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The reform of unemployment protection insurance, 1993-2007: the erosion of legislated social rights in France, Germany, Portugal and Spain

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Abstract

In the extensive literature that has been dedicated during the past fifteen years to the analysis of the reform of the welfare states, a significant number of studies have focused on the characterisation of the nature and direction of the changes in the main social programmes. This article seeks to contribute to this debate by analysing the reform of unemployment insurance schemes between 1993 and 2007 in France, Germany, Portugal and Spain, as representative of the conservative regime. A comparative analysis is carried out by examining the major legislative amendments concerning eligibility criteria and entitlement conditions, as they are expressed by legislation in the four countries. The findings of the study indicate that the four countries have adopted different instruments at different moments in time, while no significant differences were detected between them, and that the legislative changes introduced in the four insurance schemes may be seen to constitute a real erosion of social rights.

Key words

Welfare state reform; Retrenchment; Unemployment insurance schemes; Social rights

Introduction

Since the mid-1990s, a large body of literature has been devoted to the analysis of welfare state reform, particularly in Western Europe, by virtue of the important challenges shared, to different extents, by all countries. The external pressures (globalisation) and/or internal pressures (ageing population, slower economic growth, high and persistent unemployment, transformation of the household structure and the EMU-related constraints on public spending) have been identified as the major drivers of social change (e.g. Buti *et al.* 2000; Ferrera and Rhodes 2000; Kuhnle 2000; Huber and Stephens 2001; Iversen 2001; Pierson 2001a; Powell and Hewitt 2002; Corrado *et al.* 2003; Korpi 2003; Castles 2004; Kittel and Winner 2005).

It was taken for granted that such pressures on the sustainability of the welfare states would lead governments to embark on a process of down-sizing their social provision i.e. a process of retrenchment. However, the seminal work of Pierson (1994, 1996) refocused the academic debate by stressing the resilience of the welfare state. Two major conclusions were drawn (Pierson 1996:173-4): firstly, although cuts in individual social programmes were effectively made, there was no radical change; and second, the fundamental structures of the welfare states were maintained (i.e., in Germany, Sweden and the UK, over the period 1974-1990).

Representing the historic institutional approach to the retrenchment question – the *new institutionalism* – Pierson has explained the unexpected resistance of the welfare state as the result of ‘powerful groups surrounding social programs’ (1996:2). Consequently, any policy reforms would ‘confront not only the potential opposition of voters and program beneficiaries’, but also ‘the veto points within formal political institutions and path-dependent processes’ (1998: 552). The ‘new politics’ of the welfare state developed by Pierson became widely accepted in the literature, as opposed to the ‘old politics’ represented by the structural and power resources approaches which have explained the process of expansion (Starke 2006:105). However, the path-dependence thesis was already found in the theoretical contribution of Esping-Andersen (1990, 1996, and 1999), according to whom the process of reform follows from the existing policy arrangements and only adaptive measures are taken. Within the theoretical literature dealing with the explanations of the development process of the welfare state, the contributions of Esping-Andersen and Pierson are widely viewed as the most important theoretical arguments in favour of the welfare state’s resilience (Taylor-Gooby 2002).

For more than a decade, the interest of many researchers has been focused on the nature and degree of welfare change. The academic debate has been dominated by two questions related to ‘the dependent variable problem’ (Green-Pedersen 2004, 2007): the theoretical and the operational definitions of retrenchment. The former definition deals with the identification of the welfare changes that could be classified as retrenchment; the latter involves the selection of the most appropriate indicators for its measurement. In addition, some researchers attempted to identify the differences in the dynamics of reform that were applied in different welfare regimes during the period of expansion (Palier 2001).

Several authors aimed to find an answer to the first issue. Pierson (1994, 1996) distinguished between *programmatic* changes (cutback of particular programmes) and *structural* changes (significant increase in the reliance on means testing, major transfer of responsibility to the private sector and dramatic changes in benefits and eligibility rules). A similar conceptualisation of welfare retrenchment was adopted by Bonoli and Palier (1998), who distinguished between *path-dependent* changes (cuts in welfare programmes without changing the established set of principles) and *innovative* changes (those affecting the institutional factors such as the claiming principle, benefit structure, financing and actors).

