

# Feasibility and Added Value of a European Unemployment Benefits Scheme

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## Legal options and limits for the establishment of a European Unemployment Benefits Scheme

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# Introduction

- **Models of EUBS**
  - Genuine EUBS
  - Equivalent EUBS
- **Basic features that distinguish the various EUBS models**
  - Presence of a trigger for payment
  - Recipient of payment
- **Relationship between EUBS and NUBS**

# Basic features of EUBS I

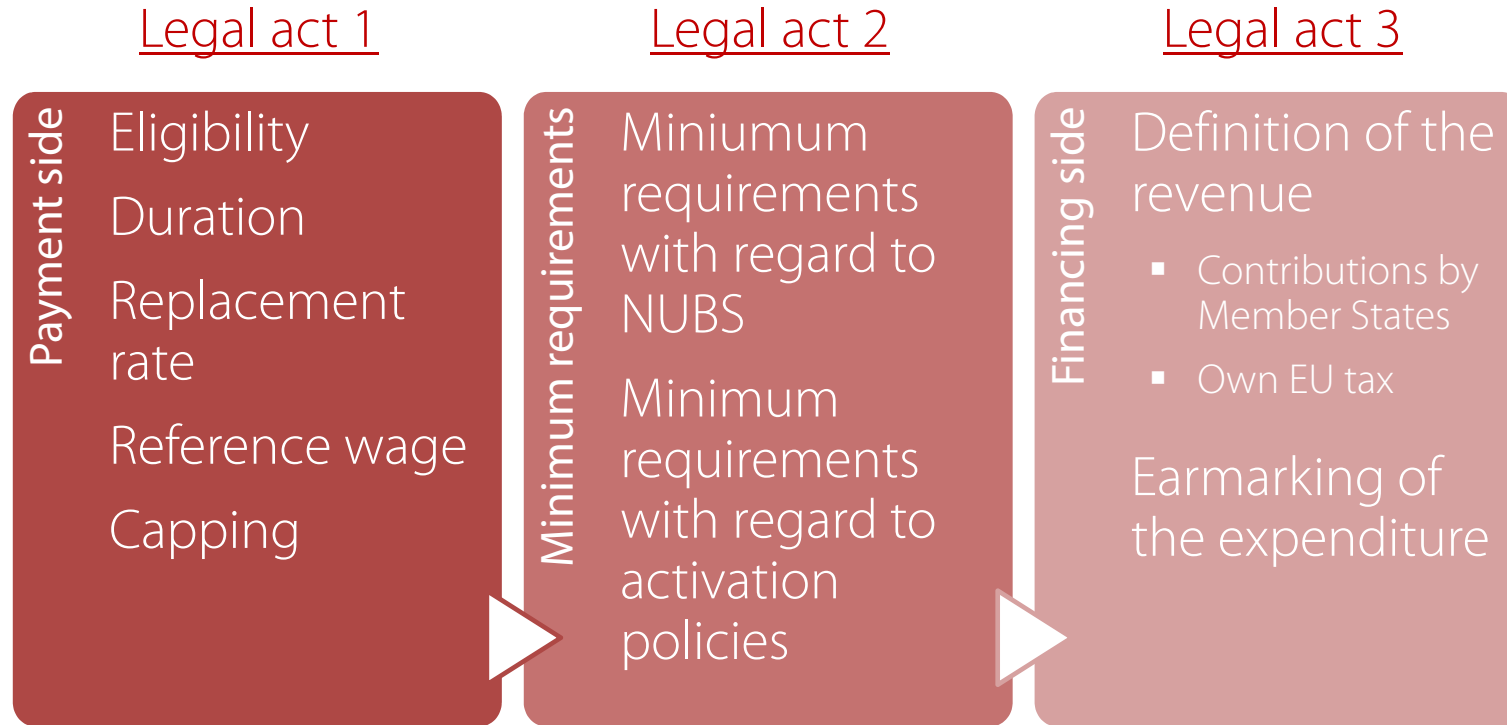
- Equivalent EUBS are to be distinguished from genuine EUBS
  - (1) by the presence of a **trigger**
    - No trigger for genuine EUBS
      - Main objective: insuring a social risk / social cohesion
    - Short-term unemployment rate exceeds a threshold: equivalent EUBS
      - Main objective : (macroeconomic) stabilisation in times of economic crisis
  - (2) by the **recipient** of the payment
    - Genuine EUBS: Sum paid to the NUBS for subsequent payment **to the unemployed person** in accordance with EUBS law
    - Equivalent EUBS: Lump sum paid **to the national general budget**
      - Important element: Question of **earmarking** the lump sum for the use by NUBS

# Basic features of EUBS II

## ■ Relationship between EUBS and NUBS

- EUBS and NUBS co-exist in the territory of the MS
  - NUBS pays out the benefit
  - National benefit is defined by NUBS
  - EU benefit is defined by the EUBS
  - EU legal act has to provide for a conflict rule to regulate cases of overlap of NUBS and EUBS
- In case of an overlap, EUBS takes precedence over NUBS (except for top-up EUBS)
- In case NUBS is more 'generous' than EUBS, NUBS remains applicable (because of a lack of 'conflict' between EUBS and NUBS)
- Outside the scope of EUBS there is no legal obligation for NUBS to adapt the conditions for the national benefit to the ones defined by the EUBS

