

The Legal and Operational Feasibility of a European Unemployment Benefits Scheme at the National Level

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No. 145 / September 2016

Abstract

The objective of this paper is to investigate the legal and operational feasibility of a European unemployment benefits scheme (EUBS) as a specific form of supranational automatic stabiliser. This investigation forms part of a broader multidisciplinary analysis of the EUBS, encompassing *inter alia* a study of its compatibility with the EU Treaties and, using macro- and micro-simulations, the value added of the EUBS in terms of stabilisation and social outcomes.

Through an examination of how the EUBS would articulate with national legal and administrative frameworks in the EU member states, this paper seeks to identify the main legal and operational barriers to the introduction of such a scheme. The paper draws on input from social security experts in all member states, which was collected by means of a questionnaire.

Focusing on the 'genuine' EUBS scheme, the paper identifies several challenges associated with its introduction. These are largely the result of three characteristics of national unemployment benefit regulations, i.e. their complexity, their diversity and their interrelation with broader areas of national socio-economic regulation.

The research shows that introducing a genuine EUBS would require substantial legal reforms at the national level. Moreover, its operation would inevitably entail a degree of additional administrative effort and complexity. That being said, it is notable that some countries would encounter more challenges – whether of a legal, operational or political nature – than others. Furthermore, it is apparent that the definition of EUBS parameters has a significant impact on the feasibility of the scheme.

This paper was prepared as part of Task 2B of the research project “Feasibility and Added Value of a European Unemployment Benefits Scheme” (contract VC/2015/0006), commissioned by DG EMPL of the European Commission and carried out by a consortium of researchers led by CEPS. The research project is undertaken by a consortium comprising the following institutions: Centre for European Policy Studies (CEPS), Centre for European Economic Research (ZEW), Institute for Social and Economic Research (ISER), Cambridge Econometrics (CamEcon), EFTHEIA and the University of Leuven (KUL).

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ISBN 978-94-6138-545-1

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List of Abbreviations

ANW	Average national wage
ECSS	European Code of Social Security
ESC	European Social Charter
EUBS	European Unemployment Benefits Scheme
FTE	Full-time equivalent
ILO	International Labour Organisation
NMW	National minimum wage
NUBS	National unemployment benefits scheme
RW	Reference wage
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Country codes

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	(The) Netherlands
PL	Poland
PT	Portugal
RO	Romania
SI	Slovenia
SK	Slovakia
SE	Sweden
UK	United Kingdom

The Legal and Operational Feasibility of a European Unemployment Benefits Scheme at the National Level

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CEPS Special Report No. 145 / September 2016

1. Introduction

1.1 Background

This report has been drafted in the framework of a study commissioned by the European Commission to assess the feasibility and the value added of introducing a European unemployment benefits scheme (EUBS). This would be a specific form of a supranational automatic stabiliser that, with its focus on the labour market and its link to cyclical developments, could help to achieve macroeconomic stabilisation and social outcomes in case of economic shocks, particularly if these are asymmetric, i.e. sustained by only a few countries. The stabilisation, ‘shock-absorbing’ effect of an EUBS would essentially lie in the fact that it would break the cycle of shock-hit countries having to impose extra spending cuts or increase taxes to offset falling revenues and rising unemployment expenditure. As per instructions in the study’s terms of reference,¹ 18 different types of EUBS are examined in this research project.

The objective of the present report is to investigate the feasibility of an EUBS in terms of compatibility with national laws and practices, how such a stabiliser would articulate with the national legal and administrative frameworks, and the main (legal, operational) barriers that might obstruct the introduction of such a scheme. This investigation forms part of a complementary and multi-disciplinary analysis of an EUBS involving, among other things, a review of existing realities in selected federal states, an in-depth analysis of different dimensions determining the design of a hypothetical EUBS, an examination of the compatibility of the EUBS with the EU Treaties (legal feasibility at the European level) and, using macro- and micro-simulations, a study of the value added of the EUBS in terms of stabilisation and social outcomes.

The findings of this report, along with the results of some of the other above-mentioned analyses, will feed into a roadmap, indicating what actions would be needed (and by whom),

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¹ The terms of reference can be found at <http://ec.europa.eu/social/BlobServlet?docId=12470&langId=en>.

in what timeframe, for the different EUBS options to possibly be implemented. The project outcomes, including of the econometric analysis, will moreover be summarised in an overview table showing the features of the different EUBS types and outlining their economic, legal and operational impacts.

1.2 *Presentation of the different forms of an EUBS*

The terms of reference of the study provide for a range of different forms of an EUBS to be studied. In this regard, a distinction should first be made between an equivalent and a genuine EUBS. The latter, which is the focus of this report, can be further divided into a basic genuine and a top-up genuine EUBS. Both forms are shaped by reference to a (partially overlapping) set of features (hereinafter referred to as 'dimensions'); the variations in these dimensions determine the different EUBS options.

For a detailed discussion of the EUBS forms and their dimensions, reference is made to the report written by Beblavy, Lenaerts and Maselli in the framework of this project.² The following sections present the various forms that an EUBS might take and the differences between them.

1.2.1 **The equivalent EUBS**

The first form is the 'equivalent EUBS', which comes in four different options. An equivalent EUBS involves financial transfers between the supranational fund, which manages the EUBS, and the member states. Under this scheme, there are no direct transfers between the fund and unemployed individuals; the EUBS receives contributions from and pays out to the member states. An equivalent EUBS is linked to unemployment through a trigger (discussed below) and through the earmarking of payouts (as the funds received from the supranational scheme must be used for passive unemployment protection).

An equivalent EUBS is only activated (and hence the funds are disbursed to a country) once the trigger for that country is 'pulled'. This occurs when the country's short-term unemployment rate in a given quarter exceeds a certain percentage over its average in the last ten years. This value is set at 0.1% (rainy-day scenario), 1% (stormy day) or 2% (reinsurance). The trigger is one of four dimensions shaping the equivalent EUBS. The others are the presence or not of 'experience rating', 'claw-back' and 'debt-issuing possibility'. Experience rating and claw-back are instruments to adjust a country's contribution to the supranational fund to its past unemployment history and its utilisation of the EUBS, respectively.

Table 1 lists the main characteristics of the four equivalent schemes through which they can be distinguished from each other. Note that the definitions of the dimensions can be found in the glossary in Annex 1.

² See M. Beblavy, K. Lenaerts and I. Maselli, "An analysis of 18 possible European Unemployment Benefits Schemes", CEPS, Brussels, forthcoming.

Table 1. Overview of an equivalent EUBS

Options (4)	Dimensions			
	Trigger	Experience rating	Claw-back	Debt-issuing possibility
Stormy day	Short-term unemployment rate in a given quarter exceeds 1% over the national average in the last ten years	No	Yes	Yes
Rainy day with debt	~ 0.1%	Yes	Yes	Yes
Rainy day without debt	~ 0.1%	Yes	Yes	No
Reinsurance of NUBS	~ 2%	Yes	No	No

Note: NUBS refers to national unemployment benefits scheme.

The discussion of the feasibility of an equivalent EUBS at the national level, which is dealt with in chapter 2 of the report, is confined to two aspects, namely its compatibility with national constitutional law and its interrelationship with fiscal rules applying in the member states. Since the analysis is valid for the equivalent EUBS as a whole, no differentiation is made according to the four options.

1.2.2 The genuine EUBS

1.2.2.1 Description of the genuine EUBS

Unlike the equivalent EUBS, the ‘genuine EUBS’ does involve direct transfers from the supranational fund to unemployed citizens. These are truly supranational systems, which receive contributions from and pay out to citizens. No trigger is required as these schemes are activated for any eligible worker who becomes unemployed.

The design of the genuine EUBS is defined by reference to eight dimensions. Four of these dimensions can be typically found in any national unemployment benefits system (qualifying period, replacement rate, duration of payments and capping), and their analysis constitutes the major part of this report. The other four dimensions are more specific to the concept of an EUBS: cyclical variability, experience rating, claw-back and debt-issuing possibility.³

A genuine EUBS comes in one of two possible forms, i.e. basic (see section 3.2, constituting the core of the report) and top-up (see section 3.3).⁴ A **basic genuine EUBS** pays out a common provision for every eligible unemployed person in Europe, which the member states are free to top up by a national provision at their own expense. A **top-up genuine EUBS**, on the other hand, guarantees that every eligible unemployed person receives a common provision. It is

³ The last three dimensions are indeed similar to the equivalent EUBS.

⁴ In the terms of reference, the basic/top-up nature of the scheme is treated as a separate (ninth) dimension, whereby ‘basic’ is the baseline and ‘top-up’ the (only) variant. For the purposes of this report, however, we have opted to discuss the top-up genuine EUBS in a dedicated section. This is justified because, unlike the case of the other dimensions, the variant value of this dimension results in a fundamentally different scheme.

only when the national provision is less generous, however, that the supranational provision tops it up.

Each of these eight dimensions has been granted a certain value (although for the EUBS-specific dimensions, simply an indication is given of their presence or not). For the basic EUBS, multiple values are set for each dimension, i.e. one baseline value and one or two variants (e.g. for the dimension replacement rate, baseline = 50% of the reference wage (RW); variant 1 = 35% and variant 2 = 60%). For the top-up EUBS, a single value applies, which is identical to the baseline value for the basic EUBS. An overview is presented in Table 2; operational definitions can be found in the glossary in annex 1.

Table 2. Overview of a genuine EUBS by dimension

		Genuine EUBS dimensions							
		Duration of payments (months)	Replacement rate	Qualifying period (months)	Capping	Cyclical variability	Experience rating	Claw-back	Debt-issuing possibility
Basic	Baseline ⁽⁵⁾	4-12	50% RW	3 out of 12	150% ANW	No	Yes	Yes	Yes
	Variant 1	0-12 ⁽⁷⁾	35% RW ⁽⁹⁾	3 out of 6 ⁽¹¹⁾	100% ANW ⁽¹³⁾	Yes ⁽¹⁵⁾	No ⁽¹⁶⁾	No ⁽¹⁷⁾	No ⁽¹⁸⁾
	Variant 2	4-6 ⁽⁸⁾	60% RW ⁽¹⁰⁾	12 out of 24 ⁽¹²⁾	50% ANW ⁽¹⁴⁾				
Top-up ⁽⁶⁾		4-12	50% RW	3 out of 12	150% ANW	No	Yes	Yes	Yes

Notes: ANW = average national wage; RW = reference wage.

The combination of the different dimensions and their values results in a total of 14 genuine EUBS options considered by the terms of reference, i.e. options 5 to 18;⁵ option 5 is the general basic scheme (general baseline) and option 6 is the top-up scheme, whereas the remaining options 7 *et seq.* each deviate from the general baseline scheme through a variant value for one dimension. This numerical classification of the different EUBS options, stemming from the project's terms of reference, is not used in the present report; still, for the sake of good order, the figures corresponding to the various options are added in superscript in Table 2.

The analysis is chiefly structured by (broad EUBS form and by) dimension, rather than by option. In other words, the feasibility of the basic genuine EUBS in the national contexts is approached dimension by dimension, whereby each time the baseline and the variant value(s) for a given dimension are discussed. This approach should not detract from the fact that the different dimensions are interrelated: all eight of them combined define the EUBS. It should thus be borne in mind that, when studying the feasibility of a given dimension (be it the baseline or variant value(s)), the baseline value for the other dimensions applies by default.⁶

⁵ Options 1 to 4 are the equivalent ones, listed in Table 1.

⁶ For example, in assessing the impact of capping the EUBS amount (be it 150, 100 or 50% of the average national wage, one needs to consider that the replacement rate of the EUBS benefits is determined in each case by the baseline value, i.e. 50% of the reference wage. Conversely, for examining the replacement rate (baseline or variants), it is understood that the benefit is capped at 150% of the average national wage. Likewise, for assessing the duration of payments under the EUBS (e.g. in the second

1.2.2.2 *Distinction between the basic and top-up EUBS and their articulation with national systems*

It is important to understand the differences between the two genuine EUBS forms, particularly insofar as their articulation with the national unemployment benefit systems (hereinafter NUBS) is concerned. Both the basic and the top-up EUBS are minimum provisions, in the sense that the member states can go further and offer more generous arrangements at their own cost. The **top-up EUBS** works like a guarantee: it *guarantees* that the eligible unemployed (i.e. those who were employed for at least three months out of the last twelve) in the member states receive 50% of their last gross wage, capped at 150% of the average national wage (ANW), from the fourth month up to and including the twelfth month. The top-up EUBS only effectively acts upon this guarantee (i.e. the supranational fund *actually pays*) if the NUBS to which the person belongs does not reach that minimum provision.

A typical characteristic of the top-up EUBS is that only some countries (i.e. the least generous) will benefit from it (while all will pay into it). This is entirely different for the **basic EUBS**, which will provide (in its baseline option) all eligible unemployed persons in the member states (i.e. those who were employed for at least three months out of the last twelve) with 50% of their last gross wage, capped at 150% of the ANW, from month four up to and including month twelve. In so doing, it effectively replaces (part of) the NUBS. The member states are free to grant an additional provision for each of these dimensions. For assessing whether there would be such a national top-up, the NUBS as they are currently defined are taken into consideration.

In many cases therefore, the NUBS and the basic EUBS would operate in parallel, whereby the EUBS would replace the NUBS within the bounds of the dimensions set. Yet it is also possible that only the NUBS or only the EUBS would apply to an unemployed person at a given point. Due to the design of the system, transfers between schemes are very likely to arise during one unemployment spell. Indeed, in the baseline option of the basic EUBS, people qualifying for both the EUBS and the NUBS will first be covered by the NUBS (because the basic EUBS only kicks in after three months), then as of month four by the EUBS with a possible top-up by the NUBS in terms of the rate (provided the NUBS is more generous in the particular case). If NUBS rights are not exhausted after twelve months, the person, if still unemployed after one year, would again pass to the NUBS.

1.2.2.3 *Some assumptions as regards the genuine EUBS*

As seen above, the genuine EUBS is construed through a limited series of dimensions fixed by the European Commission. In some cases, these dimensions, or concepts related thereto, have been further defined by the contractor. However, other dimensions shaping an unemployment benefits system have not been laid down in the project's specifications. For the purposes of this feasibility study, dimensions not defined by the terms of reference are assumed to be governed by the same rules (*mutatis mutandis*) as those applicable in the relevant national legislation. This applies, notably, to the personal scope, entitlement conditions other than the

variant value, from months four to six), the entitlement thereto is governed by the baseline value of the qualifying period (i.e. three months of employment out of the last twelve months).

qualifying period, the impact of the receipt of unemployment benefits on other social security branches, sanctions for failure to cooperate with the employment services, etc.

The genuine forms of EUBS are assumed to be funded exclusively by employers' and workers' contributions, in equal parts. In particular, each worker and each employer contributes a given, equal percentage of the gross salary every month (multiplied by any national extra coefficients as a result of applying the experience rating).

Insofar as administration of the EUBS is concerned, this is supposedly ensured by the national institutional frameworks currently responsible in the member states for administering unemployment benefits. This applies to the collection of contributions, the monitoring of entitlement conditions, the payout of the benefits, etc.

1.3 *Methodology and structure*

1.3.1 *Methodology*

This report draws heavily upon input from social security experts in each of the 28 EU member states. Input from these experts – mostly with a legal academic background – was collected by means of a common questionnaire, validated by the European Commission and initially piloted in a limited number of countries (see annex 2).

The questionnaire invited the national experts to identify legal and operational barriers to the introduction of a hypothetical EUBS, thereby taking their countries' current legal and administrative framework as a yardstick. National experts were also asked to report the changes that would be necessary at the national level to enable the EUBS to be implemented, and how easy or difficult these could be effected.

Much in the same way as this report, the questionnaire is structured by broad EUBS form. For the genuine EUBS, it is further divided into dimension-specific questions and questions of a more general nature. Next to this analytical part, the questionnaire also includes a legal descriptive part, consisting of tables describing essential aspects of the NUBS taken from the European Commission's MISSOC Comparative Tables Database.⁷ These tables, which national experts were asked to complement on various specific points and to update as necessary, seek to provide a detailed and accurate overview of the relevant legislation in the member states.

The questionnaire replies were largely based on personal reflections on the part of the national experts, next to study of legislation and specialised literature, and consultation with other specialists in administration or academia. The replies were subject to a review by dedicated external experts with detailed knowledge of the corresponding NUBS. The findings of the reviewers were subsequently considered by the national experts.⁸

The process of collecting national experts' input took place between September and December 2015. The drafting of the present report was finalised in February 2016.

⁷ See <http://ec.europa.eu/social/main.jsp?catId=815&langId=en> and www.missoc.org. For this exercise, categories from MISSOC Tables I (Financing) and X (Unemployment) were used, in their version updated to 1 January 2015.

⁸ The list of national experts is included in annex 3.

1.3.2 Structure

This report starts with an analysis of the feasibility of the equivalent EUBS (chapter 2) – an undertaking that, as noted before, is confined to a verification of the compatibility with national constitutional law (section 2.1) and with fiscal rules setting debt and/or deficit limits (2.2). Brief conclusions are formulated (2.3).

The bulk of the report is dedicated to an examination of the feasibility of the genuine EUBS (chapter 3). After having considered some general feasibility issues (3.1), linked with adaptations required in the national legal orders and organisational frameworks, we delve into a detailed analysis of EUBS feasibility from the perspective of the different dimensions (3.2). The various features characterising an unemployment benefits system are reviewed, including the eight dimensions considered by the terms of reference. The following aspects are considered in turn: personal scope, entitlement conditions (including qualifying period), benefit amounts (replacement rate and capping), duration of benefits, the four EUBS-specific dimensions and the relationship with other branches. For each one, a comparative overview of the legal situation in the NUBS is considered in relation to the EUBS, thereby highlighting possible legal and operational barriers. The final section of the chapter concerning the genuine EUBS is dedicated to the legal and operational obstacles arising specifically from the top-up genuine EUBS (3.3).

In chapter 4, we briefly address the implications for the EUBS of a series of international rules relating to social security, stemming from the EU as well as from other international organisations.

Chapter 5 provides a general summary of the main legal and operational barriers facing the introduction of the genuine EUBS (5.1). This concluding analysis is additionally undertaken from the perspective of (clusters of) countries (5.2) and EUBS options (5.3). Would some countries be more affected by the introduction of an EUBS than others? In addition, are there EUBS options that present fewer or more barriers than others?

Concise general conclusions are provided in chapter 6.

2. Feasibility of the equivalent EUBS

2.1 *Verifying the constitutionality of the equivalent EUBS*

The introduction and operation of the EUBS would have a varying impact on the constitutional values of the member states. As emphasised in several reports, a full national constitutionality check could be made only after EU law is modified.

2.1.1 No conflict with constitutional law foreseen

At this stage and on the grounds of the replies from the national experts, there would probably be no conflict with national constitutional law in the majority of member states, if one of the possible forms of an equivalent EUBS were agreed upon within EU (primary and/or secondary) law (as mentioned by AT, BE, BG, CY, CZ, EE, EL, ES, HR, HU, IE, IT, LT, LV, MT, PL, PT, RO, SK, SI, SE, UK).