In relation to operational issues, the empirical research has revealed two important changes related to analytical focus and indicators. The macro-analysis of the welfare state, in particular the use of expenditure indicators – social expenditure as a percentage of GDP – to measure the welfare change, has been criticised by several authors (e.g. Pierson 1996; Clayton and Pontusson 1998; Korpi 2003; Allan and Scruggs 2004; Green-Pedersen 2004). Thus, an alternative approach has found consensus among researchers: the analysis of specific areas of social policy (Vail 2004; Green-Pedersen and Haverland 2002) through qualitative indicators, i.e., institutional characteristics of welfare programmes (Bonoli and Palier 1998) or, more recently, the ‘social rights’ (Siegel 2003).

The net rate of replacement as a measure of social rights was used, for example, by Korpi and Palme (2003) and by Allan and Scruggs (2004), who analysed unemployment insurance (1975-1995) and sickness benefit (1975-1999) in OECD countries. They became representative of the ‘amended’ power-resources approach, which argues that certain radical reforms have been undertaken which cause a ‘race-to-the-bottom’ in respect of social rights. Compared to expenditure data, the replacement rate has the advantage of not being affected by increases in the number of beneficiaries, but cannot capture all the changes in eligibility and entitlement rules (Green-Pedersen 2004:8).

Studies at policy level and involving many European countries have been carried out by several authors who examined legislative changes on major social programs: pensions, sickness and unemployment (e.g. Bonoli and Palier 1998; Myles and Quadagno 1997; Clasen 2000; Myles and Pierson 2001; Taylor-Gooby 2001; Wood 2001). These studies presented divergent conclusions on the nature of welfare changes: they found either path-dependent or innovative/structural changes.

Taking into account the advantages of the typology approach to the comparative analysis (Taylor-Gooby 1999; Levy 1999), many studies have also focused on variations in the reform process across regime types (examples of large cross-national studies are Bonoli *et al.* 2000, Ferrera and Rhodes 2000, Kuhnle 2000, Scharpf and Schmidt 2000, and Pierson 2001). From these and other empirical studies, some general conclusions are possible (see review in Sainsbury 2001, Lindbom 2002, Taylor-Gooby 2002, and Powell 2004). First, the thesis of retrenchment, as radical change, is been rejected by numerous studies which conclude that welfare states have responded to pressures through adaptation (Taylor-Gooby 2002: 601). Second, two dominant policy direction are identified: cost-containment (measures aiming to control current and future social spending) and activation (measures designed to reduce the dependency on the State).

With regard to this debate, there is an important issue related to the ambiguities that have characterised the efforts to categorise the welfare state change (Sainsbury 2001:260): “there seems to be an assumption that ‘newness’, no matter its form, is automatically better”. If we can accept that the reform did not dismantle the welfare state, we can put into question what the legislative changes mean from the point of view of public provision and social rights. This was the aim of the following three empirical studies that have in common three methodological options: i) analysis of a specific social program (unemployment protection); ii) selection of qualitative indicators; and iii) the typology approach.

Clasen *et al.* (2001) aimed to evaluate the extent of work- conditionality – as the degree to which benefit eligibility and entitlement is dependent on employment - within unemployment protection (insurance and assistance schemes) in Denmark, Sweden and Finland (social-democratic regime) and then compare them with Germany, the Netherlands (conservative regime) and the UK (liberal regime). Analysing the legislative changes according to four criteria (benefit access, benefit level, benefit duration and obligations on the part of recipients) over a period of 20 years (1980s and 1990s), the study revealed a shift towards a stronger element of work-conditionally for unemployed people across all countries, with some specifications by criterion: the work requirement was explicitly increased in benefit access and obligations across all countries, while the level and maximum duration of benefit became more work-conditional in the conservative regime.

In order to identify different profiles of reform trajectories, Clasen and Clegg (2007:7) analysed the reforms of unemployment insurance (major legislative changes relating membership of a defined category of support, qualifying period and behavioural conditions over the period 1980-2003) in France, Germany, the UK, and Denmark. One conclusion can be stressed: Germany and France showed similar trajectories in respect of focus changes in the conditions of eligibility after 1990, despite the differences between groups of unemployed, with both countries emphasising activation later than Denmark and the UK.

Clegg (2007) analysed the unemployment policies over the period 1985-2003 in four conservative regimes (Belgium, France, Germany and the Netherlands). The study concluded that an accumulation of small changes were implemented in Belgium, Germany and France while a substantive reform took place in the Netherlands. In addition to a *selective* activation, a *qualified* cost-containment (selective expansion, cuts in level and duration of benefits and stricter eligibility requirements) and a *reactionary* recalibration (more contributiveness in benefits entitlement, reduced and enhanced protection for those with no/atypical and long work histories, respectively) were implemented in all countries (p. 610-611).