# EUBS legal act



*Separate legal acts are required if the respective legal bases cannot be combined with each other.*

Payment side

# EUBS legal act 1: Payment side

## ■ Legal base

		21(3)	48	121(6)	122(2)	148	153(2)(b)	175(3)	352(1)
Objective	Promoting social cohesion ⇒ <b>Genuine EUBS</b>	■	■	(-)	(-)	■	■	■	■
	Instrument of stabilisation in case of (exogenous) crisis ⇒ <b>Equivalent EUBS</b>	(-)	(-)	■	■	(-)	(-)	(-)	■
Technicalities	Applicable to all unemployed	(-)	(-)	■	■	■	■	■	■
	Beyond reinforcing multilateral surveillance	■	■	(-)	■	(-)	■	■	■
	Automatised application	■	■	■	(-)	(-)	■	■	■
	Autonomous fund	■	(-)	■	■	(-)	(-)	■	■
	Respect of constitutional saving clauses with regard to social security (no possibility to outvote a MS)	■	(-)	(-)	(-)	■	■	(-)	■

# EUBS legal act 1: Payment side

- Legal base for genuine EUBS
- Article 175(3) TFEU
  - Specific action is to be understood broadly (CJEU, C-166/07, Parliament v Council)
  - EUBS has to strengthen social cohesion
    - (1) EUBS has to promote an overall harmonious development (point of reference is the entire EU and not only single Member States)
    - (2) EUBS has to reduce social disparities between different regions and groups within the EU that are politically and socially intolerable
  - Weakness of Article 175(3) TFEU: No undermining of limitations in other legal bases
    - Right of Member States to define fundamental principles of its social security systems (Article 153(4), first indent TFEU)
    - Unanimous voting within Council when social security law matters are affected (Article 21(3) TFEU, Article 153(2)(3) TFEU)



# EUBS legal act 1: Payment side

- Can weaknesses in specific legal bases be compensated by additionally relying on Article 352(1) TFEU?
  - As regards Article 175(3) TFEU: Yes.
    - Unanimous voting when social security law matters are affected: Article 352(1) TFEU requires unanimous voting in the Council
    - MS right to define fundamental principles
      - Principle: Article 352(1) TFEU may not circumvent constitutional saving clauses (cf. Monti II)
      - But: No prohibition to legislate in 'questions involving any sort of link' to the matters covered by the constitutional saving clause
      - Here: EUBS co-existing with NUBS does not require legal adaptation of NUBS but will only lead to *de-facto* pressure to harmonise, which can be rejected by MS

# EUBS legal act 1 & 2: Payment side & Minimum requirements

## ■ Issue of Article 125(1) TFEU ('no bail-out' clause)

- EUBS is covered
  - Article 125(1) TFEU: General principle that EU does not finance MS
  - EU may only transfer funding to MS if there is an explicit legal base
  - Otherwise, Article 125(1) TFEU sets the limits for any other transfer
    - CJEU, Case C-370/12, Pringle
    - 'Article 125(1) TFEU does not prohibit the granting of financial assistance [...] provided that the conditions attached to such assistance are such as to prompt that Member State to implement sound budgetary policies'
  - Applies to EUBS as it to be based (additionally) on Article 352(1) TFEU
- EUBS must set incentives for continuous reforms of labour markets
  - Experience rating and claw-back mechanisms
  - Supplementing legal act setting minimum requirements for activation policies based on Article 153(2)(b) TFEU

Financing side

# EUBS legal act 3: Financing side

## ■ Two ways of designing the financing side

### – (1) Within the EU budget

- Earmarking revenue for the exclusive use of EUBS  
(⇒ External assigned revenue, Article 21(2)(d) of Regulation (EU) No 966/2012)
- External assigned revenue is excluded from MFF ceilings
- External assigned revenue is considered to be 'other revenue' in terms of Article 311 TFEU  
(⇒ no change of Own Resources Decision)
- Legal base: Article 352(1) TFEU

### – (2) Dedicated fund outside EU budget

- Establishment of a EUBS agency with an own distinct budget
- Control by budgetary authorities (EP/Council) comparable to EU budget law in order not to circumvent institutional balance
- Legal base: Article 352(1) TFEU or international agreements

## EUBS legal act 3: Financing side

- Specific feature of genuine EUBS: **Raising contributions from individuals**
  - Discussion whether the EU has the power to raise contributions from individuals
  - Precedent: Single Resolution Fund (SRF)
  - Solution
    - Establishment of a EUBS fund by EU regulation/IGA
    - Intergovernmental Agreement (IGA) for levying and transfer of contributions by national authorities (following the model of the IGA for the SRF)

# EUBS legal act 3: Financing side

- Possibility to raise debt
  - Principle: EU is not allowed to raise debt in order to finance the general budget of the Union
  - Precedents: e.g. EFSM may raise debt (Article 6(3) of Regulation (EU) No 407/2010)
  - EU is allowed to enter into borrowing-and-lending operations for a specific and predefined purpose, which may not lead to an indirect financing of the general budget
  - Guarantee is limited to the EUBS fund / general EU budget
  - Legal base: Legal base of the act establishing the EUBS fund

# Thank you for your attention

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