2.1.1.1 *Relation to EU law*

According to some constitutions, the exercise of some of the sovereignty rights can be transferred to certain international organisations, including the EU.

The constitutions of many member states were amended during accession to the EU. For instance, the Croatian constitution specifies, among others, that the exercise of the rights ensuing from the EU acquis shall be made equal to the exercise of rights under Croatian law. Moreover, the implementation of Art. 20(2)(b) TFEU (on citizenship voting rights) required several constitutional modifications.

EU law should be applied directly. Supremacy and direct applicability is also emphasised in many constitutions (e.g. BE, IE, LT, MT, PL, PT, RO, SK, SI). For instance, the Belgian Raad van State/Conseil d'Etat clearly holds that the supremacy of EC law is based on and implies provisions of the EU Treaties that should prevail over Belgian constitutional law.

Therefore, as long as a legal basis for the EUBS is found within the Treaties (TEU or TFEU), and the equivalent EUBS is incorporated within EU (primary/secondary) law, there do not appear to be any problems of a legal-constitutional nature with introducing such a system in these member states. However, if the introduction of the equivalent EUBS involved an additional transfer of decision-making power to the EU, a qualified parliamentary decision might be required in some member states (e.g. SE).

Moreover, supranational funding is already envisaged in the laws of several member states (reported, e.g. by HR and RO, where “external funding” is mentioned and by SI for lifelong career orientation, employment exchange and active employment measures). In Spain, Royal Decree No. 1383/2008 mentions EU financial assistance as a financing source for the Spanish National Employment Service (SEPE). This assistance has so far been used to support active labour market programmes but it could be used to finance economic unemployment benefits in the future.

Nevertheless, when analysing the issue of financing the equivalent EUBS by a transfer from the member states to the supranational fund, national constitutions might require **amendments** (e.g. BG, IT, SI). Fewer changes might be required if the equivalent EUBS is

introduced by a regulation, which has general application, is legally binding in its entirety and directly applicable (Art. 288 TFEU).

2.1.1.2 *Influence of international treaties*

Some constitutions define the influence of international treaties over the national legal order. These may have priority over national (even constitutional) law and be directly applicable (provided they are sufficiently precise). Although the EU is a supranational organisation, its foundations lie in traditional international law, i.e. the founding EU Treaties (as well as all amendments to them and accession treaties) have to be passed (ratified) by the parliaments of every member state and, in some cases, voted upon in a referendum.

The Lithuanian Constitutional Court holds that in Lithuania the system of the parallel adjustment of international and domestic law is applied, based on the rule that international treaties are transformed into the legal system of a state (i.e. the incorporation theory). In some member states, the constitution dictates that national law has to be in line with international treaties (e.g. HU, SK) and the international treaties might be directly applied and have priority over domestic law (e.g. PL, SI), but they do not necessarily prevail over a national constitution.

2.1.1.3 *Fundamental social rights*

The equivalent EUBS would probably not come into conflict with existing fundamental social rights, since the national unemployment (insurance/assistance) system and individual entitlements would remain untouched by the introduction of the equivalent EUBS.

Many constitutions emphasise human dignity. For instance, Art. 23 of the Belgian constitution stipulates that “[e]veryone has the right to lead a life in conformity with human dignity. To this end, the laws, decrees and rules...guarantee, taking into account corresponding obligations, the economic, social and cultural rights, and determine the conditions for exercising them.” These rights include the right to social security. This article has introduced a so-called ‘standstill effect’ in Belgian constitutional law, interpreted by the Raad van State/Conseil d’Etat and the Grondwettelijk Hof/Cour constitutionnelle in a way that Art. 23 only prohibits a considerable lowering of social security rights without justification relating to the public interest. Similar observations apply to some other member states (e.g. SI, where lowering the standards of the right to social security may be against the binding international treaties and hence the Slovenian constitution). The equivalent EUBS is not likely to cause this kind of lowering of unemployment benefits and thus would not clash with and/or require an adaptation of constitutional law.

Likewise, the equivalent EUBS would probably not contravene the rights to social security, social insurance or social assistance, which are mentioned, together or not, in several constitutions. Some constitutions explicitly mention unemployment insurance (e.g. IT, MT, PL, PT) or unemployment benefits (e.g. RO). Others might not directly mention unemployment insurance as such, but its constitutional protection stems from the general social insurance guarantee (e.g. HR, SI). In some member states, unemployment protection may be deduced from constitutional provisions on rights-based clauses about social security and decent standards of living (e.g. CY).

Constitutions – and constitutional courts interpreting them – as a rule leave a wide margin of appreciation to the legislator in choosing the most appropriate measures for exercising social security and social assistance rights (e.g. LT, SI). Therefore, the equivalent EUBS, which would be additional to the national system, would not affect the legal nature of a social insurance system, including unemployment insurance (as mentioned by, e.g. AT). Also, the partial funding of unemployment benefits by taxes would probably not contravene the constitution. In some countries they are already subject to mixed financing, i.e. by contributions and taxes (e.g. FI, SI), and in many member states other social insurance branches are not entirely financed by contributions either (e.g. AT).

2.1.1.4 *Other constitutional principles and rules*

The equivalent EUBS would probably also be in line with other constitutional provisions, such as those enshrining the principles of the social state, social justice, equality, respect for human rights and the rule of law. Neither the democratic principle nor the principle of the rule of law would be affected if the basis of the financial transfer is clearly defined by law (as mentioned explicitly by AT as well as by HR and PL). Some constitutions expressly emphasise social solidarity (e.g. LT), a cornerstone of every (national or supranational) social security scheme, which would consequently also have to be enshrined in the equivalent EUBS.

The **constitutional equality principle** is one of the fundamental legal principles. It guarantees equal treatment in shaping and applying legal rules. Together with the principles of the rule of law and social principles/rights, the equality principle emanates from the principle of justice in the constitution. It is transposable to all dimensions of social security schemes, including benefits and funding. Accordingly, excessively progressive contributions might be ruled as violating the principle of equality of citizens before the charges levied by the state. However, this might not be the case with the equivalent EUBS, where contributions are paid by the member states. In this respect, the principle of proportionality might be even more important.

Even if the constitution dictates that it should be the **central national government** that is to organise and coordinate the social security system, specific benefits granted by a European fund are not excluded. Hence, the EUBS could be introduced without constitutional amendments (e.g. in IT, where the constitution stipulates that the social protection system is to be provided by “bodies or institutes set up or *integrated* by the State” (emphasis added) and in PT and SI, where the state organises and guarantees social security, but this could be also financed from EU funds).

Organisational questions might be raised in **federal states or states with strong regional and local self-governing units**. In Italy, for instance, there might be a question of whether to consult the State-Regions Conference and local authorities of Trento and Bolzano in relation to the legislation implementing the equivalent EUBS. Indeed, recently the Jobs Act, for the part that reforms the unemployment benefits system, has been treated as a subject of shared competence between the state and the regions rather than as an exclusive state competence. As a result, this piece of legislation has been submitted to the opinion of the Conference before enactment.

2.1.2 Possible conflict with certain aspects of the constitution

In some countries, the introduction of an equivalent EUBS would potentially come into conflict with defined aspects of constitutional law (e.g. DE, FI, FR, LU, NL), especially regarding the transfer of competence in the field of social security to the EU. In other words, **the constitutional compatibility of reducing the role of the state in matters of social security could be at stake in a number of countries.**

The constitution of the Netherlands, for instance, states that the Dutch legislator will provide rules concerning social security claims. The introduction of an (equivalent) EUBS might therefore require the Dutch legislator to change this constitutional principle in order to allow for a transfer of competences in the field of social security.

Similarly, in some member states the constitution provides that matters of social security have to be regulated by legislative acts (as opposed to administrative rules or decrees, e.g. in EE, FR and SI). Even if the purpose of the equivalent EUBS is only to extend the funding at the EU level, without affecting the existing national funding system, an amendment of the law might still be required (e.g. FR). Alternatively, the French constitution might need to be amended to allow for a transfer of competence to the EU in the field of social security.

In the same vein, in Luxembourg the constitution requires that fundamental principles pertaining to social security must be set by a law voted upon by the parliament. But the constitution might need to be amended to allow for a transfer of competence to the European Union in the field of social security. That being stated, if the introduction and operation of the equivalent EUBS means participation of the state in a European macroeconomic stabiliser, an amendment of the constitution would not be required.

In a number of member states, the **social state principle** might give rise to controversial debates on the constitutionality of the EUBS. Most notably in Germany, it is one of the basic principles of the constitution and it cannot be changed by the constitutional amendment process (i.e. the so-called ‘*Ewigkeitsgarantie*’ or ‘perpetuity guarantee’). Although it is not exactly defined, it implies the commitment and responsibility of the state for social justice and social security. It creates no direct rights for citizens, but has been used by the German Federal Constitutional Court to define, among other things, a right to a minimum subsistence. Since the principle of the social state implies the responsibility of the state for social justice/social security, this might create a conflict with the equivalent EUBS, in the sense that the responsibility of the state should not be reduced through the equivalent EUBS. The German Federal Constitutional Court has already argued that “European unification may not be achieved in such a way, that insufficient space is left to the member states for the political formation of economic, cultural and social living conditions”. This applies also to social security.

Transferring part of the funding to the EU level would require constitutional checks in Finland as well, where social security contributions are considered taxes. The EU has currently limited competence in relation to economic policy. The Finnish parliament has interpreted that a state’s revenues and expenditure are part of national sovereignty and that the transfer of competence to the EU level is very limited.

Depending on whether the establishment of the equivalent EUBS would be considered a transfer of powers from the national to the international level, a potentially serious obstacle

for the EUBS could arise in Denmark. This would not so much be the result of an incompatibility with the Danish constitution as the triggering of a rather heavy approval process likely involving a referendum. If the EUBS introduction were to be seen as giving away national competences, the relevant constitutional provision (§ 20, no. 2) indeed requires that a five-sixths majority of the Danish parliament approve the proposed measure, failing which – and provided a majority of the parliament is in favour – a referendum ought to be organised whereby a majority of the population can accept or decline the proposal. An argument against the triggering of this constitutional provision is that the NUBS would be essentially left unchanged by the equivalent EUBS. Even if the scheme implied giving away sovereignty, it could be argued as being covered by previous transfers stemming from the acceptance of the different EU Treaties. If, on the contrary, the system implied a substantially higher national payment to the EU, it could be argued that it is a change that would require a five-sixths majority vote or, in the absence thereof, a referendum.

2.1.3 Constitutional amendment process

In cases where **constitutional modifications** are required, the procedures are as a rule more demanding than regular legislative procedures. In some member states, several voting rounds in parliament are necessary (e.g. in LT, with at least three months between the votes), during which an absolute qualified majority, i.e. two-thirds of all members, might be required (e.g. in LT, LU (only in the first stage and in the second stage a simple majority suffices), MT, NL and SI). In some member states, the decision of both chambers of parliament is required to amend the constitution (e.g. in NL, where the Second Chamber has to be dissolved and new elections held in order to give the population the opportunity to pronounce on the proposed amendment). In some member states (e.g. DK, see 2.1.2, *supra*), a referendum cannot be excluded.

A specific situation exists in **member states without codified constitutions**, like the UK. The constitution in the UK is not codified in a single document and there is no special procedure for amending constitutional law. It develops through the enactment of ordinary acts of parliament, judicial decisions and the evolution of informal conventions for the operation of government. Any form of EUBS could thus be introduced through primary legislation. An additional issue is that the UK Parliament normally enacts social security legislation for Great Britain alone, while competence for Northern Ireland is devolved to the regional Assembly. Current proposals envisage the devolution of competence to adjust payment arrangements for universal credit to the Scottish Parliament; similar devolved powers might be sought in respect of the EUBS.

2.2 Limits of public debt and/or deficit concerning the equivalent EUBS

2.2.1 EU rules and national law

At the EU level, the Union's fiscal rules provide an important reference for the development of the national budget. According to Art. 126 TFEU and the Protocol to the TEU (No. 12) on the excessive deficit procedure, all member states should avoid a budget deficit and public debt above the thresholds of 3% of GDP and 60% of GDP, respectively.

The above-mentioned deficit and debt limits are also prescribed in the legislation of many member states. Through the Croatian Fiscal Responsibility Act, for instance, a special adjustment rule was enacted regarding medium-term budgetary objectives outlining the commitment to implement yearly reductions of the structural deficit equal to a minimum of 0.5% of GDP. Similar observations apply to a series of other member states (e.g. in IE, the Fiscal Responsibility Act; in LT and LV, the Fiscal Discipline Acts; in MT, the Fiscal Responsibility Act; in PT, the Budget Framework Act; in SK, the Constitutional Act on Fiscal Responsibility, with strict rules if the debt reaches certain thresholds; and in SI, the Fiscal Rule Act).

Interestingly, Portuguese law already tolerates the increase of expenditures for unemployment in the event of a recession, allowing for macroeconomic stabilisation to take place (e.g. through automatic stabilisers). In some member states, additional contributions to the EUBS would have to be agreed in the (new) Economic Adjustment Programme (e.g. until 2016 in CY).

In Belgium, the rather complex overall financial management would probably not be affected, since the contribution to the equivalent EUBS would be financed by the Belgian federal state.

In Sweden, the fiscal framework (at the state level composed of a surplus target for the public sector and an expenditure ceiling for the central government) does not pose any hindrance to the introduction of the equivalent EUBS. The contribution made to the supranational fund could be included in the expenditure ceiling. The budgetary margin also means that any extraordinary/unanticipated variations quarter by quarter (due, e.g. to experience rating or claw-back) could be accommodated.

Denmark has accepted the Fiscal Compact, and hence the structural deficit must not exceed 0.5% of GDP and the overall budget deficit must not exceed 3% of GDP. Therefore, every year the parliament decides expenditure ceilings for local, regional and state budgets. At the same time, spending on unemployment benefits is outside the scope of the ceiling (but still the 3% deficit could have an impact on the ability to finance unemployment benefits), as this is seen as a structural component. It is thus possible that an equivalent EUBS might have an impact on the overall level of the public sector deficit.

In Austria, the legislator defined by (simple) law a limit of 0.35% for a structural deficit. It is a self-binding limit, which could be modified at any time. In this context also an upper ceiling for public expenditures applying for a period of four years was determined. Nevertheless, there is a possibility of an exception by introducing variable limits in public branches that are subject to cyclical variabilities. This explicitly applies to expenditures pertaining to unemployment insurance. Thus, if the transfer process of the equivalent EUBS resulted in a violation of the legal limits for public expenditures, there would still be the possibility of introducing a higher limit by regulation of the minister of finance.

In Spain, further to Art. 135 of the constitution, the Organic Law 2/2012 sets the public deficit cap at 0.4% of GDP and the public debt cap at 60% of GDP. These caps will come into effect in 2020. In Hungary, state debt should not exceed half (50%) of GDP (according to the constitution). Hence, no such financial commitment may be undertaken in the course of implementing the central budget that would allow the state debt to exceed that limit.

2.2.2 Budget planning rules

Some national experts explicitly report that national budget acts prescribe that EU funds should be taken into account when planning national budgets. The equivalent EUBS, also depending on its variants (i.e. as a function of the definition of the trigger and the presence or not of experience rating, claw-back and debt-issuing possibility), would have an impact on the national budget.

Concerns have been expressed in national reports that during periods of high unemployment, the budget would already be under strain. Due to economic and labour market problems, state revenues would decrease, while at the same time the budget would be under pressure as a result of expenditure increases in the form of various social protection benefits. Increasing member states' contributions during periods of unemployment and economic depression based on a 'bad' experience rating, claw-back or debt-issuing criteria might adversely affect a member state's ability to obey the golden rule of fiscal policy. Some member states have enshrined this rule on balanced budgets in their constitutions (e.g. IT, SI).

Conversely, periods during which the country would be a net receiver from the equivalent EUBS would cause less concern, at least in the short term. In the long run, again the dimension of experience rating would have to be taken into account.

In Poland, transfers to the equivalent EUBS would be made from the state budget or the labour fund responsible for the national unemployment benefits. In order to reduce the public deficit, proposals for statutes prepared by the Council of Ministers should indicate the upper ceiling of expenses for a given task for the coming ten years (to be revised three years prior to the expiration of this period). This approach does not apply to contributions to the EU's own resources, mandatory contributions to international organisations or social benefits listed in the statute (where unemployment benefits are not covered). This is likely to create difficulties with flexibility if the claw-back mechanism is triggered.

In some member states, the social insurance budget is separated from the state budget (e.g. LT, SK). It should nevertheless be balanced, and the state might be responsible for covering possible losses. Still, all EU requirements regarding deficit or debt procedures might be applied (e.g. LT). In practice, this would mean that the social insurance fund is part of the state budget and the debts of the equivalent EUBS scheme would be counted against the EU public deficit objectives. This might have an impact on the calculations of the public debt and deficit. Similar arguments are made for other countries (e.g. ES, FR, NL).

In the Slovak Republic, social insurance is provided through the Social Insurance Agency rather than the 'state budget' itself. If the EUBS were to be implemented through the Social Insurance Agency, the agency's budget and transfers to it from the state budget would not be affected.

It would seem that some member states do not have in place any special rules (i.e. additional to those of the EU) concerning debt/deficit limits. This applies to both eurozone (e.g. EE) and non-eurozone countries (e.g. CZ, RO, UK).

2.3 *Concluding remarks*

The bulk of the member states would have **no serious constitutional difficulties** in introducing the equivalent EUBS, as long as a sound legal basis could be found in the EU Treaties. Most national constitutions regulate (explicitly or more implicitly) the relationship with EU law and, more generally, international law. The equivalent EUBS would probably also be in line with other constitutional provisions, such as those enshrining the principles of the social state, social justice, equality, respect for human rights and the rule of law. However, some constitutions may require that social security (including its financing) is regulated by legislative acts; these would consequently have to be amended, provided at least that the equivalent EUBS is regarded as falling within the scope of social security.

Subject to that last proviso, the only potential constitutional conflict that could arise in some countries would pertain to the transfer of the execution of certain sovereignty rights in social security (including its financing) to the EU. If that were the case, it needs to be considered that a constitutional amendment process might be lengthy and that the possibility of a referendum could not be excluded.

It could be argued that the **EU fiscal rules** provide an important reference for the development of national budgets. Fiscal rules in member states may take the form of finance pacts or balanced budget rules. In some member states, EU funds should be taken into account when planning national budgets, regardless of the question of whether social insurance budgets are included in the national budget.

It follows that in some member states, EU funds (in this case for and from the equivalent EUBS) could be seen as forming part of the national budgets, and payments for/from the equivalent EUBS would not be considered for the purposes of the budgetary balance. These payments/receipts would be subject to the rules of balanced budgets as well and the question of solidarity among the member states through the equivalent EUBS might be raised.