The results of the three selected studies reveal two important aspects of the reforms implemented prior to 2003: first, there has been a considerable change in unemployment protection; second, some differences between and within welfare regimes were observed. These findings justify the continuation of this line of research.

Accordingly, the present article aims to analyse the reform of the unemployment insurance schemes during the period 1993-2007 in Germany, France, Portugal and Spain, all four of which represent the conservative regime. We will analyse the legislative changes concerning eligibility criteria and entitlement conditions as they are expressed by legislation in the four countries. With this study, we seek to ascertain whether reforms in the four schemes followed a path-dependence trajectory, or not and have, or have not, determined an erosion of social rights. With regard to the earlier empirical studies, the article presents two contributions: the analyses of the more recent reforms and the selection of two countries that are less frequently studied empirically, namely Portugal and Spain.

The structure of the article is as follows. In the next section, we briefly discuss the main reasons for the analysis of unemployment protection reform and two methodological options. Section 2 identifies the legislative changes between 1993 and

2007, by each rule concerning eligibility and entitlement and by country. Section 3 provides a brief analysis of the direction of all changes in all four countries, and section 4 concludes.

The analysis of unemployment protection reform: why and how

Why analyse?

For a long time, empirical research was focused mainly on old-age pensions as the major social programme in financial terms, as well as the number of beneficiaries, throughout the European countries (e.g. Myles and Quadagno 1997, Taylor-Gooby 1999, Myles and Pierson 2001, Bonoli 2003, Schludi 2005, Green-Pedersen and Lindbom 2006, Bonoli and Palier 2007 and Jochem 2007). More recently, as mentioned above, unemployment protection reform across a group of European countries has also been the analytical focus of many empirical studies.

Despite being a social program with more restricted coverage and therefore, much less expensive compared with old-age pensions and health care, unemployment protection has also been the subject of many legislative changes in all western European countries over the last two decades. Two main motives can explain the political option of reforming the unemployment protection (Clasen and Clegg 2006; Clasen 2000). Firstly there is an economic argument, insofar as persistently high unemployment has a two-fold negative effect on public budgets by increasing social expenditure and lowering receipt in tax and/or social contributions. A second motive takes into account the social limits of traditional unemployment insurance schemes in the context of new labour market conditions. These two lines of argument could explain changes in eligibility and entitlement rules in order to reduce unemployment expenses, as well as some more structural changes.

Assuming that the governments have adopted the new strategy of blame-avoidance (Pierson 2001b), any welfare reform is implemented in such a way as to minimise the impact on public opinion. Thus, it would seem to be of value to measure the popularity of the unemployment protection.

Having analysed attitude survey data (1985-1996) in Sweden, Germany and the UK, as representative of the three regime types proposed by Esping-Andersen, Taylor-Gooby (2001:139) argues that a selective program such as unemployment protection has, in contrast to those with comprehensive coverage (like old-age pension schemes), less public support. This can be explained by the perception that such benefits “are less

legitimate, or because they command a weaker constituency of self-interest". The weak support found for cost-containment, in addition to the low level of willingness to pay, leads the author to conclude that a policy of activation is easier to implement than measures targeting the reduction of social expenditure (Ibid: 145).

In order to explain specifically the public support for cuts in unemployment benefits spending, Fraile and Ferrer (2005) analysed comparative data for the second half of the 1990s in 13 OECD countries (not including Portugal), coming to two main conclusions (p.467-472). First, the extent of public support varies significantly across the countries, between percentages higher than 30 percent (e.g. France) and lower than 10 percent (e.g. Spain), but there is no link between the degree of public support and the welfare regime type. Second, confronted by persistently high levels of unemployment, citizens feel more concern for the unemployed, while the latter always react negatively to a reduction in unemployment spending.

The conclusions of these empirical studies enable us to highlight two points. First, while the unemployment protection receives less public support, its reform should focus more on activation than on cost-containment. Second, significant differences are not to be expected between the reforms carried out in different countries, regardless of whether they belong to the same welfare regime or not.

How to analyse?

