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

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## 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 has to be taken into account when analyzing evolution in programs and structures of European Welfare States.[[1]](#footnote-1) Trampusch, for example, on the basis of a study of collectively bargained benefits in the domains of occupational pensions, early retirement and further training, argues that there is a growing tendency to integrate welfare issues in collective agreements, contradicting the general view of a decreasing role of the social partners in the management of welfare, and suggesting that Welfare State retrenchment does not necessarily has to be analyzed in terms of privatization or individualization of social risks.[[2]](#footnote-2) Johnston and others provided additional evidence of the fact that unions and employers have filled gaps in welfare provisions or regulation via collective bargaining.[[3]](#footnote-3) Next to the compensation through collective agreements of cuts in disability benefits in the Netherlands, they also cite as an example the successful creation by the Greek social partners, without state intervention, of a training fund which they decided on their own initiative to extend to the unemployed, in front of the absence of any effective state policy in that field. And without those social partners being strongly involved in the design and management of unemployment protection policies.

What seems not to have been given attention thus far is the case of unemployment insurance benefits. This might be due to the fact that it is not a scheme 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 the systems of unemployment protection.

The comprehensive report of the European Observatory of Working Life, ‘Social partners involvement in unemployment benefit regimes’, published in 2013, shows that this involvement varies from systematic, institutionalized, tripartite and/or bipartite participation in most EU Member States, to informal or occasional consultation in countries like Italy, Sweden, Norway or the UK, and absence of involvement (except trough lobbying) in Ireland and Malta.[[4]](#footnote-4) But even in a country like Spain, classified by the report as knowing institutionalized participation of social partners in tripartite bodies, consultation has been in fact limited, among other reasons because of the consolidated tendency to regulate the system through urgent legislative governmental decrees.[[5]](#footnote-5) Moreover, in Spain, at the occasion of negative press coverage, the role of the unions and employers in the design, management of training policies for employed and unemployed alike has been limited in favor of state-driven market of private providers, where social partners have to compete with the latter. This does not mean that unions do not have recourse to other strategies to reinforce protection in case of unemployment. In the last years, in Spain, this happened through consultations with the government about the consolidation of a (still very partial and insufficient) system of unemployment subsidies, or the participation in the promotion of a popular legislative initiative on a universal social assistance benefit system in the Catalan Parliament. While the latter initiative would apparently not be directly connected to protection against unemployment, it should be said that protection of unemployed who have exhausted their insurance benefits is fragmentary and insufficient, as, besides, seems to be confirmed by the latest Commission proposal on Country-Specific Recommendations for Spain in the context of the European Semester.[[6]](#footnote-6)

Concerning management and administration of unemployment benefit programs, except countries where a Ghent system exists, in most Member States social partners do not play a specific role, even if they have 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 proceeds to the identification and legal analysis of cases where involvement of social partners in the governance of protection of unemployment has taken the form of collective bargaining. Next to the French case of a system of unemployment insurance benefits created, designed and reformed since 1958 through interprofessional collective agreements, the sections which follows also analyse collective agreements related to supplementary benefits in Sweden, before treating the recent evolution in terms of insurance benefits in The Netherlands.

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

The French system of governance of unemployment insurance could be seen as an exception in the EU. Since 1958, contributions, benefits and conditions of access are the object of an interprofessional collective agreement, renegotiated between employers’ association and representative trade unions every two or three years, commonly referred to as Unedic-agreement, as a reference to the bipartite institution managing the system. The law (*Code du Travail*) limits itself to the establishment of a right to unemployment insurance, opposable to the ‘contractual’ system,[[8]](#footnote-8) through the definition of basic conditions (definition of the notion of unemployed person, minimum duration to be fixed by governmental decree, obligation of the Unedic agreement to take into account ‘unused’ benefit periods, reference to previous remuneration for calculation of benefits, contributory character of the system, possibility to adapt the level of contributions in function of contractual circumstances) and its article L5422-20 explicitly reserves the execution of the legal provisions to interprofessional agreements. Those agreements have however to be authorized by the government and this authorization, like decisions on the extension of collective agreements, renders the agreement generally applicable. The conditions for the authorization relate to the representativeness of those who negotiated the agreement, as well the absence of contradiction with legal provisions, and in particular those related to the control of employment and unemployed and the organisation of placement, orientation and retraining of the unemployed.