3. Feasibility of the genuine EUBS

3.1 General feasibility issues

3.1.1 Amendments required in the national legal orders

3.1.1.1 Possible constitutional amendments

Research carried out in the framework of this project showed that, even though the majority of the 18 EUBS schemes examined in the project can be introduced within the boundaries of the existing EU Treaties, some of the genuine EUBS options might require an amendment of primary EU law.⁹ This would have to be agreed by the member states and ratified in each of them. On this occasion, a detailed constitutionality check (including by the national constitutional courts) would be performed.

Similar to the equivalent EUBS, a majority of member states would have no serious constitutional objections to a genuine EUBS,¹⁰ at least as long as there is a clear legal basis at the EU level for the introduction of such a system (as mentioned by AT, BE, BG, CY, CZ, EE, EL, ES, HR, HU, IE, LT, MT, PT, HU, IT, LV, RO, SK, SE and SI; problems would be envisaged only if the genuine EUBS caused budgetary deficits during a longer period, or led to a reduction of the rights of the unemployed (UK)). Several national experts point out, from a constitutional point of view, that an EU regulation would be the optimal way for introducing the genuine EUBS.

In the Dutch constitution (as mentioned in 2.1.2, *supra*), it is emphasised that the Dutch legislator is in charge of guaranteeing social protection. If the constitution is followed in this respect, the genuine EUBS would not run counter to it. In some other member states, where unemployment protection is expressly mentioned by the constitution (e.g. PT), the genuine EUBS might be a way to reinforce protection in case of unemployment within the national social security system, even if in conjunction with the EU level.

In some member states (as mentioned by, e.g. AT, DE and MT, but the same could apply to other countries), whether the genuine EUBS meets the constitutional requirements of a ‘social insurance system’ could be questioned. First, a social security system is characterised by reciprocity and proportionality between benefits and contributions. A system that would allow for a person paying contributions not to receive any benefits could come into conflict with the constitutional principle of equal treatment and proportionality. Second, social insurance is characterised by the principle of solidarity. That means that the individual risk must not determine the cost of the contributions or the value of the benefits. These principles make the difference between a private and a social insurance system.

The basic EUBS would not come into conflict with the **principle of reciprocity** as an expression of the constitutional principle of equal treatment, as it would normally exclude the possibility that an eligible person paying contributions for this form of EUBS would not receive any

⁹ See R. Repasi, “Legal options and limits for the establishment of a European Unemployment Benefits Scheme”, Erasmus University Rotterdam, forthcoming.

¹⁰ Unless indicated otherwise, the term ‘EUBS’ in chapters 3, 4 and 5 refers to the genuine EUBS.

benefits upon materialisation of the risk. A constitutional problem could arise with the *top-up EUBS*, however, whose contributors may not be entitled to any benefits upon becoming unemployed, even if they satisfy the entitlement criteria. At the same time, it could be argued that the circumstances in which the top-up EUBS awards benefits are objectively and uniformly defined and are a function of the NUBS provision applying to all insured in the same fashion. Moreover, as mentioned in the Austrian report, given that the limits of the principle of equal treatment are not exactly defined, the issue of the compatibility of the top-up EUBS with the Austrian constitution on this point cannot be fully assessed.

As regards the **principle of solidarity** (directly or indirectly mentioned in the constitutions of several member states), one may wonder whether the experience rating complies with this principle in that it has the effect of having insured EU citizens pay a different cost for their unemployment insurance depending on the risk of unemployment. This is an element that is typical of private insurance and not social insurance. Yet it could be pointed out that the experience rating is just one of many elements defining the level of the contributions and that it is dependent on the past unemployment risk of the country as a whole, as opposed to individually insured persons. Seen from that perspective, as noted by the Austrian expert, it could be argued that the experience rating would be in line with the constitution.

In Malta, the (basic or top-up) genuine EUBS would probably not be in conflict with Art. 17 of the constitution (“Social assistance and insurance”), since in a certain sense it provides ‘social insurance’ in case of involuntary unemployment.

Generally, in many member states, similar constitutionality arguments as for the equivalent EUBS (as presented in 2.1, *supra*) may apply to the genuine EUBS as well (e.g. BE, CY, CZ, DK, FI, HU, IT, SK, SI). When it comes to the considerations related to giving away powers in the field of social security (see 2.1.2), these would apply with more force in respect of the genuine EUBS, whose introduction entails that substantive social security rules would be set at the EU level. As a result, the constitution might need to be amended to allow for such a transfer of competence in favour of EU institutions (e.g. in LU and FR, although the top-up EUBS might not raise these questions due to its topping-up nature, and in PL, where public revenues, i.e. taxes and contributions, should be determined by national legislative act). Similarly, in Denmark, the constitutional provision requiring a five-sixths majority in parliament or alternatively a referendum, would likely be activated.

3.1.1.2 Possible legislative amendments

In all member states, the **national legislation** would have to be adapted to the genuine EUBS. Such adaptation would be preferable or even necessary even if the EUBS were introduced by way of directly applicable EU regulation. Most notably, the legislative acts concerning unemployment insurance (which may or may not be contained in the general social security regulation) and labour market regulation (including that concerning employment services) would have to be adjusted in order to clarify the relationship between the EUBS and the NUBS.

Moreover, some other legislative acts would have to be amended, such as those governing social security contributions and social assistance. Possibly laws pertaining to tax authorities (in respect of those countries where contributions are collected by them), income tax and budgets would require adaptations as well.

In some member states, a major reform of the social security legislation might be embarked upon. For instance in Luxembourg, the EUBS introduction could be an opportunity to create a classic unemployment insurance scheme, which would be integrated into the Social Security Code (from the Labour Code, where unemployment allowances are regulated at the moment).

In order to provide national legal/systemic coherency in the social security field, other laws may need to be amended. In some member states, labour codes might require amendment too (e.g. PT).

In several member states, unemployment insurance is not primarily based on legislative acts. It may be governed by **administrative decrees** (e.g. in BE and IT, laws and administrative decrees in PT) or subsidiary legislation (e.g. MT). In Belgium, for example, unemployment insurance is predominantly regulated by a royal decree and an implementing ministerial decree. However, it cannot be excluded that laws would also have to be amended (e.g. when it comes to increasing social security contributions). The same goes for Portugal with its governmental statutory decree and its laws (the labour code, social security and budget laws).

It may be expected that amending the legislation could be quite time-consuming, also due to the several phases of the **legislative process** (e.g. AT and SI) and consultation of the social partners (e.g. HR, NL, LT). Even though it is difficult to predict the time span, which might depend on a range of factors, including the complexity of the issues (e.g. in IE and in SI, where there is a regular and faster legislative procedure that may be used if sufficiently substantiated), the legislative amendment procedures could take, according to the national experts, an estimated several months¹¹ up to a year¹² or more.¹³ If the national government is backed by a strong parliamentary majority, legislative changes might be adopted in a shorter period; this might be the case in Hungary.

As mentioned in the Dutch report, next to the time needed for the legislative process, account should be taken of a rather lengthy administrative follow-up period for establishing the concrete implementation of the EUBS.

In some member states, the **role of the social partners** should not be neglected. They could be consulted before the commencement of the legislative process or during such a process.¹⁴

¹¹ For example, in AT and BE, this would be the case for the legislative/regulatory amendment process; in EL from three to six months; in DE and the UK ca. four months, but it could be longer, if more comprehensive amendments were required; in SK as a rule from four to five months; in DK up to six months; in ES at least six months; in EE from six to eight months; in LT from seven to eight months; and in BG from six to nine or possibly twelve months.

¹² This period would apply to, e.g. LU, LV and PT, with the exception of a statutory decree, which could be amended in a shorter period.

¹³ For instance, in CZ the period ranges from 12 to 18 months or possibly longer; in NL at least 18 months; in PL from 18 to 24 months, save in the case of urgency, and several months of *vacatio legis* should as a rule be added; and in SE from 6 months to 24 months or even up to 4 years.

¹⁴ Notable examples here are the following countries: AT, where social partners have the right to give official legal statements to a legislative draft submitted by the government; DE, where social partners take part in the hearings of the respective working groups of the parliament; FR, NL and ES, where they have to deliver a non-binding opinion; PL, where they are mandatorily consulted; and SI, where social partners are represented in the second chamber of the parliament, which has the right to a legislative veto.

Social partners might even play a central role in administering the NUBS, as is the case in France and in the Scandinavian countries.¹⁵

Related to this, it should be noted that in some countries collective agreements governing unemployment insurance would have to be modified as well. This would hold notably for France, where the concrete implementation of the scheme is set by collective agreements at the cross-industry level. In particular, the collective agreement determines the level of contributions and all rules regarding access to benefits: entitlement, amount, duration, etc.

Conversely, in several member states, social partners (or other bodies/groups) do not have to be consulted (e.g. EL, HU, MT).

Not only social partners, but also **units of local or regional governments** (e.g. in Portuguese regions and municipalities) or bodies involved in the operation of the system (e.g. the Social Insurance Institution in Poland) might have to be consulted. In some member states, it is usual to conduct compulsory surveys and reports (e.g. FR) or public consultation before the adoption of legislative acts (e.g. MT, SI).

In many countries, the same legislative procedure applies to every amendment or modification, however minor. In other words, legislative arrangements that would be **more flexible** are not commonly provided for in the member states, also due to the rule-of-law principle prescribing, among others, legal certainty and foreseeability of behaviour (e.g. AT, CZ, EL, IE, MT, PL, SK, SI).

The same holds true even in cases where unemployment insurance is governed by a royal decree and a ministerial/ governmental decree (e.g. BE, PT). In Spain, a royal decree law could be passed in a rather short timeframe, but it would have to be ratified by parliament in 30 days or be sent to parliament as a government bill. In Romania, resort could be had to emergency ordinances or ordinances of the government that subsequently should be submitted to the parliament for approval. Ordinances could also be used in France. In Luxembourg, minor changes could be implemented by a grand-ducal regulation, which does not have to go through the normal legislative process.

In some member states, there may be less need for legislative amendments. For instance in Hungary, it seems to be a common legislative technique for legislative acts to give authorisation to the government or to a minister to regulate some topics by way of other forms of legislation, i.e. to specify some legislative issues by means of a decree (instead of an act of parliament).

Elsewhere, it could be less demanding to modify certain values of unemployment benefits. Subsequent modifications of the values of the EUBS dimensions would require legislative amendments, unless it is already established in the law that the said values are going to be set/adjusted annually by the finance legislation (e.g. ES and PL).

For some member states, the national legislation could include a general legal clause, such as 'unless otherwise regulated in EU law' as a type of flexible legislative arrangement (as reported, e.g. by HR and SI). In others, in order to avoid legislative amendments, flexible

¹⁵ For a discussion about the role of the social partners in the design and the administration of the NUBS, see Eurofound, "Social partners' involvement in unemployment benefit regimes in Europe", Dublin, 2013.

legislative arrangements called ‘mobile reference to EU provisions’ (e.g. as provided in IT in the constitutional reform of 2012) could be used.

3.1.2 Amendments required in the national organisational and financing frameworks

In member states where the NUBS is based on the social insurance principle, the influence of the genuine EUBS on the national organisational framework may be rather limited (e.g. DE). Social insurance, as a rule, is a competence of the central (or federal) state, also exercised through district, regional and local offices/bodies (e.g. AT, BE, EE, ES, FR, HR, LT, IT, LV, RO, SK, SI). In other member states, the governmental/ministerial department might be entrusted with governing unemployment insurance with the assistance of regional units/branches (e.g. CY, CZ, HU, IE). No major barriers are to be expected in either case.

Increased professional autonomy and organisational independence represent important issues to be considered before introducing the genuine EUBS. The parallel operation of the NUBS and the EUBS would be a highly complex task for which additional skills would be required. It is not quite certain that the currently integrated, and institutionally not fully self-standing, government employment agencies in some member states constitute the best possible institutional setting for it.

Also for reasons of complexity, **information exchange and communication** between the NUBS and the EUBS would have to be regulated and well maintained in practice (e.g. as emphasised by EL, IE, LV, LT, RO, SK and SI).

To this end, **more staff** would have to be engaged in the existing national bodies or at least compensation for the increased complexity and administrative burdens would have to be provided (as mentioned by, e.g. BE, CZ, EL, ES, IE, HU, LV, RO (especially in local agencies) and SI). Yet, the requirement for additional staff might clash with governments’ efforts to reduce the number of civil servants (e.g. in EE). Anyhow, both systems, i.e. the EUBS and NUBS, would have to be coordinated and staff well trained in both and their interaction (as mentioned by, e.g. MT and SI). A designated person/department could act as an EUBS national contact point.

It appears that in all member states it would be best to use the **existing structures** currently responsible for the NUBS also for administration of the EUBS. For instance, in Denmark, reimbursing the state-recognised unemployment insurance funds, controlled by a state body, would seemingly be the easiest way to implement the EUBS and avoid complications for the administration of the Danish unemployment insurance system. Even if the existing structures were responsible for administering the EUBS, its introduction seems likely to create significant administrative challenges for the institutions involved (e.g. ES, MT, SK, SI), in addition to increased technical and administrative costs (e.g. PT).

Incidentally, it might be argued that in some cases the top-up genuine EUBS could be more administratively challenging than the basic one (see 3.3.2, *infra*).

A greater impact of the genuine EUBS might be expected in respect of those NUBS where larger disparities (compared with the EUBS) in financing, administration and provision of benefits exist (e.g. DK, FI, IE, SE, UK). For instance in the Scandinavian countries, the main administrative pressure would be placed on the unemployment insurance funds. The

unemployment fund system is connected to the trade unions and the social partners play a central role in agreeing on the level of unemployment benefits and their financing (see 3.2.1, *infra*).

In several member states, the **prevailing concept** of providing security to the unemployed might differ considerably from that upon which the genuine EUBS would be based. Notably, the purpose of conservative unemployment insurance schemes after which the EUBS is modelled – i.e. to protect the claimant from a dramatic fall in income and to allow sufficient time to seek employment at or close to the previous level of remuneration – differs fundamentally from that of the UK's liberal unemployment benefits scheme, which aims to prevent severe poverty while providing a strong financial incentive and obligation to seek any employment. As operational consequences of this policy clash, a larger number of administrative bodies/institutions would have to be adjusted to the genuine EUBS, more staff employed and trained, and the entire ICT system considerably adjusted.

In certain member states, the genuine EUBS might act as a (more generous) prolongation of the NUBS (e.g. HU). In these more workfare-oriented member states, a kind of perverse effect of the EUBS might be observed. The EUBS could offer more generous benefits from the fourth month of unemployment than what is provided for by the NUBS in the first three months. This would be practically, administratively and on a personal level confusing, politically sensitive and ineffective also from a social policy point of view. Moreover, there would be hardly any distinction between the basic and top-up EUBS. They would both present a top-up of the NUBS concerning its duration, and at the same time they would both be basic, in the sense that there would be nothing to be topped up, at least insofar as the level of the NUBS is concerned. (See also 3.2.4.2.4 and 3.3.2, *infra*).

There is a sensitive political debate on the **level of contributions** in some member states (e.g. in AT, EE, ES, LT, SK (where unemployment insurance is currently in surplus and paying for pensions, which might lead to cuts in the NUBS) and SI), which could mean that new/higher contributions on account of the EUBS would probably be contested in the political discourse. The same might apply to the distribution of contributions between employers and employees (e.g. in CY, CZ (where unemployment insurance contributions as such do not exist), FI, FR, LU and PT).

In other member states, social security contributions are collected by tax authorities. Hence, operational barriers might arise more at the organisational level, i.e. how to set up a coherent system of collecting contributions and how to administer it (e.g. CZ, EE, EL, LV, NL). This would especially be the case if contributions were paid from the same basis in all member states, which might not coincide with the contribution basis in the existing NUBS.

Elsewhere, contributions to the genuine EUBS could be collected by the existing bodies without significant difficulties or administrative burdens (e.g. by the social security fund in ES).

Various positions of **different interest groups** (notably social partners) should not be neglected and may potentially present a barrier to the introduction or operation of the EUBS. For instance, employers' organisations might object to experience rating, trade unions might oppose the payment of contributions by employees (e.g. HR) or the fact that paying higher contributions would not result in proportional benefits (e.g. SI). Also in other countries, where only employers pay unemployment insurance contributions (CZ, IT, LT, NL, PL), introducing

workers' contributions for the genuine EUBS might be ill-seen and controversial. Workers and trade unions might perceive unemployment as something for which employers have to bear responsibility, since it has not been caused by workers, but rather by the economic cycle of the sector or by the management of the company.

Also in France, one of the main difficulties when introducing a genuine EUBS would concern the social partners. In the current system, they play a central role by determining the key elements of the scheme (contributions, entitlement rules, benefit amounts, etc.) and by managing the Unédic (a national body under the authority of the state). The introduction of the EUBS would substantially detract from their power. From a technical point of view, it would not be a difficulty, but politically speaking this would probably be a source of conflict.

3.2 Feasibility as regards the different dimensions

3.2.1 Personal scope

The scope of (direct) beneficiaries of any social security scheme is determined in large part by the conditions for entitlement to benefits, such as the qualifying period, age limits and means tests. Prior to that, however, a determination is needed of the categories of persons who are covered by the scheme and may potentially, i.e. upon satisfaction of the entitlement conditions, receive benefits. The personal scope of social security systems is typically determined by reference to such factors as the pursuit of an economic activity, the type of activity pursued (employed or self-employed) or residence. Specific groups may be additionally covered or, conversely, excluded from coverage. Furthermore, the relevant legislation may permit certain groups to insure themselves on a voluntary basis.

The personal scope of the genuine EUBS is not explicitly determined in the terms of reference, although the definition of several dimensions (notably 'replacement rate' and 'capping') seems to indicate that the supranational scheme extends first and most importantly to those carrying out an employed activity. Moreover, it naturally follows from the rationale of the EUBS that the employed population is covered mandatorily. If the EUBS personal scope were indeed so defined, it would be broadly in line with the mainstream approach adopted in the NUBS – a consistency that would be welcome considering that both systems are to operate in close interaction.

That notwithstanding, a closer inspection of the scope *ratione personae* of the different NUBS reveals significant diversity and particularity, as exemplified in the following discussion.

The coverage of broad groups, such as the employed, may be subject to specific adjustments in both directions. For example, some countries additionally cover various specific groups of non-employees that are assimilated into the group of employed persons, such as artists, members of cooperatives and homeworkers. (e.g. IT). In contrast, some persons categorised as employees may be excluded, such as workers holding more than 50% of the equity share of the employing company (e.g. ES) or domestic workers. In a number of countries, employees whose working hours (e.g. LU) or whose earnings (e.g. AT, IE, PL) do not exceed a certain limit are not covered.

(Tenured) civil servants are excluded from coverage in some countries (e.g. in BE, save exceptions, and DE), but come within the personal scope of unemployment insurance in many others (e.g. in EE, HR, IE (if recruited after April 1995), RO and SI).