An important methodological option relates to the selection of the most appropriate indicator by which to measure the welfare change. With regard to the unemployment policy, social expenditure as a percentage of GDP presents a major limitation: expenditure can rise due to increasing levels of unemployment without any change in eligibility and entitlement rules. However, it is important to bear in mind that the share of unemployment expenditure does not always correlate with the unemployment rate (Table 1).

For example, in 1993, the share of unemployment expenditure was very similar in France and Germany, in spite of their quite different unemployment rates. In 2006, expenditure on the Spanish scheme was double that of the Portuguese scheme, with unemployment rates of 8.5% and 7.8% respectively. Besides the differing levels of GDP growth, these disparities reveal very different degrees of coverage and/or generosity.

Table 1
Standardised unemployment rates and unemployment expenditure as % of GDP

| | 1993 | 94 | 95 | 96 | 97 | 98 | 99 | 2000 | 01 | 02 | 03 | 04 | 05 | 06 |
|----------|------|------|------|------|------|------|------|------|------|------|------|------|-----|-----|
| France | | | | | | | | | | | | | | |
| UEX/GDP | 2.7 | 2.4 | 2.3 | 2.3 | 2.3 | 2.2 | 2.1 | 2.0 | 2.0 | 2.2 | 2.3 | 2.3 | 2.2 | 2.0 |
| UR | 11.1 | 11.7 | 11.1 | 11.6 | 11.5 | 11.1 | 10.5 | 9.1 | 8.4 | 8.9 | 9.5 | 9.6 | 9.5 | 9.2 |
| Germany | | | | | | | | | | | | | | |
| UEX/GDP | 2.9 | 2.7 | 2.5 | 2.6 | 2.4 | 2.4 | 2.5 | 2.4 | 2.4 | 2.5 | 2.5 | 2.4 | 2.1 | 1.7 |
| UR | 7.7 | 8.3 | 8.0 | 8.6 | 9.2 | 8.8 | 7.9 | 7.2 | 7.4 | 8.2 | 9.1 | 9.5 | 9.5 | 9.8 |
| Portugal | | | | | | | | | | | | | | |
| UEX/GDP | 1.0 | 1.1 | 1.1 | 1.1 | 0.9 | 0.9 | 0.7 | 0.7 | 0.7 | 0.9 | 1.2 | 1.3 | 1.4 | 1.3 |
| UR | 5.6 | 6.9 | 7.3 | 7.3 | 6.8 | 5.1 | 4.5 | 4.0 | 4.0 | 5.0 | 6.3 | 6.7 | 7.6 | 7.8 |
| Spain | | | | | | | | | | | | | | |
| UEX/GDP | 5.1 | 4.3 | 3.5 | 3.1 | 2.8 | 2.6 | 2.4 | 2.3 | 2.4 | 2.5 | 2.6 | 2.5 | 2.5 | 2.6 |
| UR | 18.6 | 19.5 | 18.4 | 17.8 | 16.7 | 15.0 | 12.5 | 11.1 | 10.3 | 11.1 | 11.1 | 10.6 | 9.2 | 8.5 |

Key: UEX/GDP = unemployment expenditure as % of GDP; UR = unemployment rates

Source: Eurostat (2004; 2008, 2008a) and OECD (2005, 2006, 2008)

From 1993 until 2001, the ratio experienced a downward trend, which would be partly due to the declining level of unemployment. The reduction in 1994, with the exception of Portugal, where the unemployment rates showed an increase, can be explained by modifications in the legislation. In 2002, the share of unemployment expenditure showed a small increase in all countries, resulting from the deterioration of the labour market. Since it is clear that unemployment expenditure is in fact counter-cyclical, it is noteworthy that the upsurge in the unemployment rate in France and Germany over the period 2002-2004 did not cause a higher social expenditure. Once again, the decline in the ratio can be explained by reforms of the unemployment protection schemes.

From the 1993-2006 figures, we may conclude that the quantitative measure is not the best indicator because it ignores cross-national variations and changes over time in the coverage and generosity of unemployment protection schemes. Therefore, we base our analysis on seven criteria that encompass eligibility (qualifying period, main conditions of payment and waiting period) and entitlement (reference earnings and rates of benefits, duration of payment and taxation), in order to characterise the direction of changes introduced over time as well as identify differences and similarities across the four national schemes. The analysis is limited to legislative changes introduced in insurance schemes in a context of full unemployment over the period 1993-2007. This period includes fourteen reforms: France (1996, 2001, 2002 and 2006); Germany (1994,

1995, 1997 and 2004); Portugal (1999, 2003 and 2006); and Spain (1994, 2002 and 2006).

