

# Non-public Actors in Social Security Administration

A Comparative Study

Edited by

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## CHAPTER 1

# Why Is the Role of Non-public Actors in the Administration of Social Security an Interesting Research Topic?

*Thomas Erhag, Frans Pennings & Sara Stendahl*

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### **§1.01 THE HISTORICAL ROLE OF SOCIAL PARTNERS IN THE ADMINISTRATION OF SOCIAL SECURITY**

Since the 1950s, many European countries have developed to be comprehensive welfare states that cover basically all citizens for all traditional social risks. The USA has also developed, though on a smaller scale, a state welfare system. The predecessors of the first statutory social security schemes were, however, private funds, established by trade unions, churches, charities or mutual societies providing protection for their members against the consequences of illness, old age and disability.

Since there were no other adequate (public) provisions, the funds served to relieve their members from hardship and to prevent them from having to rely on poor relief, a last resort that often deprived them of all dignity. Therefore, the funds were, in principle, an important improvement, although their private, small scale, nature meant that they had limited means and could not provide sufficient cover.

An important side effect of trade union funds was that they encouraged membership of trade unions. Membership of a trade union was required to be covered by the fund and/or led to more attractive benefits. Having more members meant that trade unions had more power and were better able to conclude attractive collective agreements and have them applied to the workers in their sectors, which in turn made them more attractive for workers. Thus, in some countries social security funds are at the root of the development of trade unions and the organization of labour relations on the labour market.

However, although sometimes funds were subsidized by the state, the protection by these funds proved to be financially unsustainable and there were often important gaps in coverage, both in terms of persons covered and the level of compensation.

Because of these important shortages and the resultant insufficient protection of the workers States began to gradually develop and establish statutory schemes by the end of the nineteenth century – to start with the German Acts under Bismarck, followed some time later by other countries, including the United Kingdom and the Netherlands.

The transition in these countries from purely private funds to public responsibility (even though this was limited in the beginning) was a very important milestone, among other things since legal certainty, legally enforceable rights and organized solidarity became essential characteristics of the systems. All persons belonging to the personal scope of a scheme were compulsorily insured and were basically treated in the same way. This marked a great improvement in the legal position of the insured and benefit recipients. In many other countries public responsibility for social security also became accepted, and gradually more and more statutory schemes were adopted.

Over the course of the twentieth century, various forms of administration of social security developed. In some countries, social partners were given a joint role in the administration of social security, such as in Germany and in the Netherlands. In other countries, they were not included in the administration, or they were excluded over the course of time. In some countries statutory social security schemes were created, in which social partners or trade unions were given a role, even if these statutory schemes were not preceded by private schemes, such as in Sweden. In some Nordic countries, unemployment funds were, or still are, managed by trade unions, such as Sweden and Denmark. Such union involvement has contributed to high unionization rates, in any case until quite recently. The high unionization rate has the additional advantage that no state interference in the area of wage bargaining is deemed necessary, as the unions are strong enough to establish the complete wage structure by themselves, including the application of collective agreements on all relevant employers and workers. In several other countries, where unionization rates are lower, statutory labour law regulates the effect of collective labour agreements, the Minister has the power to declare a collective agreement generally binding and a statutory minimum wage is applicable. Thus, there is a close link between the administration of social security and the organization of the labour market.

In some other countries, such as Germany, the Netherlands, and France, the fact that employers and employees contributed to the funding of the scheme was the reason for giving both employers' and employees' representatives the responsibility (sometimes together with public representatives) to govern the scheme. This self-governance of benefit administrations fitted very well with the corporatist identity of these states. In countries such as UK, the term 'social partners' sounds very strange; in more corporatist-oriented models it is a common word to refer to the employers' and employees' organizations together. It appeared that administering a fund or participating in the administration of social security indeed created common interests for the 'two sides of industry' and reinforced their felt responsibility for social policy and administration of the labour market. Despite the public law character of the benefit

administration, non-public actors thus continued to play a role in the administration of benefits. This role could be very important.

Another group of countries – including the USA and the UK – chose to have an entirely public system, with no interference from social partners in the statutory schemes. Often these schemes were established at a later date. In these countries it was deemed appropriate to ensure public administration of public schemes, and thus to make sure that no other interests than public ones affected the legal position of the insured.

Of course, there are many more nuances in the systems of the various countries than can be mentioned here in this overview, and, moreover, the involvement of social partners or trade unions may have changed considerably. This comparative study is meant to describe and analyse the similarities and differences. In order to avoid misunderstandings, we will describe the various systems of administration of social security and the arguments that are often heard, but our own position is only a comparative one. In other words, we are neutral to what is the best way of organizing a social security system.

## **§1.02 INVOLVEMENT OF SOCIAL PARTNERS AS AN ILO PRINCIPLE OF GOOD GOVERNANCE**

It is not only for historical reasons that social partners participate in the administration of social security, but it is often also seen as a way to involve those who pay for the system and those who may receive benefit from the system. In this way, they have a say in the way their ‘own’ money is administered, and also how they, or the persons for whom contributions are paid, are treated.