One of the most notable differences in terms of the NUBS personal scope relates to **coverage of the self-employed**. They fall outside the scope of unemployment insurance in the majority of member states, even though some countries (AT, DE, RO, SK) allow the self-employed to insure themselves on a voluntary basis. The self-employed are covered by the general unemployment insurance, alongside employees, in the Czech Republic, Finland, Croatia, Hungary, Luxembourg, Poland, Slovenia and Sweden. Some countries have in place specific out-of-work benefit schemes for the self-employed, such as Italy (applied to the limited category of the single-contractor self-employed) and Spain (a voluntary scheme not generally considered part of social protection *stricto sensu*).

Several countries enable **specific groups to insure themselves voluntarily** against the risk of unemployment. This option is typically open to the self-employed, as seen above, but also other categories may be covered, such as certain persons working abroad (e.g. CY, RO, SI) or informal caregivers (e.g. DE). More fundamentally, the voluntary character of the insurance is a key characteristic of Scandinavian NUBS, which are largely administered by trade union-linked funds. In these so-called ‘Ghent systems’,¹⁶ entitlement to earnings-related unemployment benefits is contingent upon voluntary membership of such an unemployment fund; non-members may be eligible for a flat-rate basic allowance (SE, FI) or should resort to social assistance (DK).

It is apparent from this brief overview that the personal scope of national systems is characterised by a great deal of specificity and cross-country variety. This is liable to complicate the introduction of the genuine EUBS. In the absence of a definition of the personal scope of the EUBS in the terms of reference, national experts were advised to consider, for the purposes of this feasibility study, that the supranational scheme extends to the same groups as those covered by their national system. An alignment of the personal scope of both systems seems to present the fewest barriers, in both legal and operational terms: the EUBS would be applied to groups in respect of whom unemployment insurance is already being administered and, consequently, the legal framework and operational capacity is already in place.¹⁷ Still, it would require that the EUBS defines its dimensions (in particular the replacement rate and capping) in such a way that they can be applied to self-employed persons (albeit at a later stage), notably for those countries which include this category in the personal scope of their NUBS. Moreover, the boundaries of this analogous application would need to be established. For instance, should categories currently permitted to acquire voluntary insurance in the NUBS be offered the same possibility in the EUBS, or should the European scheme only be open to those who are compulsorily covered by the NUBS? In addition, the articulation with the Ghent systems would need to be sorted out: Would the EUBS personal scope be based on that of the Finnish and Swedish basic allowance, and thus cover the entire active population,

¹⁶ These are schemes where responsibility for administering unemployment benefits is held by trade unions rather than public authorities.

¹⁷ Note, however, that as shown below under 3.2.2.2, this does not mean that the same persons will be eligible for benefits under both the EUBS and the NUBS, due to the operation of the entitlement conditions.

or only those persons who opted to affiliate with an unemployment fund? For Denmark, would it imply that EUBS coverage is voluntary for all? Whatever the replies to these last questions, it seems that the introduction of the EUBS would mean a significant overhaul of the Scandinavian NUBS and, by extension, labour market organisation. Finally, the analogous application would necessarily entail that EUBS coverage would differ to a considerable extent from country to country. But this is not, by itself, inconsistent with the rationale of the EUBS nor would it affect its sustainability, given the fact that its scope would be underpinned by a corresponding contributory basis. At the same time, according to some experts, the diverse personal scope might be vulnerable to legal challenge by reference to the principle of equality of treatment on the basis of nationality.

The opposite solution, whereby the EUBS personal scope is commonly defined, would inevitably render the operation of the EUBS, depending on the definition adopted and the country concerned, more complex and imply potentially fundamental changes to the national systems, regardless of the issue of voluntary insurance. To avoid the intricacies resulting from (seemingly) minor discrepancies in the personal field of application of both systems, countries may find themselves compelled to align their system with the supranational one, thus amending elements that may disrupt the coherence of their overall social security system (e.g. earning floors that apply throughout different branches in some member states) or may be tempted to restrict access to their national scheme, thus levelling unemployment protection downwards. National experts of two countries where the NUBS extends to self-employed persons (i.e. SI, PL) have indicated that this broad coverage might also be motivated by compliance with the constitutional principle of equality between different (yet comparable) groups of economically active persons. This would suggest that possible legal problems could arise in these countries if the EUBS were to cover only employed persons.

3.2.2 Entitlement conditions

Coming within the personal scope of a social security scheme does not suffice for a person to be entitled to benefits upon occurrence of the relevant social risk; in addition, one must satisfy the conditions for benefits entitlement laid down for the scheme.

This section examines the conditions under which entitlement is granted to the EUBS as well as the interaction with the corresponding conditions applicable in the different NUBS. The focus is on the qualifying period (3.2.2.1), which is the only EUBS entitlement condition that has been determined by the terms of reference. Subsequently, attention is paid to a range of other requirements that typically condition the entitlement to unemployment insurance benefits (3.2.2.2).

3.2.2.1 *Qualifying period*

The qualifying period refers to the period of previous activity or insurance, assessed within a given reference period, that must be completed in order to qualify for unemployment benefits. In the EUBS, the qualifying period has been set by the terms of reference as three months of employment out of the last twelve months in the baseline option, while the two variant values are determined as three months' employment out of the last six and twelve months' employment out of the last twenty-four, respectively.

For the purposes of the feasibility study, the following modalities of the qualifying period were determined by the contractor and validated by the European Commission:

- only months of actual employment are taken into account for the EUBS – there are no assimilated periods;
- the previous spells of employment need not necessarily be consecutive and are assessed in full-time equivalents (FTEs);
- no exemptions or preferential arrangements for specific groups/situations apply; and
- the EUBS qualifying period needs to be completed for every unemployment spell; interruptions of the unemployment, even of a short duration, have the effect of setting the ‘counter’ at zero.

In the following subsections, we first investigate how the EUBS qualifying period relates to those that are applied in the NUBS, and note some consequences arising from that comparison. Subsequently, we take a closer look at some particular aspects of the qualifying period that may create barriers to the introduction of the EUBS.

3.2.2.1.1 Overall comparison and impact on the scope of persons covered

The definition of the EUBS qualifying period is crucial in the sense that it directly impacts the scope of people (out of those falling within the personal scope) that may benefit from the supranational scheme. The assessment of the stringency of the EUBS qualifying period in the light of its national counterparts therefore seeks to elucidate whether the EUBS reaches more or fewer people than the NUBS.

It should be noted from the outset that the comparison is complicated due to the **wide variety of solutions adopted in the NUBS**. Below, we will come back to the different periods and time units that may be used at the national level, as well as to the various preferential arrangements that often apply. Here, it must be highlighted that a minority of member states differentiate the qualifying period according to the age of the claimant (AT; SI, with a less stringent qualifying period for the young unemployed; FR, with a longer reference period for those aged over 50; and BE, with a qualifying period that increases with age in three categories). Further differentiation considers whether s/he is a first-time claimant (in AT and in EL, with a more stringent, additional condition respectively for the first claim) and his/her profession (in FR, which has more flexible rules for artists). Besides this regulatory diversity in the NUBS, the question as to which system is more or less stringent is difficult to answer because there are two variables in the qualifying period, i.e. the basic period of activity/insurance and the reference period within which compliance with the former is to be assessed. It is clear that in general, the shorter the basic period and the longer the reference period, the easier is the access to the scheme. However, whether an insured person is better off with relatively short basic and reference periods or, conversely, fairly long basic and reference periods, really depends on the individual circumstances. In this respect, it may also be noted that some countries provide for double qualifying periods, either alternative (EL, IE, SE) or cumulative (IT), while others require, in addition to the completion of a basic period within a specific reference period, an additional ‘lifetime’ period of employment or insurance (IE, LV, MT).

That being stated, it is apparent from a **comparative assessment** that the employment requirement of 3 months for the EUBS (in both the baseline and variant 1) is downright short

in relation to the NUBS, and equalled only by Italy (with 13 weeks of contributions, albeit with an additional requirement of 30 days of effective employment). The bulk of the member states provide for basic periods of between 6 and 12 months, while a few require shorter (EL, FR and MT, but with a lifetime requirement) or longer periods (BE, for those aged over 36, LT and SK, an outlier at 24 months). The EUBS reference period, by contrast, with 12 months in the baseline (and a fortiori with 6 months in variant 1), is (much) shorter than those in the large majority (all) member states. Whereas a few countries stipulate reference periods of up to 12 months (CY, LV, LU, NL, SE), most of them opt for 24 or 36 months or even longer (e.g. BE for those aged over 50, IT and ES, an outlier at 72 months).

The picture that emerges from this comparative assessment is one of an EUBS (in baseline and variant 1) that, in comparison with the national systems, requires a very short employment period within a short (and even extremely short, in variant 1) reference period. It seems, moreover, that variant 2 ties in best with the average condition in the NUBS, to the point that it effectively corresponds with the state of the law in five countries (AT, CZ, DE, PT, RO).

Whether the EUBS is more or less stringent than the NUBS differs from case to case. It is, for example, very well possible that a Lithuanian insured person satisfies the national qualifying period of 18 months' insurance in the last 36 months while at the same time failing to comply with the EUBS baseline qualifying period; the opposite holds true as well. This implies that the people covered by the EUBS are not necessarily the same as those qualifying for the NUBS – some (probably most) will qualify for both, while others will only be eligible for the EUBS or only for the NUBS. It is clear that this has significant operational repercussions, to which we will come back later on. Consistent with its rationale of serving as a shock absorber for cyclical short-term unemployment, the EUBS focuses on people with a recent, even if small, work record. In contrast, the NUBS may be based on a different logic, aimed first and most importantly at coping with structural, long-term unemployment, and hence subjecting entitlement to a more significant history of contributory activity, even if it has taken place in the more distant past.

In the same vein, the EUBS will in general also be more favourable towards young unemployed persons having completed only short employment periods – notwithstanding the fact that some countries, as shown above, provide for less demanding qualifying periods for young persons (AT, SI). On the other hand, the EUBS will not assist unemployed persons without any work history, i.e. graduates or newcomers to the labour market in search of employment. A limited number of countries have enacted specific measures in their NUBS to cater for this group (BE, DK, LU, RO).

While it is clear from the above that assessing whether access to the EUBS is more or less restrictive than to the NUBS varies according to the country and the individual circumstances, it is nevertheless possible to make a general statement in that respect by reference to an objective criterion, which is the proportion of the reference period that needs to be covered by a period of activity or insurance. In the EUBS baseline option, this ratio equals a mere quarter, which is less than in all but five countries (EL, FR, FI, IT, MT); **therefore, it could be said that generally the EUBS is less stringent and thus in principle qualifies more people.**

3.2.2.1.2 ‘Preferential arrangements’

The conclusion about the relative leniency of the EUBS qualifying condition needs to be put into perspective, considering various preferential arrangements that typically apply in the NUBS, and which have the effect of easing access to the system for people in specific circumstances who might otherwise not (yet) fulfil the qualifying period requirements.

It is very common for the NUBS to recognise certain periods during which no actual (self-) employment was carried out and/or no social security contributions were paid by the insured person/employer as basic periods of (self-)employment/insurance for the purposes of establishing entitlement to unemployment benefits. Such periods are then ‘assimilated’ or contributions are ‘credited’. The nature of these **assimilated periods** differs among the countries and their award may be contingent upon additional conditions. Typical assimilated periods are those of child-rearing, periods of receipt of certain income-replacement benefits (e.g. sickness benefits and maternity/paternity benefits), periods spent caring for a person reliant on care, various forms of subsidised employment and holidays. Likewise, and sometimes in addition to assimilated periods, countries may provide that certain periods **extend the reference period** (whether up to a certain maximum), hence making it easier for the person concerned to fulfil the qualifying period. Common examples are periods of military service, participation in activation measures and – notably when these are not considered assimilated periods – child-rearing. The fact that these arrangements would not apply in the EUBS would make it liable to affect certain groups disproportionately. Bearing in mind that many of these arrangements are granted on account of caring/nursing/rearing activities, women would stand out as a group that would be put at a disadvantage. The social consequences, and related to that, the political sensitivity associated with a possible detraction from these widespread arrangements has been highlighted in several national reports. In Sweden, for example, where periods of receiving parental cash benefits are considered for up to two months of the qualifying period, available data indicates that over 95% of all benefit days (i.e. a maximum of 480 days per child) are used, suggesting that excluding these days would have a non-trivial effect on coverage. A few experts, moreover, have drawn attention to the concern that reducing the recognition of defined assimilated periods might raise issues of legal compliance, notably with legislation prohibiting discrimination on grounds of gender or disability.

As mentioned above, the EUBS – supposedly – does not provide for **maintenance of rights** in the event of (short) interruptions of unemployment. This is in contrast to a significant number of NUBS, where arrangements are in place to make sure that persons who were drawing unemployment benefits prior to finding work and who again become unemployed may resume receipt of unemployment benefits without having to fulfil a new qualifying period. Typically, this arrangement is time-conditioned, in the sense that the employment period should not exceed a given duration (e.g. IT, six months) or that the reapplication should occur within a certain period from the cessation of the previous benefit period (in BE, three years and SE, twelve months), and is subject to the initial benefit entitlement not being exhausted.¹⁸ Maintenance of rights is designed to encourage unemployed people to take up (even short-term) employment, and its non-recognition by the EUBS would thwart this objective and limit

¹⁸ Earlier it was pointed out that some countries lay down less stringent qualifying-period requirements in the case of subsequent claims, even if the entitlement has been exhausted.

the effectiveness of active employment measures. This is especially problematic in countries with a high rate of temporary employment contracts¹⁹ or in countries with rigorous activation policies, requiring jobseekers after a certain period to accept any work (e.g. NL, UK).²⁰

Finally, it should be noted that calculation of the employment period in the EUBS – again by hypothesis – in FTEs might make it harder for **part-time workers** to qualify for benefits compared with full-time workers and, indeed, compared with the situation in many NUBS. It is quite common for NUBS to assess completion of the basic period of activity or insurance regardless of the number of working hours, albeit in some cases subject to certain conditions (e.g. in LU and FI, with a floor of 16 and 18 weekly working hours, respectively), or otherwise to provide for arrangements departing from a simple imposition of the *pro rata temporis* principle (e.g. DK). The FTE requirement in the EUBS, even if present in some NUBS (e.g. SI), makes it vulnerable to legal challenge on the basis of equality legislation, particularly – for it is a statistical fact²¹ that part-time employment is mainly undertaken by women – gender equality rules. Yet in the EUBS, the absence – supposedly – of a minimum working time requirement might actually render it more accessible for certain groups, including part-time workers, than NUBS whose legislation does incorporate such a requirement (in SE, where it is at least 80/50 hours per month, depending on work history during the last year).

The above paragraphs go to show that certain parameters of the EUBS qualifying period would need to be adjusted, if not for reasons of social justice then for labour market efficiency and legal compliance. Making provision for the analogous application of the national legislation pertaining to the aforementioned arrangements may be politically more acceptable, and more feasible from an operational point of view, than laying down harmonised rules. After all, it concerns issues that touch upon the core of the national schemes and which may be correlated with other parts of the social security system. At the same time, one should be aware of the risk of moral hazard associated with the reality that national rules would be able to determine the access modalities to the EUBS. Also, the impact of these rules on the respective systems should be studied in detail. Their interrelation may give rise to remarkable situations – for example, the recognition by several member states of periods of receipt of unemployment benefits as assimilated periods could result in the situation that drawing NUBS benefits during the first three months of unemployment could be sufficient for people to qualify for EUBS benefits.

3.2.2.1.3 Operational issues

Above we pointed to the **increased administrative burden** that would be placed upon national authorities charged with the parallel operation of two unemployment insurance systems,

¹⁹ In Spain, 91% of the new labour contracts signed in the first five months of 2015 were temporary contracts (www.empleo.gob.es/es/estadisticas).

²⁰ As mentioned in the UK report, “[f]or an EUBS claimant to accept a short-term, low-paid position could run counter to his or her medium-term financial interests if the EUBS claim cannot be resumed thereafter, but refusal of the position could result in a financial sanction if...conditionality mirrors that for national unemployment benefits”.

²¹ See Eurostat, “Persons employed part-time – Total” (<http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00159&language=en>).

whose scope of beneficiaries would only partially overlap as a result of varying qualifying-period modalities.

Besides additional complexity, account should also be taken of the **larger volumes of caseloads** generated by the relative flexibility of the EUBS qualifying period requirement. More cases may lead to increased pressure on staff and facilities in entities awarding unemployment benefits. Yet as mentioned in some national reports (e.g. MT), to the extent that the calculation and payment process is heavily automated, this should not lead to significant operational problems. Still, augmented client numbers would be felt immediately by the entities in charge of monitoring the conditions for retaining the right to unemployment benefits – with some national experts adding that public employment services are already under strain because of the high unemployment figures (e.g. ES) and/or recent budget cuts (e.g. BE). At the same time, it can be expected that part of the extra caseload would represent persons who otherwise would have been drawing assistance-based benefits. The fact that the administration of these (means-tested) benefits is more resource-intensive could partially offset the impact of an increased number of beneficiaries/clients, notably for countries operating an unemployment assistance scheme through the same organisational framework.²²

Finally, we should mention a number of **issues of a more technical nature** that might create operational difficulties when introducing the EUBS. One of these refers to the **time units** in which qualifying periods are expressed. The EUBS, along with around a third of the member states (e.g. BG, CZ, RO, SI), uses months; other countries count in weeks (e.g. AT, IT), days (e.g. BE, HU) or hours (DK), thereby often fixing the conversion to another unit (e.g. a week or month counts as x days). This problem should not lead to insuperable barriers and might be solved by agreeing upon period conversion rules. The rules contained in Art. 13 of Regulation (EC) No. 987/2009 (i.e. the implementing regulation on social security coordination) could serve as a model.²³

The differences concerning the **type of the (basic) period** to be completed should also be taken into consideration. The EUBS refers to periods of employment, whereas the majority of member states use the broadly similar, yet not identical concept of ‘periods of insurance’ or ‘contribution payments’. The latter may disregard certain (e.g. low-paid) employment or include certain contributory periods during which no employment is carried out. In the Czech Republic, insurance in a specific branch, i.e. pensions, is required. While it could be realistically (and pragmatically) envisaged to have countries apply their national definition of ‘periods’ also for the EUBS,²⁴ this would seem more difficult in relation to the few countries that subject eligibility for the NUBS not (only) to the condition of having completed a qualifying period, but (also) of having paid a minimum amount of contributions (CY, UK), thus implying that an individual in low-paid work requires a longer period of employment than a higher earner.

²² For a discussion of the impact on unemployment assistance and social assistance, see 3.2.6.1.

²³ See Regulation (EC) No. 987/2009 of 16 September 2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems, OJ L 284/1, 30.10.2009 (as amended).

²⁴ As noted before, and regardless of the nature of the period, a major difference between the EUBS and virtually all NUBS relates to the absence of assimilated periods in the former.