As the data base, we used the Mutual Information System on Social Protection in the Member States of the European Union (MISSOC). The information that is reported annually by the European Commission makes it possible to identify the main changes that have occurred in each country. Moreover, two further complementary sources were used: the database of the *International Reform Monitor* (Portugal not included), and NATLEX from the ILO.¹

The second methodological option refers to the choice of case studies: France, Germany, Portugal and Spain. There is a consensus on the classification of the first two countries in the same welfare regime, despite the different names, given as: conservative (Esping-Andersen 1990), Bismarckian (Ferrera 1996), continental (Bonoli 1997) or corporatist (Korpi and Palme 1998). The same is not true with the classification of Portugal and Spain. Indeed, their classification, together with Italy and Greece, in a southern model (Ferrera 1996; Bonoli 1997) can be challenged with several arguments (Arcanjo 2006). Here, we advocate that the four countries belong to the same welfare regime (conservative), despite the relatively less developed welfare states of the Latin countries. Two common characteristics of the four insurance schemes can be identified: the access to benefits is dependent on a specific volume of contributions and the benefit level and duration of payment is determined by the insurance career (Clasen 2001: 645).

In relation to previous empirical work, this selection of countries presents two aspects that should be highlighted: first, the inclusion of two of the least studied countries (Portugal and Spain); and second, the comparative analysis within the conservative regime, rather than examining ways in which it contrasts with the other regimes, which has been the most common approach in the literature (Palier and Martin 2007: 535).

The institutional changes between 1993 and 2007

The literature concerned with the institutional design of unemployment compensation usually identifies three methods of protection: an insurance system (eligibility depends on the individual's contribution record and benefits are earnings-related), an assistance system (eligibility depends on a means test and benefits are flat-rate), or a combination

¹ The *International Reform Monitor* is a project carried out by the Bertelsmann Foundation, which provides online information on social policy in 15 OECD countries (Portugal not included). The ILO's NATLEX database provides abstracts of legislation.

of these two schemes into a dual system. In 1993, all the four countries analysed operated a dual system, i.e. a combination of an insurance scheme with an assistance scheme. In all insurance schemes, membership is compulsory, following the contributory principle, which is a means of avoiding adverse selection (Kvist 1998:40). All of the countries restrict social protection to wage earners and pay the typical earnings-related benefits.² Next, we will proceed to analyse the changes in the four countries during the period studied, in addition to the means of implementation, according to the respective legal parameters and rules concerning eligibility and entitlement.

Eligibility: qualifying period

The purpose of the qualifying period is to limit benefit eligibility to claimants who fulfil a certain work requirement which may be expressed by three factors: a minimum work record, a relevant work period and the work intensity (Clasen *et al.* 2001). In all four countries, the work requirement has been expressed by a minimum work record and a relevant work period (Table 2).

Table 2
Qualifying period under the insurance scheme

| | 1993 | 2007 |
|----------|-----------------------------------|------------------------------------|
| France | 4 months in the last 8 months (a) | 6 months in the last 22 months (c) |
| Germany | 12 months in the last 3 years | 12 months in the last 2 years (d) |
| Portugal | 18 months in the last 2 years | No change (e) |
| Spain | 12 months in the last 6 years (b) | No change |

(a) Reform of 1992 (Before: 3 months in last 8 months); (b) Reform of 1992 (Before: 6 months in last 6 years); (c) Reform of 2002 (Reform of 2001: 4 months in last 18 months); (d) Reform of 2004 (For new entitlements after 1 February 2006); (e) Reform of 2003.

Source: MISSOC (several years).

In order to facilitate the comparative analysis, as well as that of the extent of changes, we have calculated the ratio between the first two factors mentioned above (Clasen *et al.* 2001).

In 1993, the countries were ranked as follows: Spain (0.17), Germany (0.33), France (0.50) and Portugal (0.75). Over the course of the subsequent fourteen years, the picture changed in two countries, where the work requirement shows a reverse trend: in *Germany*, the qualifying period became more stringent (the ratio amounted to 0.50), while in *France*, the work requirement became one of the more generous (the ratio fell

² In all countries, unemployed persons can claim unemployment assistance benefits when they are not eligible for insurance benefit or have exhausted entitlement to insurance benefits.

to 0.27) which can be explained by the combined changes in the minimum work record and the relevant work period. *Portugal* and *Spain* presented no changes.³ The increase in the work-relatedness resulting from reforms in other European countries (for example, the UK, Netherlands, Belgium and Finland) is only evident in Germany.