The latter reference has to be read taking into account the fact that, until 2008, Active Labour Market Policies for unemployed receiving insurance benefits were also managed by the Unedic under the Unedic-agreements. It shared those competences with the ANPE, a state-run institution who took in charge activation policies for all unemployed, whether those received insurance or assistance benefits. In 2005, legislation was passed to oblige to the negotiation and conclusion of a tripartite convention between the state, the ANPE and Unedic, so as to put down rules of coordination of the activities of the different institutions, and ensure the flow of communication. In 2008 most services of the Unedic (ALMPs and recognition and payment of benefits) and the ANPE were brought over in the new state-run organism *Pole emploi,* a tripartite institution centralizing all aspects of the execution of regulations on unemployment protection and active labour market policies.[[9]](#footnote-9) It seems that, despite the fact that the social partners are majoritarily present on the board of the new institution, in reality they are not left a great margin in the framework of decisions already taken by the government, introduced in the laws on the State budget, or simply because its competence to take strategic decisions is more formal than real.[[10]](#footnote-10) Ten percent of the budget of Unedic (coming from the contribution decided in the interprofessional agreement) goes to the financing of Pôleemploi.

Also, even if the procedure of authorization and extension of the cross-branch Unedic agreement is to be construed as a matter of routine, it has been shown that in critical occasions it threatened the autonomy of social partners. For example, in 2000, the government refused to authorise the agreement (which had not been signed by all the representative unions) on several grounds: it did not guarantee the sustainability of the system and tried to introduce stricter definitions of the employment that benefit holders had to accept than the legal definitions; the introduction of a compulsory reintegration plan; a regime of sanctions for the insurance scheme different than the legal regime. After further formally bipartite but in reality tripartite negotiations (with government and unions sharing common objectives) and the recognition of the role of the state (and the *Code du Travail*) in the definition and application of infractions and sanctions, the agreement was authorized.[[11]](#footnote-11) Also in 1982, the government intervened in the financial crisis of the system by conditioning, by decree, the access to insurance benefits to previous periods of contributions, combined with an assistance ‘track’ for those unemployed with insufficient periods.[[12]](#footnote-12) Those principles were confirmed in the subsequent interprofessional agreement of 1984, confirming the improper bipartite character of the system.[[13]](#footnote-13) And the state, after its move to preserve its competences in matters of activation of unemployed in the 2000 crisis, gradually brought the design and implementation of active labour market policy and activation under its control, through tripartite institution with state dominance.

This context is also important taking into account the reforms proposed by the recently elected French President, tending to the universalisation of the system and the suppression of its financing by 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 One Aspect of Collectivization

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

While complementary insurance does not generally extend to industries with high unemployment risks, around 80 per cent of the workers are covered by Job Security Agreements (now also called Transition Agreements).[[15]](#footnote-15) Those are collective agreements instituting Job Security Councils, responsible to give support to unemployed in their transition between jobs. From that point of view, it could be said that they embody a vision of unemployment protection as going further than guaranteeing income security to focus on labour market reintegration. The first of those agreements was created in the seventies, in the context of mass unemployment amongst white-collar workers, which seemed to not having been sufficiently supported by public employment services.[[16]](#footnote-16)After a pause during the nineties, new job security agreement shave been created in 2004 (for blue-collar workers)[[17]](#footnote-17), strongly connected with reintegration of workers in restructuration processes (collective redundancies), as compensation for the fact that PES focus above all on the reintegration of workers already unemployed, and above all long-term unemployed.[[18]](#footnote-18) From that perspective job security agreements can also be seen as instruments of a preventive active labour market policy, as their provisions start to apply even before redundancies are effective.