The calculation of employment in **FTEs** would pose problems in some countries where information on employees' working schedule is not currently collected (e.g. LV, UK). In Sweden, where working time is regulated to an important extent in collective agreements, the definition of FTE would be problematic. It follows that the concept of 'full-time work' varies between sectors or even within sectors, which could lead to the situation that some would have to work more or less than others to fulfil the EUBS qualifying period.

A last possible source of administrative difficulty that we would like to mention concerns the determination of the reference period, which, further to particular rules in some countries, does not always correspond to the time period immediately prior to the start of unemployment. In Ireland, for example, the one-year reference period is the second-last complete calendar year before the year in which the claim is made. The Greek reference period, for its part, excludes the last two months prior to the onset of unemployment.

3.2.2.2 *Other entitlement conditions*

As already noted, the qualifying period is the only entitlement condition that has been set for the EUBS. However, entitlement to unemployment insurance benefits is typically contingent upon a range of other requirements, which could be summarised as the condition for a person to be (and continue to be, throughout the unemployment spell) in a state of unemployment within the meaning of the relevant legislation. These requirements pertain to the following characteristics: the origin/nature of the unemployment; the beneficiary's capability and availability for work; his/her age; the fact of not pursuing work (above a certain limit) and/or education; not receiving other (pension) benefits; and finally, being registered, and cooperating, with the employment services (active job search).

While these requirements can be generally found in any given NUBS, their exact modalities may differ considerably among the member states. When applied accordingly to the EUBS, these varying conditions may be a source of legal and operational barriers. This inevitably raises the question about the feasibility of European-wide requirements. In the following discussion, a concise overview is given of the main possible obstacles.

A first possible barrier concerns the **nature of the unemployment**. On the face of the legislation, in the large majority of NUBS, unemployment ought to be **involuntary** (i.e. further to dismissal or lay-off); only a minority of countries also compensate voluntary unemployment (i.e. further to resignation). Upon closer inspection, the picture seems more nuanced. First, it appears that countries insisting on involuntary unemployment may treat certain situations of voluntary resignation on the part of the insured person as legitimate and hence, eligible for benefits. In France, for example, a limiting list of such situations (e.g. resignation to follow one's partner) is laid down in the relevant regulations, whereas in Belgium, the relevant assessment is left to the discretion of the authorities. Second, a number of countries belonging to either group do provide benefits in situations where the employment relationship ended owing to the insured person's fault or where s/he resigned without a legitimate reason, but they do so on less favourable terms. These may take various forms: the application of a waiting period (e.g. in AT, four weeks; in DE, up to twelve weeks; in MT, six months; and in LV, two months) in the case of voluntary unemployment, the application of a longer waiting period than that which applies to involuntary unemployment (FI, LT) or the imposition of a sanction consisting of the temporary disqualification/suspension of benefits entitlement (e.g. BE, CY, IE, SE). In Bulgaria, employees who terminated their contract of their own accord or were

summarily dismissed receive benefits at the minimum rate and for the minimum duration. A similar rule, albeit only for the rate, applies in the Czech Republic.

Bearing in mind that unemployment benefits are essentially intended to compensate for the absence of income from work as a result of losing one's job, it comes as no surprise that entitlement is generally subject to the beneficiary not pursuing gainful activities and thus not receiving employment income. As a rule, the **accumulation of unemployment benefits with earnings from work** is not permitted. While this rule strictly applies in some NUBS (e.g. EE, LV, MT, RO), other countries allow unemployment benefit recipients to combine their entitlement with earnings from work, albeit within certain limits. These limits may relate to working time (e.g. EL), but more often some income limit is set (e.g. AT, FR, LU, NL, PL, SI, SE, SK, UK) or a combination of the two (DE). The limit may concern the employment income and correspond to a fixed amount (e.g. SI) or (a percentage of) some defined basis (e.g. in PL, 50% of national minimum wage). In France, an overall (i.e. benefit plus employment income) limit is defined, corresponding to the concrete reference salary. The consequences of exceeding the ceiling also vary: entitlement may be fully withdrawn upon exceeding the ceiling (e.g. AT, SK) or the unemployment benefit may be reduced by the excess (e.g. LU) or by any income from work exceeding a certain disregard (e.g. DE, UK).²⁵ To add to the complexity, some countries, regardless of the issue of combining benefits with earnings in the case of total unemployment, provide for schemes of **partial unemployment**, awarding specific benefits to individuals whose normal work schedule is involuntarily reduced or interrupted (due to economic, meteorological, technical reasons, etc.) or to persons who have accepted part-time work to escape (total) unemployment.²⁶ These schemes exist, for example in Belgium, Germany, Finland, Portugal and Sweden.

In principle, unemployment benefits are reserved for people of working age. This general rule may find expression in the requirements for beneficiaries not to follow (full-time) education and not to receive (old-age) pension benefits. Additionally, many NUBS make explicit provision for (lower and upper) **age limits**. Whatever the case, the concrete implementation of this general rule varies among the countries. Lower age limits in NUBS are typically set at 18 (e.g. BE, DK, IE, PL) or 16 (e.g. ES, LT, LU, RO), but some countries apply different minimum ages (e.g. in FI, 17; in HR and LV, 15; and in IT, 14). More importantly, at the other end of the spectrum, the variation is more significant, largely reflecting differences in pensionable ages among the member states. The upper age limit for entitlement to unemployment benefits lies at 66 in Ireland, whereas in other countries it is 65 (e.g. BE, DK, LU, SE) or lower (e.g. currently 61 in France²⁷). The connection with pensionable ages also implies that the upper age limits in some (particularly Central and Eastern European) countries differ between female and male unemployed persons (e.g. in PL, 60 and 65, and in LT, 61 and 63, respectively). It is worth noting that the limits may in some cases be lower than

²⁵ Benefit withdrawal may also take different forms, such as 'euro-per-euro' ('pound-per-pound') or taper.

²⁶ Note that this issue should not be confused with that of the entitlement of partially employed persons to unemployment benefits (cf. 3.2.2.1.2, *supra*).

²⁷ However, the benefit is maintained (within the limit of its maximum duration) until the person reaches the age of entitlement to a full pension (between 65 and 67 years), regardless of the length of insurance.

the legal retirement age due to the existence of schemes of early old-age pension or pre-retirement benefits, which cannot be combined with unemployment benefits. The link between pensionable age and entitlement to unemployment benefits should also be put into perspective in the light of the fact that many countries allow for individuals to defer their pension and thus to continue working beyond the normal retirement age.

The above overview illustrates once more the diversity of NUBS in Europe and their interlinkage with other parts of the national social security systems. But what about the articulation with the EUBS? As mentioned, in the absence of specific rules for the EUBS, the national arrangements are supposed to apply *mutatis mutandis* to the supranational scheme. **First, it is questionable whether the results of this analogous application would always be in line with the rationale of the EUBS and/or the will of EU policy-makers.** One can think of instances where, depending on the country, EUBS benefits would be provided for persons who are not involuntarily unemployed, or who still receive some earnings from employment activities or are partially employed. More generally, to the extent that it concerns matters of principle, it could be argued that EU policy-makers should take a stance on these issues, rather than leaving them to the national level. **Second, the analogous application of national entitlement conditions to the EUBS would inevitably lead to differences in EUBS coverage among the member states.** Depending on the definition of these conditions, more or fewer people would be eligible for the EUBS, without this difference necessarily being reflected in the contributory basis. This could leave some room for moral hazard, which would nevertheless be mitigated by the claw-back mechanism. The different coverage might also raise issues of equality of treatment on the basis of nationality, which is a basic principle of EU law. It is, for example, not certain whether it would be in keeping with this principle if a 62-year-old in otherwise comparable circumstances were eligible for EUBS benefits in one country but not in another. **Third, the practical implementation of the analogous application might not always be straightforward, given the particularities of both systems involved.** For example, if under the national legislation the commencement of benefits is postponed for six months if the beneficiary is voluntarily unemployed, would this mean, in the baseline scenario and variant 2 for the dimension ‘duration of benefits’ (see 3.2.4, *infra*), that the EUBS benefit kicks in as of month seven or rather as of month ten? And how could a rule be implemented to the effect that voluntary unemployment is compensated at the lowest rate, knowing that the EUBS applies a single rate, while at the same time preventing the reduction from being ‘topped away’ by the EUBS?

The alternative, i.e. setting common EUBS requirements, might not be without problems either. For one thing, it could have a profound impact on the national social security systems as a whole. For instance, and building on the last example, a common upper age limit for EUBS entitlement would not leave national old-age pension schemes unaffected.²⁸ Likewise, imposing a requirement to the effect that persons should be without any (income from) work in order to be able to claim EUBS benefits would clash with established work incentivisation policies in many member states, often reflected in the rule that taking up employment, even

²⁸ In addition, such a common age limit might constitute a hindrance for people who wish, or need, to continue working beyond retirement age in order to increase their pension entitlements.

short-term and lower paid, should always result in an increase of income.²⁹ Even if these common requirements only applied to the EUBS and hence any ‘losses’ could be topped up by the NUBS, account should be taken of the considerable complexity associated with the administration of two parallel schemes with divergent entitlement conditions for the above-mentioned aspects. At the same time, increased complexity (and national regulatory changes) might be unavoidable anyhow, even in the analogous application of the national entitlement conditions: consider, for example, the implementation of limits on earnings from employment in the case of a beneficiary receiving EUBS, possibly combined with NUBS, benefits.

As noted earlier, the entitlement conditions need to be satisfied throughout the duration of unemployment. This is particularly relevant for those conditions pertaining to the **availability for work and cooperation with the employment services**, among others regularly reporting to the employment services, actively looking for work, accepting job offers and participating in training. The analogous application of such national conditions to the EUBS would seem both logical and relatively unproblematic. The same holds true when it comes to the institutional frameworks charged with monitoring compliance with these conditions and applying sanctions, as well as for the body of **sanctions** themselves. To set up a specific EUBS monitoring and sanctioning mechanism would be a very costly venture and lead to many operational difficulties, notably insofar as the exchange of information between the supranational and national levels is concerned. Issues of compliance with data protection legislation might also arise. **More fundamentally, separate monitoring and sanctioning mechanisms could lead to serious incoherencies in national activation policies. Individual decisions taken at one level could be inconsistent with, or downright undermine, decisions taken at the other.**

Regarding the analogous application of the national monitoring and sanctioning mechanisms, it is clear that the claw-back mechanism would have its role in mitigating moral hazard. We have referred elsewhere to the operational challenge associated with the fact that national public employment services might be confronted with greater client numbers (see 3.2.2.1.3, *supra*) having to be followed for a potentially longer duration (see 3.2.4, *infra*). Furthermore, **adaptations would be necessary to enable the application of some sanctions with respect to the EUBS.** This is especially the case with regard to those sanctions that are partial in nature, i.e. which provide for a reduction of the benefit amounts or for partial withdrawal or suspension (which occurs in a limited number of countries, including BE and FR). If the sanction is applied to an individual drawing a combined benefit, consisting of both an EUBS and a NUBS element, the question arises as to which part will be reduced or withdrawn. Will the reduction/partial withdrawal be proportionally applied to both parts? Or, more arbitrarily, will the part paid as a top-up be affected first? Whatever the case, it is likely that this discussion will also have operational (administrative) repercussions. Besides the issue of partial sanctions, some other aspects of the interplay between the EUBS and NUBS with regard to sanctions need to be sorted out. For example, how does the EUBS payment duration (baseline and variant 2) affect sanctions incurred in the first three months of unemployment? Finally, it needs to be considered that a few countries (e.g. DE) apply different sanction regimes according to whether unemployment insurance or unemployment assistance benefits are

²⁹ And thus the problems associated with the non-recognition by the EUBS of maintenance of rights would be exacerbated (see 3.2.2.1.2, *supra*).

involved. It would seem logical that the former (in the German case, less stringent) regime is applied to the EUBS, even if it concerns individuals who would otherwise only be entitled to unemployment assistance benefits.

3.2.3 Benefit amounts

The amounts of the EUBS benefits are defined through two dimensions, i.e. a replacement rate (50, 35 and 60% in the baseline, variant 1 and 2, respectively) applied to a certain reference wage (i.e. the last gross wage) and a cap set at a percentage (150, 100 and 50%, respectively) of the average national wage.

In the following analysis, we examine how the (determination of the) EUBS amount relates to the reality in the NUBS, and what challenges and obstacles the introduction of the EUBS would entail in this respect. Before engaging in a (tentative) comparison of the levels of EUBS and NUBS benefits and the implications thereof (3.2.3.2), the analysis first highlights the multitude of factors that impact NUBS levels as well as – once more – the enormous diversity of the solutions embraced by the national systems (3.2.3.1).

3.2.3.1 Factors determining the benefit amounts

The setting of the EUBS benefit amount as a fraction of previous earnings with a defined maximum broadly corresponds to the situation in the bulk of the NUBS. However, **in contrast to the EUBS, which is characterised by a marked simplicity in this regard, the NUBS tend to operate with complex rules for determining the amounts payable.** These pertain to the calculation basis (i.e. the reference earnings), the calculation method (including the replacement rate) and the capping.

It should be noted from the outset that there are four member states (IE, MT, PL, UK) in which unemployment insurance benefits are not in any way linked to previous earnings. These countries provide for flat-rate benefits depending on the age of the claimant (IE, UK), his/her household situation (IE, MT, UK), the length of his/her employment record and the duration of unemployment (PL).

3.2.3.1.1 Calculation basis

The use of **gross earnings** as the basis for the EUBS is consistent with the mainstream approach in the NUBS. Net wages (i.e. after the deduction of income tax and social security contributions) are used as a basis only in a few countries (AT, CZ, DE), while Croatia uses some intermediary form (gross wages reduced by pension insurance contributions). The national experts from these countries do not report specific legal or operational barriers insofar as the calculation of the EUBS benefits is concerned; rather, such barriers could arise when it comes to organising the levy of taxation and contributions from these benefits. Regardless of the gross/net issue, the NUBS define specifically what is understood by the concept of ‘wage’ or ‘earnings’, which may or may not include holiday pay, overtime compensation, bonuses, benefits in kind, etc. The analogous application of national wage concepts to the EUBS can certainly be envisaged. The same applies to the fact that some countries define their calculation basis by reference to the basis for contribution payments (e.g. in CY, insurable earnings; in HU, the contribution base; and in SK on an assessment basis), which is essentially similar to the gross wage.

The EUBS calculation basis is the **last** gross wage. Leaving aside the cases of Belgium and the Netherlands, this manifestly departs from the situation in the NUBS, where the basis corresponds to an average value of earnings over a longer period before the onset of unemployment. The length of this period varies from three months (e.g. HR, LU) to as long as four years (IT), with many countries opting for one year (e.g. CY, DE, FR, SE). This period need not have taken place immediately prior to the commencement of unemployment – it may be the last complete calendar year (e.g. AT) or the first part of a certain period before unemployment (e.g. in EE, the first nine months out of the last twelve; similar rules apply in LV and PT). The latter example may also illustrate the rationale for calculating reference earnings over a longer period, i.e. discouraging fraud, as systems based on the last wage are indeed vulnerable to abusive practices of manipulation of the last wage in an attempt to obtain higher benefits. It should also be noted, for completeness' sake, that detailed rules may apply to the calculation of the average earnings (e.g. HU, LT) and that time units for assessing the earnings may vary (daily, weekly or monthly).

Last but not least, attention should be drawn to the issue of **ceilings on reference earnings**. The EUBS does not provide for such a ceiling, and neither does a minority of member states (CZ, DK, FI, HR, HU, LU, LT, PT, SE, SI). In the absence of caps on reference earnings, ceilings invariably apply to the benefit amounts themselves – as is also the case in the EUBS (see 3.2.3.1.3, *infra*). The rest of the member states operating earnings-related unemployment benefit systems do provide for ceilings on reference earnings. The value of these ceilings may vary considerably. For example, the French ceiling is more than five times higher than the (highest) Belgian ceiling. The ceilings can equal a flat-rate amount per month (e.g. BE) or per day (e.g. NL), be expressed in relation to the ANW (e.g. SK) or, as is the case in several countries, they can correspond to the maximum contributory base (e.g. DE, ES, LV). The Belgian NUBS applies different ceilings according to (notably) the duration of unemployment. It is worth mentioning that ceilings on reference earnings in a number of countries apply horizontally throughout different branches (e.g. DE, ES, LV, ES), and hence any adaptations are likely to affect systemic coherence.

Because of its straightforward definition, specific obstacles – i.e. over and above the general difficulty associated with administering two benefits based on different calculation principles, see 3.2.3.1.2, *infra* – are hardly reported when it comes to the establishment of the EUBS reference wage. Unsurprisingly, the few national contributions that do highlight **operational obstacles** in this regard mainly stem from countries where unemployment insurance benefits are unrelated to previous earnings. In both Malta and the UK, it is unlikely that the competent social security authorities would have access to the necessary information to establish a reference wage for each claimant; they would probably need to obtain it from the tax authorities, which may cause delays and error. In Poland, the EUBS implementation could be modelled after the rules and mechanisms in place in the field of sickness and maternity insurance, which is the only branch familiar with a (more or less) similar reference wage concept.

Some obstacles might also be encountered in Sweden, where the concept of 'normal working hours' plays an important role in determining the level of NUBS provision, next to the actual earnings, which may be monthly, weekly, daily or hourly. The assessment is made by the unemployment insurance funds, based *inter alia* on information contained in employers' certificates. Adjusting this procedure for use within the context of the EUBS could be

challenging, as would be the establishment of parallel data collection and processing for the EUBS.

3.2.3.1.2 Calculation method

The EUBS calculation method is conceived in a very simple way: it varies solely according to previous earnings, and once fixed, the benefit value remains unchanged for the entire duration of unemployment. Even though similar arrangements can be found in a few member states (e.g. BG, DK, HU, SK), these do not correspond to the prevailing picture in the NUBS.

First, it should be noted that in some countries the determination of the benefit amount is the result of **compound calculation methods**. In France, two separate calculations are carried out, whereby the one yielding the highest benefit is retained. In Italy, the benefit is determined by applying a relatively high replacement rate to earnings up to a (relatively low) ceiling, plus a low replacement rate to the worker's earnings exceeding the ceiling.³⁰ The Cypriot unemployment benefit, consisting of a basic and a supplementary benefit, is based on somewhat similar principles. Furthermore, in a number of countries, the unemployment insurance benefit comprises a fixed flat-rate component and an earnings-related one. In the Finnish and Swedish Ghent systems, these components constitute separate benefits with a different scope and conditions (see also 3.2.1, *supra*), whereas in the Lithuanian system they are an integral part of the same benefit.

Second, in the majority of member states, the **benefit amount varies according to defined factors beyond previous earnings**: household composition (CY, DE, EL, LU), the length of the employment or insurance record (FI, PL, RO), the duration of unemployment (CZ, EE, ES, HR, IT, LT, NL, PT, SE, SI), a combination of two of the foregoing (in LV, employment record and unemployment duration) or of all three of them (BE).