Eligibility: main conditions of payment

In 1993, the four insurance schemes all required the claimants to be involuntarily unemployed, registered at a public employment office and capable and available for work. The conditions for receipt of an unemployment insurance benefit became progressively more restrictive in all the countries over the period 1993-2007. The issue of the unemployed returning to work dominates all recent reforms in EU countries (MISSOC-Info 2004). Some examples illustrate this common trend: stricter definitions of availability for work in relation to active job-seeking and acceptance of job offers (definition of a suitable job and the geographical rules). Nevertheless, in the late-1990s and after 2001, the activation measures were reinforced with, for example, specific programmes for high-risk groups, individual action plans to aid the efforts to return to work and tougher sanctions on those refusing training courses or job offers⁴. Observed together these measures can be classified as a major change in unemployment protection. Indeed, even if almost no other legal parameters were altered, the policy of activation weakened the traditional relationship between contributions and eligibility requirement. In view of the significant amendment introduced, this policy re-orientation can be classified as an innovative or systemic change (Palier 2002: 107).

Eligibility: waiting period

In 1993, three countries had no waiting period (*Germany*, *Portugal* and *Spain*) while in *France* it was 7 days. There were no changes during the period.

Entitlement: reference earnings and rates of benefits

We now turn to the factors that determine the amount of the unemployment insurance benefits, i.e. the (gross) rates of replacement (Table 3) and the earnings taken as reference (Table 4).

³ In Portugal, the creation of the Employment and Social Protection Programme, which included special (and temporary) measures for new claimants from March 2003, had no effect on the ratio. For more details, see MISSOC-Info 01/2004.

⁴ For a more detailed analysis of activation policies, see, for example, Clasen (2002, Part C, pp.197-255), Barbier and Ludwing-Mayerhofer (2004), Taylor-Gooby (2004, 2008) and Dingeldey (2007).

Table 3
Rates of unemployment insurance benefits

| | 1993 | 2007 |
|----------|---|---|
| France | 57.4% with a limit of 75%; downward sliding scale (a) | Fixed scale (b) |
| Germany | 68%, or 63% without children | 67%, or 60% without children (c) |
| Portugal | 65% | <i>No change</i> |
| Spain | 70% during the last 6 months for up to 180 days; afterwards 60% (d) | <i>No change</i> |

(a) Reform of 1992: introduction of the degressivity principle (the full rate is decreased every 4 months); (b) Reform of 2001 (in 1996: periods at which degressivity apply lengthened from every 4 months to every 6); (c) Reform of 1997; (d) Reform of 1992 (before: 80% and 70%)

Source: MISSOC (several years)

A system of rates is used by three countries: in *Germany*, the rates vary according to family status (better for claimants with children), while in *France* and *Spain*, the rate decreases in function of the unemployment spell (better for short-term unemployment). We can observe that in 1993 the replacement rate varied between 57.4% (France) and 70% (Spain). It should be noted that we are only concerned with gross replacement rates, which are not a good measure of the degree of generosity of different schemes, since taxation and social contribution incidence are not included (see next section below)⁵.

In respect of the earnings taken as reference we find a wide diversity in the time period over which benefit calculations were based (Table 4). In 1993, it varied between 3 months (*Germany*) and 12 months (*Portugal* and *France*).

Table 4
Earnings taken as reference in insurance schemes

| | 1993 | 2007 |
|----------|--|--|
| France | average earnings during the last 12 months | <i>No change</i> |
| Germany | average earnings for the last 3 months | Average earnings for the last 12 months (a) |
| Portugal | average earnings during the 12 months preceding the 2 months prior to unemployment | <i>No change</i> |
| Spain | average earnings during the last 6 months | <i>No change</i> |

(a) Reform of 1995 (in force from 1998). Reform of 1994: last 6 months.

Source: MISSOC (several years)

In addition, the setting of a maximum benefit amount (and/or a minimum) must be analysed, because it “breaches significantly the principle of equivalence or reciprocity

⁵ Depending on the tax system and social contributions incidence, the net rate of replacement may be higher or lower than the gross rate, which implies an increase or decrease of generosity, respectively.

i.e. the correspondence between contributions and benefit” (Clasen 2001:645). In *Portugal* and *Spain*, a maximum and a minimum amount are set; the *Spanish* scheme has a special feature, i.e. the minimum amount varies according to the number of dependent children. In *France*, there was only a minimum amount. In a simplified way, we could say that the more generous schemes (combining this item with the rate of benefit) were found in *Germany* and *Spain*.