Actually, those 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, next to a series of services related to placement and outplacement, provided through the Job Security Councils, those 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 case of the acceptance of a new job with lower salary than the previous salary.[[21]](#footnote-21)For example, in 2014, the Job Security Agreement for government employees provides for top-up payments to unemployment benefits to reach 80 per cent (70 per cent after 200 days) of the salary, for permanent workers included in collective redundancies, but also fixed-term workers which have been working for at least 3 of the last four years and whose contract has not been renewed. The Job Security Agreement for employees of local authorities provides the same benefits, and, on top of that, a lump sum payment at the expiration of the benefit period. The oldest agreement, for white collar workers, instituting the *Trygghetsrådet*, only applies to redundant workers of more than 40 years, and provides top ups to the basic unemployment benefits up to 70 per cent of the salary (50 per cent after six months), as well as extensions of the duration of unemployment benefits for older workers. For blue-collar workers of the private sector, the job security agreement provides redundant workers of more than 40 years with a one-time lump sum depending on their age.[[22]](#footnote-22)

The financing of the Job Councils and the benefits go are charge of the employers, something that can be seen to be linked to the fact that the formal character of complementary protection in case of dismissal which the job security agreements take. Those agreements apply to all workers within their scope and not only trade union members.[[23]](#footnote-23) As the Swedish legal system does not have a system of extension of collective agreements,[[24]](#footnote-24) this comprehensive applicability is agreed upon in the agreement itself.

Sweden has thus seen part of unemployment protection being 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 fact that there is a tradition of supplementary unemployment protection through individual and, above all, collective insurance provided by the unions. The latter development is to be explained by the fact that, since the nineties, the generosity of the income-related unemployment insurance system has been gradually lowered. Replacement rates decreased (with some reversal) from 90 per cent to 80/70 per cent (depending on duration), and so did also the maximum level of benefits. This, combined with the scrapping of a system of automatic indexation of benefits, made that the system has moved away from an income-related insurance towards a system of basic benefits,[[25]](#footnote-25) or ‘basic security model’.[[26]](#footnote-26)

In this context, union strategies (increasing or maintaining members), combined with favorable taxation of private insurance, 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)

By mode of conclusion, it should be said that the regulation of aspects of unemployment protection trough collective agreements in Sweden does not respond to Welfare State retrenchment as such, but more as a collective response to 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, participation of social partners in the development of social legislation in general has been well established at the end of the previous century. This happened mainly through bipartite and tripartite institutions like the *Stichting voor de Arbeid* and the *Sociaal Economische Raad.*

Moreover, until the nineties, the social partners participated in the administration and execution of social insurance programs, under which unemployment benefits. Through the *Bedrijfsverenigingen*, bipartite, sectorial organizations, who administered the different schemes, social partners also assessed individual cases directly.[[28]](#footnote-28) Following a report from the public audit office (*Rekenkamer*) about failing control of the execution of the Social Security programs, a Parliamentary investigation took place in 1993. The latter concluded that priority given to rapid and fair recognition of benefits happened in detriment to the control of the total volume of benefits. Also, it seemed that unemployed were also funneled to the more generous disability benefit system as a way to defend workers interests and preventing conflict through creative solution to workforce management problems.[[29]](#footnote-29)

Therefore, between 1995 and 2002, the *Bedrijfsverenigingen* were forced, on the one hand, to merge into fewer structures, and on the other hand to cooperate with private insurers, before being abolished altogether. Their role in the public local job placement services was terminated and the latter were centralized and nationalized.

Since then, involvement of social partners in unemployment protection seems to have been limited to the policy development level, through the formulation of recommendations to the government, and tripartite consultation and agreements which led to the reforms of 1998[[30]](#footnote-30), 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 WerkenZekerheid,* based on a bipartite agreement agreed in the *StichtingvoorArbeid* in April of the same year, in reality negotiated also with the government. Continuing with the Dutch comprehensive ‘flexicure’ approach to labour market reform since the 90’s[[33]](#footnote-33)the law provided for the following changes in the Law on Unemployment (*Werkloosheidswet*): the obligation to look for suitable employment was sharpened, a system of compensation of remuneration in case of acceptance of employment with lower salary would be introduced, and, above all, the maximum duration of benefits will be gradually reduced from 38 to 24 months, starting from 2016, which will affect above all workers with long employment tenure. As a ‘compensation’ (concession to the unions during the negotiation of the agreement), the law, conform to the agreement, expressly provides that collective bargaining can ‘repair’ the reduction through private insurance coverage.