Having dependants may result in a higher replacement rate (BE, DE, LU) or in an increase per dependant (CY, EL). It is worth noting that some member states provide for separate family supplements, paid on top of the unemployment benefit (AT, FI), which may be means-tested (IT, MT). Household-related increases may be contingent upon specific circumstances, such as both parents being unemployed (e.g. PT). It may also be recalled that household composition is a factor determining the benefit amounts in some countries with flat-rate unemployment insurance benefits.

Without exception, the employment record and the unemployment duration are directly and inversely proportional, respectively, to the benefit amounts. In Latvia, for example, the unemployment benefit amounts vary from 50% to 65% of the average contribution wage for persons with an insurance record of one to nine years and over thirty years, respectively, and are paid out in full during the first three months of unemployment. During the next three months, beneficiaries receive 75% of this amount, and from months seven to nine, 50%. In those countries where unemployment benefit amounts vary according to the duration of unemployment, the decrease sets in after two (NL, CZ), three (BE, EE, IT, LT, SI), six months/180 days (ES, HR, PT) or 200 days (SE³¹). It commonly applies to the replacement rate of the reference wage, but it may also be applied to the benefits themselves (e.g. IT) or to a

³⁰ An overall benefit cap applies.

³¹ But note that a lower benefit ceiling already sets in after 100 days.

component of them (e.g. LT). In most cases, there is only one decrease; in others, there are two (CZ, SI) or more (BE, IT). The extent of the decrease may vary drastically from country to country, e.g. from 75% to 70% of the reference earnings in the Netherlands, and from 70% to 35% in Croatia. A rather specific system is applied in Italy, where the unemployment benefit is gradually reduced by 3% per month as of the fourth month of payment.

Operationally speaking, the straightforward EUBS calculation method does not pose specific difficulties in itself. Again, the administrative challenge would stem from the fact that, in cases of overlapping (EUBS and NUBS) entitlements, a dual calculation needs to be carried out to verify whether there is reason for a top-up payment. As is pointed out by several national experts, this might prolong processing times.³² It should be kept in mind that, because of the case-specific and dynamic character of calculation methods in many countries, the determination of the top-up cannot be done once and for all. Rather, it will depend on an assessment of the individual/family circumstances (e.g. according to whether the claimant has dependent children and/or the claimant's insurance history) and it will vary in time; indeed, the top-up will need to be reassessed on one or more occasions, possibly even monthly (cf. the Italian example).

A fundamental question in this regard is which amounts payable by the national systems will be considered for calculating the top-up: Will it only be the basic NUBS amount to which the claimant is entitled, or will it additionally include specific increases and supplements payable in the individual case, such as separate household supplements? This question will mainly arise with regard to means-tested supplementary benefits and increases in relation to the top-up EUBS scheme (see 3.3.2, *infra*).

3.2.3.1.3 Benefit ceilings

The EUBS benefit is capped at 150, 100 and 50% of the ANW in the baseline, variant 1 and variant 2 options, respectively.

In each of the NUBS, the amount of earnings-related unemployment benefits is limited. This can be achieved through ceilings on reference earnings (see 3.2.3.1.1, *supra*), resulting in de facto maxima (e.g. BE, BG, DE, LV, NL, RO, SK) or through benefit ceilings. Incidentally, caps on reference earnings and benefits may also be combined, as the examples in Italy and Spain show.

In general, a single benefit ceiling applies in the NUBS, though some national systems deviate from this rule by establishing multiple ceilings. In Croatia, Luxembourg and Sweden, the ceiling decreases if unemployment lasts beyond a certain point. In Spain, the benefits ceiling varies according to the number of dependent children. The Portuguese NUBS applies a double ceiling, whereby the one resulting in the lowest amount is decisive.

Only two member states use the (net) ANW as a reference for determining the ceiling, i.e. the Czech Republic (58%) and Croatia (70% and 35% as of day 91). The other countries laying down benefit ceilings refer to a fixed amount (e.g. IT, SE, SI), a percentage of the reference earnings (e.g. in AT, DK, FI and FR; in PT, net) or the minimum wage (HU, LU) and/or some

³² In Romania, processing time is currently ca. 45 minutes per case. This would substantially increase if the EUBS were implemented, although a plain duplication would probably be exaggerated, given the relatively simple set-up of the EUBS benefit.

other basis (e.g. in CY, basic insurable earnings (supplementary benefit); in PT, an indexing reference for social support).

It is important to specify that, unlike the EUBS, a number of NUBS expressly lay down minimum benefit values (AT, BE, BG, ES, FR, HR, LT, PT, SI).

Much in the same way as for the calculation basis and method, the implementation of this aspect of the EUBS does not, **operationally** speaking, pose insurmountable barriers. In the bulk of the countries, data on the ANW is regularly calculated and made available by the national statistical office, albeit in some cases with a significant delay (e.g. AT, LV, SE).³³ Yet, the fact that the ANW is statistically available does not necessarily mean that it can be readily used as a basis for capping the EUBS benefits. Statistical data might lack the accuracy required if this parameter is to be used as a statutory benefit ceiling reference (e.g. ES). Moreover, as the ANW is not a concept currently used for social security purposes in the overall majority of countries, its implementation will need to be accompanied by staff training, adjusted procedures and software tools (e.g. HU, PL). Finally, several national experts stress the need for a comprehensive, uniform definition of the ANW for EUBS purposes, notably in terms of wage components, the gross/net character and the period over which it is calculated.

3.2.3.2 *Comparison of EUBS and NUBS benefit amounts*

Below, we consider the question of how the level of EUBS benefits relates to benefit levels in European NUBS. If benefits payable under the supranational scheme are lower than those provided by the NUBS, the latter is expected to top-up the difference.³⁴ Frequent national top-ups may be administratively difficult to implement. In contrast, EUBS benefits exceeding those payable by the national system would result in increased protection for the beneficiaries; however, they might generate distortionary incentives in terms of activation, given the close links in many member states between unemployment insurance and labour market policies, and raise financing issues.

As the above analysis (3.2.3.1) demonstrates, the comparison of the EUBS and NUBS benefit amounts is **extremely complex**. It may be tempting to proceed with a simple comparison of the replacement rates of the EUBS benefits and NUBS benefits – at least for those systems where benefits are based upon previous earnings. Such a comparison shows that the EUBS replacement rates in the baseline and variant 2 options (50% and 60%, respectively) are broadly in line with the reality in a majority of NUBS. Some NUBS fix replacement rates at exactly these levels (50% in SK; 60% in BG and HU), albeit only in some circumstances (50% in CZ, EE, ES and SI; 60% in BE, DE and SI; both in LV) or they fix them in between (e.g. AT, FR³⁵ and PT³⁶). Depending on the case, countries may also provide for rates below 50% (e.g. EE) or exceeding 60% (e.g. ES, SI and PT), or sometimes for both (e.g. BE, CZ, DE, HR, LV). Only a few member states consistently use higher replacement rates (90% in DK; 80% in LU and SE; and 75/70% in NL). The comparison furthermore shows that the replacement rate in the

³³ Eurostat publishes ANW data, with a delay, based on a gentlemen's agreement with the member states.

³⁴ That is, save in the top-up EUBS option, which in this case would not intervene (see 3.3, *infra*).

³⁵ In France, they are part of a compound calculation.

³⁶ In Portugal, this occurs after 180 days of unemployment.

variant 1 option (35%) is strikingly low, although it can be found in some national systems (e.g. in HR after 90 days of unemployment).

Whereas comparing replacement rates may give some indication of the relative generosity of the EUBS benefits in relation to NUBS benefit levels, it by no means gives a complete picture of the situation. Because of differences in the determination of reference earnings, the application of similar replacement rates will result in divergent amounts. Furthermore, NUBS replacement rates often vary according to the individual situation of the claimant and the point in time of the employment spell. Moreover, several NUBS rely on compound calculation methods, which may be alternative or cumulative, and which may or may not involve a flat-rate component. Finally and most importantly, the widespread use of ceilings (and floors) on both reference earnings and benefit amounts severely distorts the simple relationship between the replacement rate and the eventual benefit amount.

It follows that the comparison between the EUBS and NUBS benefit amounts is a huge and intricate undertaking that cannot be achieved within the scope of this report. Nevertheless, it is possible to provide some general observations and even draw some conclusions when it comes to the level of EUBS benefits compared with NUBS benefits.

First, the comparison is relatively straightforward for those **countries operating flat-rate unemployment (insurance) benefit systems** (IE, MT, PL, UK). It is worth noting that the provision of flat-rate insurance benefits is not a neutral element, but is to be seen against the backdrop of the fundamental philosophy underpinning these NUBS, with benefits close to the subsistence level and a strong emphasis laid on the return to work. It is therefore not surprising that in all these countries, the baseline EUBS option would be higher (and, depending on claimants' reference earnings, even very significantly higher) than current NUBS levels. Except for (very) low wage earners, this also holds true for the variant 1 option.³⁷ The picture is somewhat different if also household-related increases (IE) and means-tested benefits and supplements (MT, UK) are considered.³⁸

The option, offered to this group of 'flat-rate countries', to convert the EUBS benefit into a flat-rate sum equivalent to 50% of the gross average wage might eliminate a great deal of the administrative complexity associated with establishing an individual reference wage for every claimant. Rather than legal or operational, it seems that any barriers relating to this option would be mostly of a political nature: for each of the countries, this option would result in an EUBS level that is considerably higher than the current NUBS level, so as to raise issues of

³⁷ The Irish basic NUBS benefit corresponds to 27% of average gross earnings. In Malta, a single person or a married person with a dependent spouse would be entitled to benefits amounting to 23% of the average basic salary (43% of the national minimum wage, hereinafter NMW). Any other person would receive benefits with a replacement rate of 15% (28% of the NMW). The Polish benefits equal between 30% and 57% of the NMW (13.54% and 25.87% of the average wage), according to the duration of unemployment and the length of the employment record. In the UK, the basic unemployment insurance benefits are equivalent to a replacement rate of 30% compared with full-time employment at the NMW and 14% compared with median, gross full-time earnings. For definitions and sources, see the respective national reports.

³⁸ In Ireland, the rate of the unemployment insurance benefits equals 54% of the average gross earnings for a claimant with a qualified adult and two qualified children. In Malta, the replacement rates for means-tested 'special unemployment benefit' claimants earning the NMW would rise to 72% and 48%, respectively.

financing and work incentivisation. For example, the EUBS benefit thus converted would approach the Maltese minimum wage and would correspond to double the highest NUBS benefit payable in Poland. Yet, the EUBS at this level would fall within the UK household benefit cap.

Incidentally, it is noted that the NUBS in Ireland, Malta and the UK provide for weekly benefits, which may cause some operational difficulties if EUBS benefits were to be awarded, as is the case in the other NUBS, through monthly payments.

For the **other countries**, the picture is, as expected, more nuanced and more diverse. For some countries (e.g. RO), all three EUBS values would result in higher benefits than currently offered by the NUBS. For a few others (e.g. FR, LU, NL), the EUBS benefits in whatever option would be lower than the NUBS benefits, except for high-wage earners in variant 2. At average wage levels, the latter EUBS option would exceed the national benefits in the majority of countries, including many affluent member states (e.g. AT, BE, DE, ES, DK, FI, IT), whereas the opposite is true in the variant 1 option. This last option may still yield comparable or higher benefits for high-income groups in the cited countries. Whether the baseline variant exceeds the national benefit is more often dependent on the wage level of the claimant. Still, it is often higher than the NUBS benefit, including for beneficiaries earning below or at the average wage (e.g. HU, LT).

The above analysis is based on replacement rates at the start of unemployment. Since, as seen above, replacement rates in over a third of the countries decrease as unemployment lasts longer – sometimes as sharply as by 100% – it can be concluded that, in the event of persistent unemployment, the EUBS benefit would be higher in a greater number of cases or to a greater extent. For some countries, conversely, the opposite trend could be observed in respect of beneficiaries with dependants or long insurance records.

It is apparent from the above analysis that **the comparison of EUBS and NUBS benefit amounts cannot be seen in isolation from the income level of the claimants**. This has to do with the prevalence of ceilings to cap benefit amounts directly (benefit ceilings) or indirectly (ceilings on reference earnings), and sometimes even both. This results in actual replacement rates that are digressive, i.e. inversely proportional to the level of previous earnings. The digressive character of earnings-related NUBS, which, incidentally, is reinforced through the provision of benefit floors in some countries, differs drastically among the countries.³⁹ In general, however, the ceilings used in European NUBS lead to actual replacement rates that are significantly lower for high-income groups than the official, legal rate. With some exceptions, NUBS ceilings are set considerably more stringently than the EUBS ceilings (in the baseline and variant 1 options). In most countries, (statutory or de facto)⁴⁰ maximum benefits

³⁹ While in the French NUBS, for example, the insurance dimension is particularly prominent (much more than in other French social security schemes), the Danish model is firmly based on an egalitarian approach. The latter system operates with 90% of the previous income. Primarily as a result of the (reference earnings) ceiling, only persons earning 50% of the ANW may expect to come close to this replacement rate (86.8%). For those with earnings at 100% and 50% of the ANW, the actual replacement rate drops to 53% and 35.3%, respectively. At the other end of the spectrum, the Romanian NUBS ensures a real replacement rate of 35.71% of the NMW, 25.52% at the ANW and 13.10% at the maximum reference wage considered. For more details, see the respective national reports.

⁴⁰ More specifically, not set by law but resulting from capped reference earnings.

do not exceed 50% of the ANW (e.g. BE, CY, HR, HU) or 100% of the ANW (e.g. AT, CZ, DK, ES, HR, IT, LT, RO, SE, SI, SK). Several countries provide maximum benefits between 100% and 150% of the ANW (LU, NL, PT). France and Latvia stand out with benefits that may reach as much as ca. three times the ANW.

It follows that on the whole, and regardless of differences in generosity among the various NUBS, EUBS benefits are proportionately lower for low-income groups, and higher for above-average earners. For high-income earners, especially in the baseline option (capping at 150% of the ANW) and even more so in combination with the replacement rate in the variant 1 option (35% of the RW),⁴¹ the difference can be called excessive, as noted in several national reports.

For the sake of completeness, it should be mentioned that the proposed EUBS capping is also far in excess of the amounts provided by the countries operating flat-rate insurance benefits. If the baseline capping were to be applied to the Maltese ANW, for example, the benefit would be 651% higher than the highest rate of (regular) unemployment benefits. The variant 2 option would still be more than double the highest rate of unemployment benefits in Malta. In the UK, any EUBS capping would exceed the basic rates of out-of-work benefits by a significant extent, although the variant 2 value would not necessarily be higher than total benefit income when housing benefits are included. This option would follow a similar principle to the current household benefit cap. Finally, at current Irish rates, a claimant would have to have a dependent adult and have 13 children to receive benefits that would equal the variant 1 cap.

The imbalances caused by the EUBS capping, and especially its calibration at the baseline and variant 1 values, raise some serious issues that should not go unaddressed. We have already mentioned the cost of financing a supranational scheme with significantly higher benefits as well as the disincentives to active job search arising from over-generous benefits. We may add here that the image of an EUBS leaving redistribution to the NUBS – called upon to top-up benefits for below-average earners – and providing more generous benefits to above-average earners, might have a hard time generating a social support base.

In some countries, the discrepancy between EUBS and NUBS levels might also have an impact on take-up, albeit in quite different ways. In Poland, the higher EUBS benefit would make the unemployment benefits scheme in general more attractive for better-paid employees, who at present tend to avoid using the scheme in spells of unemployment due to the low amount of the benefits and the administrative burden involved. In the (voluntary) Danish system, by contrast, where the EUBS benefit levels for low-income earners would be significantly lower than the NUBS benefits and even in some cases those of the social assistance system, the EUBS system, unless it is made obligatory, would not be attractive to these groups, which would seek coverage through the assistance system or other branches (e.g. sickness).

3.2.4 Duration of benefits

According to the terms of reference, EUBS benefits would be payable for a period ranging from three to twelve months, i.e. from the fourth to the twelfth month of unemployment (baseline), for the first twelve months of unemployment (variant 1) and from the fourth to the sixth month of unemployment (variant 2).

⁴¹ This combination, embedded in EUBS option no. 9, may be considered an anomaly.

This section starts off with an analysis of the duration of unemployment benefits in the NUBS (3.2.4.1), then proceeds to an examination of the articulation between the EUBS and NUBS payment periods, thereby highlighting possible legal and operational barriers (3.2.4.2).

3.2.4.1 *Duration of unemployment benefits in NUBS*

With the famous exception of Belgium, the period during which unemployment (insurance)⁴² benefits can be paid is limited in all NUBS; the jobseeker who exhausts his/her entitlement, even if s/he continues to fulfil the entitlement conditions, will have to rely on means-tested (categorical or general) social assistance.

In the bulk of the member states, there is no single maximum duration during which unemployment benefits can be drawn. Such unique payment periods exist only in Cyprus, the UK (both 6 months), Latvia (9 months), Finland (16.5 months) and Denmark (24 months).⁴³ In the other countries, the maximum duration for the receipt of unemployment benefits **varies from case to case, according to one or more criteria**. The period of previous employment (or insurance or contribution payments) is by far the most common determining factor (BG, EE, EL, ES, FR, HR, HU, IE, IT, LT, MT, NL, RO). In several countries, this criterion is used in combination with or in addition to age (AT, DE, EL, FR, LT, LU, PL, PT, SI). In the Czech Republic, age is the sole criterion. Finally, a few countries resort to other determining factors, notably the type of employment contract (fixed-term or indefinite, as in SK), the unemployment rate of the area in which the beneficiary lives (LT, PL), his/her household situation (PL, SE) and the fact of belonging to the category of 'difficult-to-place persons' (LU).

In all the countries differentiating the unemployment benefit duration according to the insurance record, the relationship between these two indicators is a positive one: the longer the insurance record, the longer the benefits. The differentiation may take the form of provision for a shorter or longer payment period for a particular group (e.g. in IE, 6 months instead of 9 for those with less than 260 weekly contributions), but mostly it appears as a set of multiple categories with ascending insurance records and/or age (e.g. in AT and DE; in PT, involving 12 different categories). There may be important differences between the standards of the categories, with some countries defining the 'lowest' category as those with insurance periods just above the qualifying period and others grouping therein insured persons whose record extends to several decades. In a number of member states, the duration of unemployment benefits is directly correlated with the period of previous insurance or the number of contribution payments, resulting in a plethora of different durations (FR, HU, IT, LU, MT, NL). The Italian benefits, for example, are paid for a number of weeks equal to half the total weeks of contributions paid during the last 4 years before dismissal. Likewise, in the Netherlands, a person who satisfies the condition for years receives benefits for as many months as the number of months in employment, with a maximum of 38 months.⁴⁴ Malta provides a maximum of 156 days' benefit, provided that the number of benefit days paid does not exceed the number of contributions.

⁴² Unemployment assistance is provided for an unlimited duration in several countries (e.g. AT, DE, FI, IE).

⁴³ Durations expressed in days were converted to months for ease of comparison.

⁴⁴ Note that this maximum is gradually decreasing to reach 24 months in 2019.