Participation of social partners in the administration of benefits is even seen by the ILO as an important principle for social security administration. Already in Article 27 of ILO Recommendation 67 (Income security recommendation) of 1944 it was provided that:

the administration of social insurance should be unified or coordinated within a general system of social security services, and contributors should, through their organizations, be represented on the bodies which determine or advise upon administrative policy and propose legislation or frame regulations.

Article 72(1) of ILO Convention 102 provides that:

Where the administration is not entrusted to an institution regulated by the public authorities or to a Government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions; national laws or regulations may likewise decide as to the participation of representatives of employers and of the public authorities.

This text was also included in later instruments, including Article 24(1) of Convention 121, Article 36 of Convention 128, Article 31 of Convention 130 and Article 29 of Convention 168.

Still recently, the ILO recently remarked: ‘The participation of the social partners in the design and monitoring of social security systems could contribute to their smooth functioning’.<sup>1</sup>

The participation of these organizations is meant to guarantee *checks and balances* and *countervailing powers*, thus the powers of employers, employees and public authorities. This cooperation is also found in the very composition of the ILO bodies, in which representatives of employers, employees and states can be found.

As was remarked in the previous section, the ways of administration of social security may vary considerably from country to country, and the involvement of social partners or unions has also evolved. There are also countries without involvement of the social partners. Although for the ILO the involvement of social partners is a normative principle, we as researchers will study it from a distance, and try to find answers to questions such as if and how the participation of the social partners is realized, to what extent do the members of these organizations have a say in the administration of the scheme, and which side effects or advantages stem from their participation. Thus, we want to analyse the developments, to see how the representation of employers and employees has worked out, and how other groups in society are affected. Their role in complementary schemes is also described, and in this way the social partners in countries with purely public schemes will also be discussed.

### **§1.03 NEW FORMS OF PARTICIPATION BY NON-PUBLIC ACTORS IN THE SOCIAL SECURITY ADMINISTRATION**

By the end of the twentieth century, in most countries of our study the thinking on responsibilities in the social security system began to change gradually. Since the welfare states had been expanding considerably, the costs for social security schemes had risen to new heights, and it appeared rather difficult to reduce these costs, because due to economic crises, changing society and other factors, the demand for social protection kept rising. In the Netherlands, for instance, it was argued that it was difficult for the state to keep track of all developments, and that giving responsibility to private bodies that were closer to the persons concerned would make it easier to increase their own responsibility and to supervise the use of money. This was concerned with not only trying to reduce expenditure, but also trying to promote *activation* in social security. Persons were supposed to get back to work as soon as possible, also in case of sickness and disability, in order to reduce the use of the system and to increase the size of the active labour force. Sometimes it was thought that private actors were better equipped for ensure efficient spending or for undertaking activation activities. In countries such as the Czech Republic, the UK, Germany, the Netherlands, Denmark and Sweden, the role of the employer was emphasized. Employers were obliged to continue to pay their ill employees, private insurance companies replaced statutory sickness schemes, agencies for the re-integration of

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1. International Labour Office, *Social security: A new consensus* 17 (ILO 2001).

unemployed or ill employees were established, and private funds offering old age pensions were set up, etc.

The reasons for the interference of non-public actors are quite different from the involvement of the social partners. One reason is that, for instance, employers or insurance companies, as regards health care, can better supervise the use of the benefits, since they are closer to the users and/or they feel the effects of ineffectiveness in their own pockets.

Another type of argument is that private actors may work more efficiently since they have an interest in doing so. Their remuneration may depend on the outcome of their work or they may even be allowed to keep the profit they make by selling their products.

A third argument, dominating the Swedish context, for instance, is that by contracting out public responsibilities to private providers of services, beneficiaries can be offered more choice, and thus the legitimacy of the welfare state can be promoted. This is the case, for instance, for health care providers, re-integration agencies and pension insurance providers.

The emergence of the new actors is not necessarily connected to that of social partners or trade unions; it is very possible that both types of actors are involved. In some cases, however, e.g., in the Netherlands, the social partners have been replaced by the new actors, and it is interesting to study such developments.

#### **§1.04 WHY IS IT INTERESTING TO INVESTIGATE THE INVOLVEMENT OF THE NON-PUBLIC ACTORS?**

The involvement or non-involvement of social partners and other non-public actors in the statutory systems raises some interesting questions.

In case of their involvement, the issue arises of who decides on the contents of the scheme. If the social partners and/or public actors have a large say in this, how does this relate to the position of the democratic bodies of a country? A second issue relates to the actual decision-making on benefits, which is also possible in some systems. How does this relate to the public interests underlying a public scheme? In other words, is a trade union able to impose sanction a member who has failed to actively seek work?