Negotiation between social partners on the design of the scheme after the 2013 social agreement and reform law remained inconclusive, despite agreements on the principle of repair being inserted in collective agreements in the construction, agricultural, municipality workers and youth/child protection sectors. In 2017, the government seems to have unlocked the situation by proposing the basic principles of the scheme (general collective agreements applicable to whole sectors of the economy which would create ad-hoc funds, and financing by workers) and reaffirming its 2013 promise to declare those collective agreements generally applicable.[[34]](#footnote-34) After an ultimate refusal in April 2017, employers finally agreed to the scheme, under the conditions that it would not serve as precedent for future ‘repairing’ of retrenchments in social security, minimization of administrative costs of the management of the schemes, and a guarantee that the contribution by workers would not lead to compensating salary claims in further collective bargaining.

It should not be forgotten 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. For example, in 2012, 38 per cent of the most important (branch level) collective agreements contained provisions for complementary protection to ‘public’ unemployment benefits, through the form of complementary benefits,[[35]](#footnote-35) covering around 2.600.000 workers, and for an amount of 170.000.000 € (in 2011), or 3,7 per cent of legal benefits.[[36]](#footnote-36) The sectors where complementary benefits seem to be most present are industry (11,4 per cent of legal benefits), health care (10,1 per cent), public sector (8 per cent), and education (6 per cent).[[37]](#footnote-37)

The clauses regulate the level of the supplementary benefits (generally to guarantee from 75 to 100 per cent of the previous salary), its duration (coinciding with the duration of legal benefits, or a certain duration depending on the age of the unemployed[[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 goes at the expense of the employer, or is shared between employer and worker. Financing only by worker does not seem to be significant.[[42]](#footnote-42)

The existence of supplementary benefits in case of unemployment in collective agreements has also to be seen in the perspective of the greater tradition of complementary protection by collective agreement in other branches of social security, above all temporary and permanent disability, as a response to the trend of privatisation in those matters.[[43]](#footnote-43) The example of the reform of disability insurance is particularly interesting in that context, and not only because alleged misuse by social partners was also at the basis of the expulsion of social partners from the management of unemployment benefits, as explained here above. After the ‘unilateral’ imposition of a reform of the disability insurance system (basically reducing access criteria and level of benefits) which the social partners strongly opposed, unions managed to ‘repair’ part of the cuts, through worker and employers’ contribution to funds negotiated in several sectoral collective agreements. This even provoked a conflict with the government, which tried to limit the rules on the extension of collective agreements.[[44]](#footnote-44) And when the government reformed a second time the system in 2002 and 2004, with a reduction of the level of benefits, those were again ‘repaired’, as two years later, 71 per cent of collective agreements contained supplementary benefits.[[45]](#footnote-45)

The new development, however, presents strong differences with the other cases of collectively bargained supplementary benefits, in that, as decided from the beginning of the negotiation between the social partners following the bilateral agreement of 2013, the ‘private’ extension of unemployment benefits would be financed exclusively by contributions paid by workers. Even with this early agreement of the unions to exempt the employers from the financing of the system, employers’ associations did block a final agreement and the start of its implementation until May of 2017, probably in part because they perceived the repairing of welfare state retrenchment through collective bargaining as a consolidating trend in the evolution of Dutch social protection. It is the intervention of the government which finally brought the employers to agree to collaborate in the repairing of retrenchment. In contrast to the repairing of the first reforms of disability insurance, the state had a supporting role. Moreover, its involvement in the negotiations from the start, as well as the power given by the role of the state in the mechanism of extension, necessary to make repairing comprehensive, nuanced the bipartite character of the bargaining. It is also interesting to point out the inclusion in the law of a reference, or rather, an authorization, to repair the reduction in the duration of benefits. Given that some collective agreements already extended benefit periods for some categories of workers (mainly older workers) without express legal habilitation,[[46]](#footnote-46) it is not sure that that reference was necessary. On the other hand, it is a clear indication of the role of the state in this particular process of privatization (and collectivization) of unemployment insurance.