By fourteen years later, none of the structural features of the insurance scheme had been altered. However, we can identify some trends towards a new direction: i) in *Germany*, the time period used to calculate the benefit was increased (the last 12 months instead of the last 3 months) and the benefit rates were decreased, which produced a double effect towards a more restrictive entitlement, i.e. lower benefits; ii) in *France*, the sliding scale of benefits was abandoned; in terms of the amount of benefit, the new fixed scale penalises longer spells of unemployment less than its predecessor; and iii) in *Spain*, the maximum benefit became variable according to the number of children (170%, 195% or 220% of the MW), replacing the previous single rate (220% of the MW), which translates into lower maximum benefits for beneficiaries with few or no dependent children.

Entitlement: duration of payment

With regard to the duration of payment, one of two principles may be applied in the insurance schemes: a fixed period or a variable maximum period which may be dependent on the labour market status (the insured’s employment record) and/or the personal status (age) (Kvist 1998: 48). Table 5 presents the situation in 1993 and 2007.

Table 5
Duration of payment: insurance schemes

| | 1993 | 2007 |
|----------|---|---|
| France | From 4 months to 60 months, according to insurance work and age | From 7 months to 36 months (a) |
| Germany | From 6 months to 32 months, according to insurance work and age | From 6 months to 24 months (b) |
| Portugal | From 10 months to 30 months, according to age | From 9 months to 24 months , according to age and insurance work (c) |
| Spain | From 4 months to 24 months, according to insurance work | <i>No change</i> |

(a) Reform of 2006 (in 2002: from 7 to 42 months); (b) Reform of 2004 (in force 2006): 6 to 36; Reform of 1995 (in force from 1998) decreased duration for old-age unemployed; (c) Reform of 2006: a bonus was established (30 or 60 days extra for every 5 years of insurance during the last 20 years). Reform of 1999: from 12 to 30 months.

Source: MISSOC (several years)

In 1993, all the countries operated with a variable period, but with different determining factors: i) in *France* and *Germany* the duration of benefit was positively related to the previous work record and age; ii) In *Spain*, the duration depended on the length of insurance; and iii) in *Portugal*, the age was the guideline principle. Over the period, *Portugal* joined the first cluster.

In 1993, there was much diversity in the duration of insurance benefit, mainly in terms of the maximum duration, with *France* having the most generous scheme and *Spain* the least⁶. Over the period, the duration of payment has been successively changed in three countries, but in different ways. Some convergence can be observed in the maximum duration, which has been reduced in all these three countries, while the minimum duration has undergone an opposite change in France (increase) and Portugal (decrease). Some general trends can be highlighted: i) in all countries, the work record has been increasingly important in determining the duration of payment (minimum and maximum); ii) the duration has been tightened for older unemployed people, despite a less favourable change for those with a longer insurance record.

Entitlement: taxation of unemployment benefits and social contributions

In 1993, the four countries were clustered into two groups according to the tax treatment of the unemployment insurance benefits as well as the social contributions. The first group comprised *Germany*, *Portugal* and *Spain*, where the benefits were subject to neither tax nor social contributions. *France* was the only country where the benefits were subject to taxation (after a deduction) and social contributions. After 1994, *Spain* followed the French example.

What has been changed and how

There is some evidence that the four selected countries have made changes to their unemployment protection schemes. Table 6 presents the direction of the change by each item.

⁶ All schemes offer extended periods beyond the maximum duration up to pensionable age to older unemployed people with a long contributory record.

Table 6
Direction of changes in the indicators

| | France | Germany | Portugal | Spain |
|------------------------------|---------|---------|----------|-------|
| Eligibility | | | | |
| Qualifying period | - R | + R | | |
| Conditions of payment | + R | + R | + R | + R |
| Entitlement | | | | |
| Earnings reference | | - G | | |
| Rate of benefit | + G (a) | - G | | |
| Duration of payment | ± R (b) | +R | +R | |
| Tax and social contributions | | | | - G |

Key: R= restrictive; G= generous; more (+), less (-), or differences between groups of unemployed persons (±).