Age and the duration of benefits are positively related as well. This determining factor is sometimes used to fix a shorter unemployment duration for young persons (e.g. SI), but more often to extend it for older unemployed persons, either in addition to the criterion of insurance (or employment) record (EL, FR, LT) or in combination with that criterion (e.g. AT, DE). It is worth noting that several countries provide specific extensions for unemployed persons close to the retirement age, enabling them to continue receiving unemployment benefits until reaching that age (e.g. HR, FI, IE).

Finally, some countries prolong the maximum duration of unemployment benefits for individuals who participated, or who are participating, in vocational training measures (e.g. AT, CZ, LU).

It follows from the above that the maximum duration of unemployment benefit payments **differs drastically** among the member states and, with several exceptions, within the same member state. The spread between the highest and the lowest maximum duration within member states is mostly within the bounds of 150% (e.g. in EE, 6/12 months for persons with an insurance period of less than 5/more than 10 years), but may reach much higher levels, in some cases even exceeding 1,000% (e.g. in NL, 3/38 months for persons satisfying only the qualifying period/the years' period having completed 38 months of employment or more). An interstate comparison⁴⁵ shows that maximum payment durations are generous regardless of the individual case in Belgium, Denmark (24 months) and Finland (16.5 months), while the Netherlands (maximum 38 months), Portugal (maximum 26 months), Spain and Italy (maximum 24 months), and Sweden (maximum ca. 21 months) provide benefits for a relatively long time to larger groups of the unemployed. The country with the shortest payment duration is clearly Hungary (maximum 3 months). Also, in Malta (maximum 6 months, but lower for those with less than 156 weekly contributions), Slovakia (6 months, but 4 for employees who were on fixed-term labour contracts), Cyprus and the UK (6 months for all), the Czech Republic (5 months for all those under age 50) and Lithuania (6 months for all those with less than 25 years of insurance), considerable groups of the insured face relatively short payment durations. It should be noted that in other countries as well, maximum durations may be short (less than 4 months) for those satisfying only the qualifying period. In Slovenia, all unemployed persons aged under 30 are entitled to unemployment benefits with a maximum period of 2 months.

3.2.4.2 *Interrelation between EUBS and NUBS payment periods*

3.2.4.2.1 *At the beginning of EUBS payments*

To avoid “a long and distressing waiting period”⁴⁶ resulting from the fact that the EUBS, in the baseline and variant 2 options, only kicks in as of the fourth month of unemployment, the NUBS would be called upon to provide a top-up at the beginning of unemployment. It needs

⁴⁵ Taking the hypothetical case of a 35-year-old single individual living in an area with an average unemployment rate, who had an open-ended labour contract and who became involuntarily unemployed on 1 June 2015 after having worked and contributed for nine years, the following payment durations would apply (in months): unlimited (BE), 38 (NL), 24 (DK, ES, FR, IT), 16.5 (FI), 15 (PT), ca. 14 (SE), 12 (DE, EL, LU), 11 (HR), 9 (EE, IE, LV, RO), 8 (BG), 7.5 (AT), 6 (CY, LT, MT, PL, SK, SI, RO), 5 (CZ) and 3 (HU).

⁴⁶ Citing the phrase used by the Italian expert in her report.

to be pointed out that this top-up NUBS provision might not necessarily cover the full three-month period. While in some countries benefit payments commence immediately after the termination of employment provided the person concerned makes the claim or completes the registration within a specified time limit (e.g. in CZ, a claim within three days or in RO, registration within ten days) or immediately following registration if the person applies within a certain period (e.g. in MT, a claim within five days), others impose a delay on claiming at the expense of the unemployed individual (e.g. AT).

More importantly, a range of other **factors may delay the start of unemployment benefit payments in the NUBS**. First, it must be observed that well over a third of the member states provide for general **waiting periods**, deferring the onset of unemployment benefit payments for a period ranging from three (e.g. CY, IE) to eight days (LT). Maintenance-of-rights clauses may apply in respect of these deferrals.⁴⁷ As noted earlier (3.2.2.2), some countries lay down (much) longer waiting periods in the case of voluntary unemployment. Moreover, a number of member states explicitly defer the start of unemployment benefit payments for the outstanding annual leave period at the end of the employment contract (e.g. FR, IE) or if the individual is entitled to financial compensation paid by the employer (e.g. AT, CY, FI, FR, IE, PL). In Finland, for example, the period of deferral (in working days) equals the quotient of the amount of financial compensation and the daily pay. Also in France, the deferral is dependent on the amount of a conventional redundancy payment, with a maximum of 180 days.

The question arises as to how these factors delaying the start of NUBS payments would interfere with the EUBS. To the extent that they generally do not shorten the maximum payment duration, it seems logical that they should not have this effect on the EUBS either. But should such NUBS provisions also postpone EUBS payments accordingly? A negative reply might lead to national deferral periods being neutralised. This would be the case for any NUBS deferral, including general waiting periods, in the variant 1 option, but it could apply to the other two options as well, insofar as deferral periods exceeding three months are concerned. This might frustrate legitimate policy objectives, such as penalising voluntary unemployment or avoiding benefit payments for those who still derive an income from work. The opposite solution, whereby deferral periods applied according to the EUBS, would be consistent with the general assumption of the corresponding application of features not determined by the terms of reference, but would also raise questions, notably in relation to the baseline and variant 2 options. In particular, would the national deferral period come on top of the EUBS three-month waiting period, or would it reduce the latter (and thus only affect the EUBS if it exceeds three months)? It might be added that a provision such as that envisaged in Denmark, whereby the unemployed are confronted with a recurrent waiting day per quarter of unemployment, might interfere with the EUBS throughout the duration of unemployment, and not just at the beginning.

A potentially serious obstacle concerning the baseline and variant 2 options might arise in those countries where certain groups, notably those with insurance periods that do not or hardly exceed the qualifying period (e.g. MT, HU) and the younger unemployed (SI), are entitled to benefits for periods of less than three months. As EUBS payments would only

⁴⁷ In France, for example, the seven-day waiting period need not be completed again if the person concerned has already fulfilled it over the last twelve months.

intervene as of month four, these persons would suffer a **gap in coverage**. Even if this period might be bridged by social assistance, on condition that they fulfil the relevant (including means-related) requirements, this solution seems unsatisfactory for both the individuals concerned and the administering authorities (see also 3.2.4.2.4, *infra*).

We note, for the sake of comprehensiveness, that also persons who would have no entitlement to the NUBS would have to resort to (any) assistance-based schemes in the first three months of unemployment.

3.2.4.2.2 During the period of EUBS payments

Earlier, we mentioned (in 3.2.2.2, *supra*) that NUBS payments may be suspended by way of sanction for failure to cooperate with the employment services. There, we also stated that a corresponding application of the relevant NUBS provisions to the EUBS might be necessary to ensure coherent and effective policies and to avoid huge administrative complexity.

It seems that a similar approach could be adopted vis-à-vis other circumstances that normally suspend the payment of NUBS benefits, such as the **temporary work incapacity** of the unemployed person. Indeed, when a person in receipt of unemployment benefits becomes ill or suffers an accident and is unable to work, payment of unemployment benefits is usually suspended in favour of the award of sickness cash benefits, and the maximum unemployment benefit duration is extended accordingly.⁴⁸ Specific rules may apply in some countries, such as a limit on the period for suspending the unemployment benefits on grounds of sickness (e.g. a maximum of 30 days in LT) or the provision that unemployment benefits will continue to be paid at a first stage of the sickness period (by way of continued pay), prior to giving way to benefits from the sickness insurance fund (DE). In Malta and Spain, while NUBS recipients shift to sickness cash benefits during their work incapacity, days taken by way of sickness cash benefits are counted towards assessing whether the maximum duration of unemployment benefits has been reached. Some countries lay down provisions to ensure that the level of sickness benefits payable matches that of the unemployment benefits (e.g. BE, DK, SE). A corresponding application of these arrangements to the EUBS appears to be relatively unproblematic,⁴⁹ on condition that there is excellent collaboration between the relevant sickness and unemployment insurance institutions. It would be consistent, incidentally, with the solution adopted in Art. 25 of the former Regulation (EEC) No. 1408/71 regarding the coordination of social security schemes.⁵⁰ Increased expenditure could be expected in the sickness insurance branch, particularly on account of work incapacity suffered by those who are only entitled to the EUBS (see also *infra*, 3.2.6.2).

However, the general rule of a suspension/interruption of unemployment benefit payments in the event of sickness is not followed in all member states. In a few of them (e.g. HU, LU, SI), unemployed persons who are temporarily unable to work due to sickness continue to receive unemployment benefits. Whether such an arrangement can apply *mutatis mutandis* to the EUBS will depend on whether it is conceivable for the latter to provide unemployment benefits

⁴⁸ A similar approach is often taken as regards maternity benefits.

⁴⁹ Exceptions here would perhaps be the above-mentioned specific Lithuanian and German rules.

⁵⁰ See Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 149, 05.07.1971 (as amended).

to persons who have temporarily lost their working capacity. An ‘orthodox’ interpretation of the concept of unemployment, which would result in a negative reply to this question, would de facto oblige the aforementioned countries to (re-)introduce entitlement to sickness cash benefits for unemployed persons. This discussion touches upon the definition of the concept of unemployment under the EUBS, much in the same way as our above considerations relating to the (in)voluntary character of unemployment and the accumulation of unemployment benefits with earnings from work (see 3.2.2.2, *supra*).

In some countries, the suspension/interruption of unemployment benefit payments is not confined to the imposition of sanctions or the occurrence of other social risks. The Swedish NUBS, for example, allows unemployed individuals to take control of their benefit payment period, basically leaving them to decide how to use their maximum number of benefit days (450/300, depending on whether the beneficiary has a child aged under 18). They may be spread out over a longer period if the unemployed person chooses not to apply for benefits five days a week, for example because s/he is engaged in part-time work or is not available for the labour market on a full-time basis (e.g. as a result of taking up parental cash benefits for several days per week). Arguably, this flexible system would be difficult to maintain if it were not analogously applied to the EUBS.

Earlier in this report, when discussing **maintenance of rights** in relation to qualifying periods (in 3.2.2.1.2, *supra*), we noted that it is fairly common for NUBS to allow unemployed persons who had taken up employment (prior to exhaustion of the unemployment benefits) only to become unemployed again soon afterwards, to resume unemployment benefit payments without having to prove completion of a new qualifying period. These resumed benefits are typically payable for the remainder of the existing benefit period, up to the maximum duration of unemployment benefits applicable. Lately, some countries have introduced (e.g. FR), or will do so in the near future (e.g. DK), measures that enable unemployed persons to prolong the maximum benefit duration through brief periods of work, so as to encourage them to accept even short-term and minor employment.

As mentioned before, maintenance of rights would not, supposedly, be a feature of the EUBS. Therefore, EUBS benefit recipients whose unemployment is interrupted by a short employment period would lose their EUBS entitlement unless this period of employment equalled the EUBS qualifying period⁵¹ and thus generated a new round of EUBS entitlement. Even so, and except for the variant 1 option, the new EUBS benefit period would only start after three months had passed.

We noted earlier that the non-recognition of maintenance of rights by the EUBS might be a poor fit with national activation policies. This would especially be the case if only an EUBS entitlement (still) exists. If a person having rights under both the NUBS and the EUBS interrupts his/her unemployment, the articulation between the two systems would turn out to be very complex and, depending on the case at hand, might present various mismatches (such as gaps or unduly long benefit periods).

⁵¹ This might be feasible in the baseline and variant 1 options for the dimension ‘qualifying period’ (three months), but less so in variant 2 (twelve months).

3.2.4.2.3 At the end of the EUBS payments

At the end of the EUBS benefit duration, national top-ups would be generally less frequent than at the beginning (regarding the baseline and variant 2 options).

In the baseline and variant 1 options, the payment of (full) national benefits would not resume in fourteen countries. In four member states (BE, DK, FI, SE), it would resume in all cases, and in the ten others it would depend on the individual case. In the last set of countries, top-up NUBS provisions would be mainly for those of a certain age and/or with longer insurance records, even though there is considerable variation from country to country. In Germany, for example, the NUBS benefit payment would recommence following EUBS exhaustion only in respect of those aged 50 or older and having completed at least thirty months of compulsory insurance coverage. In France, all those unemployed whose insurance record exceeds one year, regardless of their age, would be entitled to a top-up by the French system.

In the variant 2 option, only in five countries would (full) national benefit payments not recommence (CY, HU, MT, SK, UK), in six it would in all cases and in seventeen in some.

It may be noted that several countries, with a view to encouraging a return to work, provide for the continued payment of (a part of) the NUBS benefits for some time after the start of new employment activity. This is the case for instance in Italy, as regards low-paid work, and Malta, specifically for self-employed activities. In the UK, employment income reduces the benefit, over and above a small disregard, on a pound-for-pound or tapered basis, depending on whether the jobseeker's allowance or the universal credit is involved. Once again, the interrelation of these measures with the supranational scheme will depend on whether EUBS benefits can be cumulated with earnings from work – an issue that hinges upon the definition of unemployment under the EUBS – but is likely to lead to significant administrative complexity either way.

3.2.4.2.4 Operational issues

Especially in the variant 2 option, but to a lesser extent also in the baseline option, insured persons would likely be **subject to multiple schemes in the course of their unemployment**. In the first three months (and without prejudice to any factors delaying payment commencement, see 3.2.4.2.1, *supra*), unemployed people would be covered by the NUBS. After this period of NUBS coverage – and in a small number of cases, following a period of lack of insurance coverage (3.2.4.2.1, *supra*) – payment of the EUBS benefits would start, possibly topped up by NUBS provision. If unemployment lasts, a shift to the NUBS benefits at the end of the EUBS coverage could occur, more frequently in the variant 2 than in the other two options.

Depending on the country and the variant, a jobseeker could be confronted with up to three system shifts, taking into account also national social assistance entitlement. Even assuming that EUBS and NUBS benefits are administered by the same institutions and that a single claim would enable the individual to obtain both benefits, successive shifts between different benefit systems – with each having their own conditions and modalities and which may or may not apply in conjunction – would be source of administrative burden. The risk of error would increase, with insured persons possibly suffering delays or under-payments or, conversely, receiving over-payments leading to costly recovery procedures.

In this regard, we must also consider the amount of the EUBS benefits payable, which, as seen earlier (in 3.2.3.2), might differ very substantially from the NUBS amount depending on the EUBS option, the country and the individual situation. As a result, **system shifts are likely to be accompanied by considerable fluctuations in benefit income for unemployed individuals**. As long as the amount of the EUBS benefit is lower than that of the national benefit payable, the difference will be topped up by the NUBS and income variations (over and above those foreseen by the latter system) will only arise if NUBS entitlement ceases prior to EUBS entitlement. As shown above, however, the EUBS benefit amount would often exceed that payable by the NUBS, especially in the baseline and variant 2 options for the dimension ‘amount’ (i.e. 50% and 60% of the RW, respectively). In combination with the baseline and variant 2 options for the dimension ‘duration’, this might lead to increases in unemployment benefit income at the beginning of the fourth month of unemployment. Such increases, which could be very significant depending on the country and the jobseeker’s situation (notably his/her reference earnings), might act as a powerful disincentive to job search during the unemployment spell.

More generally, **the interaction of discrepancies in terms of both duration and amount between the national and supranational benefits may disrupt a balanced unemployment provision, leading to unwarranted fluctuations in benefit income and potentially even to the creation of unemployment traps. This holds true especially for those options where the EUBS benefit commences after three months of unemployment.**⁵²

Our above considerations relating to the administrative complications stemming from the use of different **time units** in terms of the qualifying period, as well as the solution put forward in the form of fixed, common conversion rules (see 3.2.2.1.3, *supra*), also apply in relation to the benefit duration.

A last challenge, which we might qualify as more **political** in nature, might be encountered in countries where the duration of unemployment benefits is generally shorter than that of the EUBS (in its baseline and variant 1 values). To the extent that such a short benefit duration reflects a conscious policy choice, extending the period during which unemployment benefits can be drawn may instigate opposition on the part of certain political parties and employers’ organisations. Such is the expectation, according to the national expert, in Latvia, where the NUBS is already being criticised by the aforementioned groups for being over-generous.

⁵² The Croatian example shows that this is not necessarily the case. As highlighted in the relevant national report, the variant 2 option for the dimension ‘duration’, in combination with the baseline ‘amount’ value of the EUBS, would actually serve to ‘smoothen’ unemployment provision for the Croatian unemployed. They would receive 70% of the RW during the first three months (NUBS), then 50% of the RW during the next three months (EUBS), and finally (for those whose previous employment period exceeds five years) a national provision of 35% of the RW for a period of up to nine months.

3.2.5 Cyclical variability, experience rating, claw-back and debt

The four remaining dimensions are more specific to the concept of the EUBS. They were specified by the contractor (in close consultation with the European Commission)⁵³ and vary according to whether the EUBS form includes these particular elements.

Overall, the interrelation with the EUBS dimensions relating to cyclical variability, experience rating, claw-back and debt issue does not seem to be very problematic, particularly from a legal point of view. It is apparent from the national reports that potential obstacles mainly concern operational feasibility and, to a certain extent, (political) desirability.

In the next sub-sections, the interaction of each of these dimensions with the NUBS is fairly briefly discussed.

3.2.5.1 Cyclical variability

Cyclical variability refers to the extent to which parameters defining the EUBS are a function of variables related to the economic cycle. For the purposes of this study, cyclical variability is defined as an additional six months of benefits in case of a recession (two consecutive quarters of negative growth) in more than half of the member states simultaneously.⁵⁴ These extended benefits would be funded from the general EU budget.

Some national experts make **general comments relating to this EUBS dimension**, stressing that its implementation should be governed by *ex ante* defined conditions (ruling out any discretion) and fully uniform parameters, and drawing attention to the associated risk of moral hazard. The latter might make the case for developing minimum requirements in relation to activation policies, all the more so as the extended EUBS would be providing benefits for the officially (i.e. as per Eurostat's definition) long-term unemployed.⁵⁵

Cyclical variability is **not common in the NUBS**. Only a small minority of countries incorporate elements akin to cyclical variability in their unemployment protection systems. This is most clearly the case in Austria, where the federal minister for social affairs may issue regulations to the effect of halving the qualifying period for certain groups of employees in case of severe unemployment. In Spain, the Professional Retraining Programme, which is a temporary economic aid programme for unemployed persons with family responsibilities, is automatically extended as long as the unemployment rate exceeds 20%. In this regard, we would also reiterate that some NUBS award unemployment benefits for longer periods of time in regions struck by high unemployment (e.g. LT, PL). Finally, some national experts have referred to the adoption of legal measures temporarily expanding unemployment protection in the wake of the Great Recession. In Luxembourg, for example, measures were taken to

⁵³ For an extensive discussion of these dimensions, see Beblavy, Lenaerts and Maselli, "An analysis of 18 possible EUBS", forthcoming, op. cit. A brief operational definition is included in the glossary – see annex 1.