A second series of questions relate to the differentiation between the persons covered that may be the result of the involvement of interest groups (such as the social partners) and/or other private actors, which may provide more choices or may have varying policies.

Related to this issue is the question of how the fundamental principle of state responsibility for social security, as emphasized in several international instruments, is satisfied. Of course, this includes the level and duration of benefits, but does it also refer to the way the system is administered, i.e., the actual treatment of beneficiaries by private bodies?

A third issue is also relevant to countries that do not include social partners and non-public actors in their statutory system. How, in these systems, is the relationship between the statutory system and the complementary systems? Is, for instance, the

differentiation that is avoided in the statutory system even stronger in the complementary system? Or are, if complementary schemes have become compulsory in one or another, the differences between countries smaller than it seems at first sight?

A last issue concerns the principle that representatives of the insured have to be involved in the administration of the schemes. How is this democracy realized, if at all? And if there is no such representation, is it missing in the countries concerned?

## **§1.05 THE STARTING POINT FOR UNDERTAKING THE COUNTRY STUDIES**

Since countries may differ considerably and we did not know what to expect at the outset of the project, we asked the authors to describe and analyse the role of non-public actors in social security. Now there was but little information available on this topic, and we left it to the author(s) of each chapter to identify the non-public actors playing a role in the administration of social security, and also to describe the relevant background. The major definition of the research area was that it should concern old age, sickness and disability, unemployment and health care. We expected that the impact of non-public actors would be the largest in exactly these areas. This approach caused some problems in the case of countries whose national social security systems did not include all these four areas, since they had to study new fields. However, for comparative reasons it is important to have a common playing field. Moreover, in some countries social unemployment benefit is not seen as part of social security, exactly because these benefits are administered by social partners. Thus, this definition of social security would omit our research topic, and is therefore not appropriate for comparison.

We studied the social security systems from a legal point of view. Thus, we described the rules and the underlying principles, the relationship between the administration and the schemes and the inconsistencies between rules and regulations, e.g., constitutional problems. We also described the issues in their contexts, i.e., mentioning the background of the developments and reported effects. However, it was beyond our remit to study the empirical differences between the systems.

We also made a selection of countries to be studied. For our purpose we were interested in countries with a Bismarckian tradition (Germany, the Netherlands, France), a Southern European context (Spain), an Anglo-Saxon approach (the United Kingdom, the United States of America), Nordic countries (Sweden, Finland, Denmark), and a former communist country (the Czech Republic). We do not claim that this means that the studied country is representative of all countries of its 'group' and we cannot always maintain the label given to the country now the research has been done, but this categorization was relevant to the selection of the countries. Relevant to the choice of the country was also the availability of qualified researchers to describe and analyse the national systems.

The authors were asked to describe the development of the systems and describe the non-public actors. By non-public actors we mean all persons and organizations that

do not have public personality. We use the term ‘non-public’ to denote that these actors have a place in the system and therefore often also public responsibility.

For the rest we did not harmonize the use of terms. This can be seen most clearly in respect of the term *pillar*, which is very relevant, of course, when we deal with the role of private actors. It appeared that these terms are used differently in the countries, but in order to include all relevant information, it was necessary to leave the various approaches intact. In the concluding chapter, Chapter 12, we will come to a common terminology, and then put the information obtained into this framework. From a comparative point of view this often led to new insights.

The study on the role of the private actors can raise many questions, which are all very interesting. However, it is important to limit the research to those issues which are comparable and which are within our field of knowledge. For this reason authors were asked to describe the potential differences between groups in society that can result from the schemes involving non-public actors. Thus, if, for example, a scheme is open to members of a trade union only, it distinguishes between union and non-union members. If a scheme allows or requires a choice between investment funds, the more educated may have better results from investments.

This does not mean that such effects automatically occur, or that they are always absent, but it is interesting that these systems permit such differences, since traditionally, within statutory systems, compulsory participation and thus equal treatment, have been important principles. It is clear, however, that further research on the empirical effects is necessary.

We also focused on the statutory schemes, since here the role of the social partners and other non-public actors is special. In the complementary occupational schemes they have their ‘natural’ place. Describing all occupational and private schemes would have been very complicated, or even impossible, since there may be very many of these and information is often not available.

However, the interrelationship between the statutory schemes and the complementary and private ones has been included in the descriptions. For instance, if coverage of a risk is transferred from the statutory scheme to an occupational one, or vice versa, or if participation in a complementary or private scheme is made statutorily obligatory, or if these schemes in fact have taken over the function of what is normally a statutory scheme, attention is paid to these complementary schemes.

In some countries constitutional problems arise if you give tasks to non-public actors. If these occur, they will be described and analysed as well.

## **§1.06 THE COMPARISON OF THE DEVELOPMENTS**

In Chapter 12 we will focus on the comparison of the distribution of responsibilities for social security over the various pillars of social security. We will then define more clearly the pillars and also the role of the non-public actors (that will be split into several tasks, which will identify their functions more precisely).