(a) For longer unemployed; (b) More restricted for older unemployed.

Source: Elaborated by the author

The changes introduced in the four insurance schemes reveal restrictions in eligibility and entitlement criteria, although to different extents. All countries attempted to curb unemployment expenditure growth, but by introducing changes to their insurance scheme, adopting a different mix of instruments. However, we can highlight one trend that is common to all countries: eligibility has been tightened by means of more restrictive conditions of payment, mainly by activation measures.

Germany introduced legislative changes in almost all items concerning eligibility and entitlement. Moreover, it must be noted that the gross rate of benefit – perhaps the most conspicuous change - has been reduced only in this country. In contrast, Portugal and Spain have used the lowest number of instruments.

We can also conclude that unemployment reforms have been implemented by stages over the period of analysis. However, there are important differences between countries: Spain adopted tougher reforms in 1993 and few adjustments later; in Portugal, the process of reform was initiated later (1999), with the most significant change being implemented only in 2006; the French and German schemes experienced legislative amendments over the period, the most important of which were implemented after 2001.

There is some evidence of cutbacks in eligibility and entitlement criteria. These cuts may be seen as a diminution of social rights, with a significant impact when the result has been a reduction in the number of unemployed entitled to protection. Additionally, there is evidence that the Portuguese and Spanish insurance schemes do not reveal any structural difference from the other two.

Conclusion

This article has endeavoured to contribute to the discussion on unemployment protection reform by analysing the reform process in four western European countries (France, Germany, Portugal and Spain), all of which represent the conservative regime of welfare. The empirical analysis focused on legislative changes implemented over the period 1993-2007 in relation to eligibility and entitlement rules. With respect to earlier empirical studies on unemployment protection reform, the article presents two contributions: an analysis of the most recent reforms (after 2003) and the selection of two of the least studied countries (Portugal and Spain).

Three main conclusions can be highlighted. First, in addition to the activation measures, which may be classified as the major change in the domain of unemployment protection, there is some evidence of cutbacks in eligibility and entitlement criteria. The legislative changes implemented in France, German, Portugal and Spain may be viewed as constituting a diminution of social rights for many unemployed people. The measures identified, particularly from 2003 onwards, validate findings of previous empirical studies. Indeed, they reflect not only a trend of recommodification (Green-Pedersen 2001; Lindbom 2002), i.e. the consequence of efforts to restrict the alternatives to participation in the labour market, but they also represent a process of dualisation of the population protected, with a restricted protection for the 'outsiders', such as the young (Clegg 2007; Palier and Martin 2007). As we have seen, the activation policy has been common to the four countries and strengthened in recent years, while all the other changes (which are less visible) were applied more gradually and to different degrees in the four countries. This political option can be explained by the greater public support for activation than for measures intended explicitly to cut benefits (Taylor-Gooby 2001; Bonoli *et al.* 2000).

The second issue/conclusion relates to the categorisation of the welfare changes. If the activation measures can be interpreted without any doubt as a systemic or structural change, the other cumulative changes in eligibility and entitlement could be construed as following a path-dependency trajectory. However, there is a fundamental issue that should not be neglected, which concerns the link between work and individual social rights. As we mentioned above, the four insurance schemes as representative of the conservative welfare regime would grant unemployment protection based on the contributory principle, i.e. access was dependent on the previous contributions and the

duration of payment varied according to the insurance career. Not only do we observe a reinforcement of the work-relatedness principle, a trend already found in some other countries before 2003 (Clasen and Clegg 2007; Clegg 2007), but we can also identify a new conditionality in terms of the right to protection. Indeed, the receipt of insurance benefits has become strictly dependent on the active job search which may reveal a reconstruction of social protection on the basis of the future work prospects (Erhel and Zajdela 2004: 138). This reorientation of policy introduces a positive aspect, which is to promote a rapid (re)insertion of the unemployed into the labour market. However, it equally has a negative aspect in its consequences: the exclusion of unemployed individuals for reasons unrelated to their personal circumstances or efforts, such as persistent unemployment and low creation of jobs.

Finally, if it was possible to verify that the four countries adopted different instruments at different moments in time, no significant differences were detected in the reforms carried out in Portugal and Spain in comparison with France and Germany. This finding is in line with the argument of Palier and Martin (2007:547), according to whom the reforms developed by the so-called Bismarckian countries 'appeared to share certain features, related to the specific institutional settings of these social insurance systems'.

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