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

Collectivization of welfare through collective bargaining in Italy is often cited in the context of the development of social protection for atypical workers, and particularly 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*, or bilateral bodies instituted by sectorial or interprofessional agreements. Their development could be associated with the general evolution of the system of industrial relations from a lack of formalised framework for collective interest negotiation towards a system of collaborative corporatism.[[49]](#footnote-49) Since the nineties, bilateral bodies have risen with the objective to mutualise the provision of benefits related to the contract of employment (severance pay, illness,…) in economic sectors whose characteristics (important presence of SME, for example) did not favor the constitution of such advantages. Even if their inclusion of benefits related to unemployment has been marginal,[[50]](#footnote-50) they are worth mentioning because they have started to assume tasks related to the active side of support of unemployed, which would normally belong to public employment services. Services related to professional training and long-life training are also an important function they assume, also under promotion of the law, which institutes the creation of special funds, financed partially by contributions for unemployment protection.[[51]](#footnote-51) This response to the lack of services offered by public institutions has even been promoted by the law, through legal integration of the role of bilateral bodies. Law 276/2003 seems to be a turning point, in that it explicitly recognizes the bilateral bodies as privileged bodies 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, and, amongst others services of intermediation and placement of jobless workers, so as to promote the matching between offer and supply of work. In doing so, bilateral bodies have above all started to collaborate with public employment services in the exchange of information, through the signature of agreements with the different territorial public actors involved.[[52]](#footnote-52) It is also important to mention that bilateral bodies have created funds for those sectors and workers not covered by the Wage Guarantee Funds, giving financial support in case of redundancies and short-time work schemes.[[53]](#footnote-53)

## COLLECTIVIZATION 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, have not been much the object of collective bargaining. On the other hand, this chapter has identified existing and new cases of provision of welfare benefits 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 interprofessional collective agreements, collective bargaining seems to be limited to supplementing existing systems of unemployment insurance.

Even in a ‘Ghent’ country, like Sweden, with a strong tradition of union involvement in the management of unemployment insurance, it is only in the framework of support to redundant workers at the occasion of restructuring that collective agreements were concluded, which also implied financing of the benefits by the employers. Even if those collective agreements are more connected to the (social) responsibility of the employer in case of redundancies than to protection against unemployment, they are still the product of the reaction of social partners to voids in state-provided social protection, and in this particular case on the appearance of new needs, or new social risks[[54]](#footnote-54).

On the other hand, the Swedish case has shown that collective bargaining is not the only instrument of collectivization of unemployment protection through benefits, in the context of welfare state retrenchment. There, cuts in the generosity of the system were met by the setting up of collective insurance for union members. The fact that the unemployment protection system is considered as a Ghent system, and (partly linked to the former) high union density are to factors which can also explain this type of evolution. On the other hand, despite taking the form of collective agreements, the Dutch ‘reparation’ of the decrease in the duration of unemployment insurance benefits does not involve the sharing of the responsibility of the risk of long-term unemployment between workers and employers, as financing of the scheme will rest exclusively on the workers’ contributions.

From that point of view, those moves could be characterized as a one-sided collectivization of a social risk (as opposed to collectivization where employers also contribute), or also, to use the approach of Freedland and Countouris, ‘vertical demutualisation’[[55]](#footnote-55) of that risk, as the previous mutualisation of the risks through the intervention of the state rested on a system financed (also) by contributions of employers.

