-49)
50. Examples can be found, among others, in the bilateral body in the sector of temporary agency work (EBITEMP), which in 2009 provided, in case of cessation of work which did not give right to unemployment benefits (because of lack of minimum working days), for a lump sum of 700 €, as well as a lump sum of 1.300 €, paid by the INPS (national social security institute), but partially financed by the bilateral body; see Sandulli, P., Faioli, M., Bozzao, P., Bianchi, M. and Croce, G. *Indagine sulla Bilateralità in Italia e in Francia, Germania, Spagnia, Svezia*, Quaderni Fundazione G. Brodoloni. Studi e Ricerche (Rome, Fondazione Giacomo Brodolini, 2015) 94; Acording to the current agreement and EBITEMP’s website, those benefits are not paid any more, which could be linked to a bettering of the public unemployment benefit system with the latest reforms. [↑](#footnote-ref-50)
51. Tiraboschi, M., ‘Bilateralism and Bilateral Bodies: The New Frontier of Industrial Relations in Italy’ (2013) 1 *E-Journal of International and Comparative Labour Studies* [↑](#footnote-ref-51)
52. D’Onghia, M., ‘Bilateralità e politiche attive’ in Gottardi, D. and Bazzani, T., *Il workfare territoriale. Collana del Dipartimento di Scienze Giuridiche dell’Università di Verona* (Napoli: Edizioni Scientifiche Italiane, 2013) 201 [↑](#footnote-ref-52)
53. *ib* [↑](#footnote-ref-53)
54. On the notion of new social risks, see, among others, Taylor-Gooby, P., *New Risks, New Welfare: The Transformation of the European Welfare State* (Oxford, OUP, 2014), or van der Veen, R., Yerkes, M., Achterberg, P. (eds.), *The Transformation of Solidarity. Changing Risk and the Future of the Welfare State* (Amsterdam, Amsterdam University Press, 2012) [↑](#footnote-ref-54)
55. Freedland, M. and Kountouris, N., *The Legal Construction of Personal Work Relations* (Oxford, OUP, 2011); Freedland, M., ‘Regulating for Decent Work and the Legal Construction of Personal Work Relations’, in McCann, D. and others (eds.) *Creative Labour Regulation. Indeterminacy and Protection in an Uncertain World* (Palgrave, 2014) 63-83 [↑](#footnote-ref-55)
56. See, for the French case, Supiot, A. ‘Un faux dilemme : la loi ou le contrat ?’ (2003) 1 *Droit Social* 58, 66  [↑](#footnote-ref-56)
57. Trampusch, C ‘Industrial Relations as a Source of Solidarity in Times of Welfare State Retrenchment’ (2007) 36 *Journal of Social Policy* 197, 210 [↑](#footnote-ref-57)
58. Trampusch, C ‘Industrial Relations as a Source of Solidarity in Times of Welfare State Retrenchment’ (2007) 36 *Journal of Social Policy* 197 [↑](#footnote-ref-58)
59. Ingold, J and Valizade, D. ‘Employer engagement in active labour market policies in the UK and Denmark: a survey of employers’ (2015) Centre for Employment Relations, Innovation and Change Policy Report 6, https://lubswww.leeds.ac.uk/fileadmin/webfiles/ceric/Documents/CERIC\_Policy\_Report\_6.pdf [↑](#footnote-ref-59)
60. de le Court A. *Protección por desempleo y derechos fundamentales. El caso español en contexto* (Valencia, Tirant lo Blanch, 2016); de le Court, A. (2014); de le Court, A. ‘Decommodifying social rights: Welfare State policies in a comparative perspective’ (Ph.D. thesis, Pompeu Fabra University, 2014) 253-254, www.tdx.cat/handle/10803/283752 [↑](#footnote-ref-60)