Another aspect that appears from the analysis, characteristic of the Dutch evolution and the French system is that, despite taking the bipartite form of collective bargaining, the role of the state in the negotiation and further development of the agreements is important, even if sometimes informal. This brings us to a certain contradiction, to the extent that on the one hand there is a de-responsabilisation of the state through retrenchment in the programs (at least in the Dutch system), but the subsequent collectivization of the risk is almost impossible without the involvement of the same state. As the Dutch case shows, (one-sided) collectivization seems not to have been possible to happen without participation of the state, technically through the promised extension of the concerned collective agreement, and, more politically, through its role in convincing employers. Common to both cases is also the legal integration of collective bargaining on the matter, through the recognition (necessary or not) of the competence of collective bargaining in the field. The Italian case also show an important degree of legal (and financial) integration of the functions of bilateral bodies, in the sphere of unemployment protection, but also in terms of training and other work-related benefits. In the Dutch and French cases also, a certain interplay between social dialogue, law and collective bargaining could be observed, given the legal recognition of the ‘reparation’ system in The Netherlands, or through legal integration and posterior legal reforms to allow the legality of the agreements in the French case.[[56]](#footnote-56)

Also, some divergence between France and the other cases should be noted. In France, the state has taken away the competence of collective bargaining in terms of activation and management of the benefits, as The Netherlands did in the beginning of the nineties, by expelling the social partners from the design and implementation of unemployment protection altogether. However, the Dutch state did not seem to have challenged the control by the social partners of the supplementary and ‘repairing’ benefits in unemployment protection, and does not seem to be going to do it in the case of the generalized extension of the reduced duration of benefit (which might reflect the attribution of the responsibility of the reintegration of workers receiving disability benefits on the employers in the beginning of the century). Moreover, the current French proposals around the universalization of unemployment insurance threaten the model, and an even lesser involvement of social partners in the system is to be expected. On the other hand, the importance of those changes could also be relativised when taking into account the factual quasi-tripartite character of the governance of unemployment insurance benefits. This confirms previous research which points towards the important role of the state in industrial relations in the determination of the extent of social solidarity which collective agreements can provide.[[57]](#footnote-57) It should however be observed that this aspect is not as relevant in the case of Sweden. From a technical point of view, this might be related to the absence of a system of extension of collective agreements through state intervention, which is a defining element of the system in the French and the Dutch cases. From a more systemic point of view, and taking strategies of social partners into account, other factors come to mind. One would be the importance of the autonomy of the social partners in Sweden. Another factor would be the fear of decreasing union membership in case of the absence of necessity of union membership for a worker to be covered by this complementary collective solidarity. From the latter perspective, it could be said that there is a tension between the extension of collectivized solidarity and the use of that type of solidarity as a power resource. That tension is also visible in the Dutch case, where unions seem to have constrained themselves to accept extended unemployment protection as a bargaining item, without employers having to participate in its financing, which in principle should weaken the bargaining position of the former.

Finally, to be complete, a study of the regulation of protection against unemployment should have to take into account the idea of activation and active labour market policies (including training). From that point of view, it seems that, in terms of further training of workers and unemployment, some cases can be found where collective bargaining has played a role, like in Greece, as shown above, but also in France, Sweden, The Netherlands and, even if not studied here, in Denmark.[[58]](#footnote-58) A survey of employers in Denmark found that collective bargaining coverage was an enhancing factor in systematic participation of employers in ALMP schemes.[[59]](#footnote-59) In France, as commented above, the tendency seems to go in the direction of more control of the state on those aspects. On the other hand, in Italy, the evolution of the *enti bilaterali* towards the assumption of tasks which public employment services do not fulfill effectively shows a different trend, which reminds the appearance of the Swedish Job Security Agreements, with the difference that the evolution seems to be promoted by the state. Because of the conceptual shift in the notion of unemployment protection towards the inclusion of the idea of activation and non-monetary ‘benefits’ to support the workers in their labour market reintegration (or, depending on the perspective, for a more rapid reintegration),[[60]](#footnote-60) more research on the role collective bargaining plays in those fields would be necessary to have a more complete picture of its interaction with gaps and retrenchment in unemployment protection policies.

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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. *ibidem* [↑](#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)