⁵⁴ Only cyclical variability tied to the EU level was considered for the purposes of this national feasibility study, excluding cyclical variability tied to the national level, i.e. using the short-term unemployment rate as a triggering variable (see Beblavy, Lenaerts and Maselli, "An analysis of 18 possible EUBS", forthcoming, op. cit.). This should not, however, affect the findings presented below.

⁵⁵ See notably the comments made in this regard by the Belgian expert in his report.

uphold benefit levels (by suspending time-conditioned capping decreases) for those who are unemployed beyond six months.

Legally speaking, cyclical variability would not pose any specific obstacles. Provision would need to be made in the legislation introducing the EUBS, and existing instruments regulating unemployment benefits would need to be amended. These could include, as in France, cross-industry agreements entered into by the social partners (on this see 3.1.1.2, *supra*).

On the **operational** side, no major barriers are expected either, even if the implementation of cyclical variability might give rise to administrative challenges. It would seem important that this dimension is integrally considered when setting up the EUBS. Concrete procedures need to be ready for use in the eventuality of a deep downturn. Transitional provisions need to be laid down, covering both the phase-in and phase-out of the extended benefit provision.

Cyclical variability as conceived here would entail that EUBS benefits would be payable for a maximum of 15 months, from the 4th up to and including the 18th month of unemployment. This late in the unemployment spell, the benefits are likely to stem exclusively from the EUBS, as NUBS provision would already have been exhausted or, on account of its progressively decreasing nature, be of a lower amount. Only in Belgium and Denmark would NUBS provision normally resume after termination of the extended EUBS benefit; in six others (FR, DE, IT, PT, NL, SI), it would do so only in defined (and possibly rare) cases.

With cyclical variability activated, the delaying effect of the EUBS on any assistance-based entitlements (*infra*, 3.2.6.1) would be more marked. This would clearly reduce national expenditure in respect of these benefit systems, and even overall given that the extended benefits would supposedly be funded from the general EU budget.

This last element should probably assuage the opposition that might be encountered from authorities and employers' organisations against channelling additional funds to unemployment protection in times of crisis (as referred to, e.g. in the Romanian report). Even so, as is mentioned in the UK report, further extending a benefit provision that, even without cyclical variability, is already more generous than what is currently offered, might be seen to clash with the policy preference for limited benefit payments as an element of a system of work incentives.

3.2.5.2 Experience rating and claw-back

Experience rating and claw-back are mechanisms aimed at adjusting the contribution of a country (or payer) to the EUBS, so that the net contribution is closer to zero in the medium to long term than it would be without these features. Their rationale is to minimise moral hazard and avoid the risk of permanent transfers across countries.

In a system with **experience rating**, those paying into the system contribute to a different degree depending on their past experience of unemployment. Concretely, experience rating as construed for the genuine EUBS entails that a coefficient is applied to all individual contributions (i.e. from workers and employers) from a given country at a given time. This coefficient corresponds to the ratio of the ten-year national average of headline short-term unemployment over the ten-year average of headline short-term unemployment for the whole EU. The coefficient would be updated every three years. **Claw-back** is a mechanism that reduces a potential, long-term negative (positive) net contribution by a member state by

increasing (decreasing) the amount that the member state has to pay into the supranational fund. Operationally, for the genuine EUBS, claw-back is asymmetric (in the sense that it is activated for countries that 'owe' funds to the EUBS, but not for those that have a large positive balance) and paid by member state governments (which can then determine the financial source) rather than by employers and workers (directly). Claw-back would be an annual 0.2% GDP contribution that would start to be paid after three years of more than a 1% of GDP cumulative negative balance vis-à-vis the central fund and would continue to be paid until the balance declines to below 1% of GDP.

Overall, experience rating and claw-back are **rarely applied in national social security systems**. A number of countries are familiar with schemes that tie contribution rates to risk occurrence or past performance under the scheme, but these mainly relate to the branches of accidents at work and/or occupational diseases (e.g. DE, LU, PL, RO) and, to a lesser extent, sickness cash benefits (LU). When it comes to unemployment insurance, some degree of experience rating can be encountered in the Italian and Dutch schemes. In the latter, one of the two unemployment insurance contributions, i.e. those paid into the sectoral funds (*sectorfondsen*), is risk-related. In Italy, *Naspi* contributions incorporate an additional one-off contribution in case of dismissal. Furthermore, the basic contribution itself is differentiated by economic sector on the basis of the (*ex post*) probability of high unemployment rates. Note that in none of the aforementioned cases is experience rating or claw-back applied to employees' contributions – only employers' contributions are concerned.

Some national experts have made **comments, mainly addressed to the EU level, regarding the design of experience rating**. The Belgian expert questions the appropriateness of the unemployment rate evolution as a performance indicator, since it carries the risk of incentivising member states to transfer their caseloads to inactivity schemes. Instead, so the expert argues, consideration could be given to creating an incentive effect by using the evolution of the employment rate as a performance indicator. Also with regard to experience rating, several experts (SE, UK) have stressed the importance of harmonising definitions of short-term unemployment, thus precluding individual member states from attempting to reduce their short-term unemployment rate (and exposure to higher contributions) by adjusting the national definition. In the same vein, hinting at the current refugee crisis, it was pointed out in some national reports that a country's net balance or short-term unemployment rate may be influenced by structural changes in the labour market, notably immigration. According to the Swedish expert, it may be discussed whether countries, and ultimately citizens living in these countries, should be economically punished for such structural changes, and what kinds of incentives are created for governments and others.

Similar to cyclical variability, the EUBS incorporating or not experience rating and claw-back would not be a source of particular **legal barriers**. If the EUBS is to include (one of) these mechanisms, appropriate provision would need to be made in the legislation introducing the EUBS, and existing legislation, notably in the realm of financing unemployment benefits, would need to be changed. When it comes to experience rating, the legislation will need to stipulate in advance which of the contributors (employees or employers) is going to bear what portion of the increase (as mentioned by SK). In the case of France, this would imply an agreement among social partners at the cross-industry level. It is not unlikely that they would oppose such an arrangement, as it would effectively confirm their (partial) loss of power over the budget of unemployment-related benefits. It should also be noted that, faced with

increasing unemployment, social partners in France have traditionally preferred to toughen entitlement rules rather than to increase contribution rates.

Specifically with regard to claw-back, a number of national reports (e.g. ES, HR, NL) point to the negative impact that the additional national contribution could have on **public finances**, noting that it might lead to the country concerned failing to comply with European fiscal rules. Since claw-back potentially involves government spending, it would need to pass the Maltese Fiscal Responsibility Act. As mentioned in the report of the UK expert, given the political reaction to the increase of the UK's contribution in 2014, gaining parliamentary approval for a claw-back arrangement could be problematic and might be dependent on ensuring the claw-back process is a 'two-way street', i.e. symmetric.

A few experts (e.g. AT, CZ, FR) raise questions about the compatibility of experience rating and claw-back with general principles enshrined in **international and/or national (constitutional) law**. In particular, the possibility for countries, or for economic players operating in these countries, to pay a different cost for similar insurance compared with their European counterparts might conflict with the principle of equal treatment. This could be the case if the situations were found to be comparable and in the absence of a proper justification for the diverse contributions. Moreover, to the extent that experience rating and claw-back have the effect of establishing a direct link between the cost of the EUBS and the occurrence of the social risk, it could fall foul of the principle of social solidarity (see also 3.1.1.1, *supra*). None of the experts, however, go as far as suggesting that an EUBS incorporating these corrective mechanisms would necessarily breach the aforementioned principles. With regard to experience rating, for example, it is acknowledged that the criterion is the national, rather than the individual risk of unemployment. More generally, the fact that these mechanisms would apply nationwide (i.e. to all economic operators in a given country) rather than individually, somewhat blurs the compatibility assessment.

Even if it is accepted that experience rating and claw-back would not pose obstacles of a legal-constitutional nature, a number of national reports (e.g. CZ, ES, HU, LU, SI) mention that their operation is liable to undermine the **legitimacy** of the EUBS. Some national experts criticise the logic of putting extra strain upon countries (and their economic operators) when they are already struggling (or just recovering). It is also reiterated that the circumstances leading to the application of experience rating or claw-back may be connected with factors that are beyond authorities' control, such as immigration. Specifically for experience rating, it is mentioned that penalising employers that undertake efforts to avoid redundancies in a hard economic environment appears unfair and counterproductive. The same holds true in respect of workers, whom, it is recalled, are not affected by the experience rating mechanisms that currently exist at the national level. A number of experts moreover point out that experience rating and claw-back detract from the social dimension of the EUBS, as they hardly leave room for redistribution and solidarity, which constitute intrinsic features of a social insurance system.

There is some concern (voiced by, e.g. ES, HR, SI) over the impact of the said mechanisms, especially experience rating, on labour costs and economic competitiveness. As mentioned several times, raising social security contributions is politically a highly sensitive matter.

From an **operational** point of view, it is clear that a claw-back mechanism would be easier to implement than experience rating. Unlike claw-back, which is paid by the national

government, experience rating requires adjustment of (employees' and employers') contribution rates. This leads to an administrative burden for both employers (having to adapt their payroll system) and authorities charged with collecting contributions (having to change software, train staff, etc.). It may be expected that adjustments to EUBS contribution rates would be more easily dealt with in countries that are familiar with frequent changes in social security contribution rates, such as Spain, Poland, Sweden and the UK. By contrast, in a country like the Slovak Republic, where NUBS contribution rates rarely change, this is likely to be administratively more challenging. As mentioned above (see 3.1.2), the implementation of (adjustments of) EUBS contributions from employees might be administratively and politically more complicated in countries where NUBS contributions are payable by employers alone (CZ, HR, IT, LT, NL, PL).

No legal or operational barriers at the national level are to be expected if the **EUBS does not feature experience rating or claw-back**. An EUBS without these mechanisms would embody a certain intra-EU solidarity, whose appropriateness and degree would essentially be a political choice. At the same time, few national experts have pointed out in their reports that experience rating and/or claw-back may be necessary to avoid moral hazard, serve as an incentive for more effective activation policies or protect them from becoming a net contributor to the EUBS.

3.2.5.3 *Debt issuing*

By default (the baseline option), it would be **possible** for the EUBS to cover short-term imbalances by borrowing money from the capital markets.

It is stressed in several reports that this debt-issuing possibility is essentially an issue of European policy rather than of national legislation or administration. Provided there is a sound (EU/international) legal basis for this possibility – it may be noted, incidentally, that the EU is currently not permitted to borrow to finance its budgetary expenses – it should not result in significant legal or operational barriers in the member states.

That is not to say that the option would not cause political controversy, stemming from the use of loans as a means of financing social security, from the ability of the EUBS to issue supranational bonds (as mentioned in the Belgian report) or simply from the fact that this option is not open to any social security fund at the national level (as mentioned in the Czech report). Conversely, as noted by another national expert, the possibility for the EUBS to issue debts could bear symbolic meaning, attesting to a real supranational, solidarity-based fund.

Consideration should be given to the question as to whether member states would be called upon to act as guarantors in the event of an EUBS default.

If debt issuing were **not possible**, as would be the case in the variant options, then the resources needed to avoid a negative financial position of the EUBS would be contributed by the member states, in proportion to their GDP. National governments would be free to decide how to fund this special contribution, i.e. from the general budget and/or through social security contributions. The former would be simpler administratively speaking, but would constitute an unforeseen burden for state budgets and possibly lead to breaches of EU fiscal rules and/or national deficit limits. The operational and political challenges of raising contributions have been discussed above, in relation to experience rating (see 3.2.5.2).

3.2.6 Interrelation with other social protection branches

Until now, we have been occupied mainly with considering the interrelation of the EUBS with national schemes of unemployment insurance. In the present section, we look beyond unemployment insurance to consider the articulation of the supranational scheme with other social security branches (3.2.6.2) as well as with systems of social assistance (3.2.6.1).

3.2.6.1 *Interrelation with social assistance*

With a few exceptions (EL, ES, IT), all EU member states make provisions for meeting the subsistence needs of individuals and families who otherwise lack sufficient income from employment or other sources (including insurance-based benefits). Such **general social assistance**, which is not related to a particular social risk, provides cash benefits to eligible claimants whose resources are below a specified, minimum income standard.

Next to general social assistance, over a third of EU member states operate assistance-based schemes specifically directed towards persons who are jobless and capable of working (AT, DE, DK, EE, ES, FI, FR, IE, MT, PT, UK). Like other forms of social assistance, this type of **categorical social assistance** (i.e. ‘**unemployment assistance**’) is tax-financed and means-tested. Unlike (most) unemployment insurance allowances, benefits granted by unemployment assistance are unrelated to previous earnings. Their level tends to be higher than that of general non-contributory minima, and in some cases equals that of unemployment insurance benefits (IE, MT, UK). Unemployment assistance benefits are typically granted to persons who fail to satisfy the contributory conditions for the unemployment insurance entitlement or who have exhausted that entitlement. In some countries (AT, DK, FR⁵⁶), expiry of the insurance-based entitlement is a pre-condition for accessing unemployment assistance. The award of unemployment assistance benefits is usually not contingent upon previous insurance or activity periods, although it might be (EE, PT). In contrast with unemployment insurance, unemployment assistance is often of unlimited duration (even if entitlement may need to be proved regularly), though again, some countries (e.g. EE, PT) deviate from this rule.

Because the EUBS would generally qualify more people than the NUBS do (see 3.2.2.1.1) and for a longer period than the NUBS (see 3.2.4.1) and at relatively important benefit levels (see 3.2.3.2), it is expected that resort to (categorical and general) assistance schemes would overall decrease. Two mechanisms are at play here: first, unemployment insurance (with which the EUBS is to be equated) and unemployment assistance entitlement are generally mutually exclusive; second, the consideration of EUBS benefit income would likely lead to the person concerned failing to satisfy the means test conditioning assistance-based entitlements.

To put it in more concrete terms, those qualifying only for the EUBS (to the exclusion of the NUBS) would not, during the payment of EUBS benefits, be able to claim unemployment assistance – even if they would otherwise pass the means test. Subject to that last proviso, assistance benefits would be payable prior to (in the baseline and variant 2 options for the dimension ‘duration’) and, depending on the option and the country, after the payment of, EUBS benefits. But it cannot be excluded, as the example given in the Spanish report demonstrates, that some groups currently without national insurance or assistance coverage

⁵⁶ Note, however, that in France, unemployed persons aged over 50 may opt for unemployment assistance from the start of unemployment, if that is more advantageous for them.

would gain an assistance entitlement on account of having exhausted the European insurance benefits. Still, this would seem to be a marginal phenomenon.

The role of social assistance would also decrease in respect of the (larger) group of people eligible under both the EUBS and the NUBS. Since it would be quite common for EUBS benefits to last longer than NUBS benefits, a possible recourse to unemployment assistance would be deferred until after expiry of the former. It follows that unemployment assistance entitlement would effectively be ‘pushed backwards’ in many cases (AT, DE, EE).

In principle, the above applies not only to unemployment assistance but also to general social assistance. Even though it may be possible, for an individual or a family, to draw both unemployment benefits and general social assistance (whereby the amount of the former reduces the latter), the relatively high levels of EUBS benefits payable are likely to disqualify the person or family from general social assistance (AT, EE, HR, LV, MT, RO, SI, SK). The same holds for other forms of categorical social assistance (or even means-tested social security) that can typically be combined with unemployment benefits. This is the case first and most importantly for the family branch: receipt of an EUBS benefit may result in the person or family concerned not being entitled to means-tested family supplements or tax credits, or being entitled only to lower ones than would have been the case if no EUBS benefit were available (BE, IT, MT, UK). A similar impact could be observed with regular family allowances in those countries (ca. a third of the member states) where child benefits are income-tested (e.g. PL). Likewise, certain income-dependent healthcare entitlements, such as the increased reimbursement status in Belgium, might be affected by higher unemployment benefit income. Housing allowance rights could also be influenced by the EUBS (DK, UK).

That being stated, it cannot be excluded that for persons with low reference wages, the EUBS benefits (or combined EUBS and NUBS benefits) would not reach the minimum subsistence level.⁵⁷ In such cases, which naturally would arise more frequently in the variant 1 option for the dimension ‘replacement rate’, the EUBS benefit could be topped up by a national social assistance entitlement. This could notably occur in Denmark, where social assistance is relatively generous and sometimes preferred by unemployed persons over (voluntary) unemployment insurance.

On the **operational** side, several national experts draw attention to the importance of an efficient data exchange between the EUBS and the assistance-based schemes. This should not, however, present specific challenges to the extent that the EUBS were governed by the same institutional framework as the NUBS. An overall decrease in the resort to assistance-based systems by unemployed persons would likely reduce the administrative effort on the part of the institutions implementing these schemes – an effort that is relatively intensive having regard to the need to assess the means-related requirements conditioning the said systems. At the same time, for a share of the cases, the effort would merely be delayed, until expiry of the EUBS entitlement.

It is clear that the expected decline in assistance-based entitlements would lead to reduced expenditure in the corresponding benefit systems. It is recalled that these are as a rule funded by general taxation and often, especially insofar as the general non-contributory minimum is concerned, administered locally. Yet at the macro level, the reduction realised in spending on

⁵⁷ It may be recalled that the EUBS does not provide for a minimum benefit.

assistance-based entitlements – which are on the whole of a low level – would likely be largely offset by increased contributions on account of the relatively generous EUBS.

The relative generosity of the EUBS might also be seen as **conflicting with policy tendencies towards workfare and stringent conditionality** that underpin social assistance schemes for the unemployed in several member states. This is particularly evident in the case of Hungary, where, it is recalled, the NUBS entitlement would already be expired upon commencement of the EUBS benefits (in the baseline and variant 2 options for the ‘duration’ dimension). The assistance-based ‘employment substitute support’ that normally ensues is strictly means-tested, of a very low amount (ca. €75 per month) and is contingent upon (among others) participation in workfare programmes. As a result of the introduction of the EUBS (baseline option), this scheme would be deferred for nine months, i.e. three times the length of the national insurance entitlement, making it politically hard to swallow.

3.2.6.2 *Interrelation with other social security branches*

It stems from the analysis carried out by the national experts that the impact of the EUBS in other social security branches would remain limited overall.

This articulation could take different forms, each based on the presumption that the receipt of EUBS benefits would be assimilated into that of NUBS benefits. Above (see 3.2.6.1), we pointed out that EUBS income might affect the claimant’s entitlement to other, means-tested social security benefits, notably in the family and healthcare branches. Another form in which the interaction might occur is through **accumulation with other social security benefits**. The most tangible type of interrelation is present in those cases where the receipt of unemployment insurance benefits **generates entitlements in other branches**.

Starting with the latter type, it is very common in NUBS for **periods of drawing unemployment benefits to be considered periods of insurance for the purposes of pensions**, particularly old-age pensions. Only in a few countries (e.g. HR,⁵⁸ SK) does the fact of drawing unemployment benefits not create any pension rights. To the extent that the EUBS generally qualifies more people for longer and higher unemployment insurance benefits (see 3.2.2.1.1, 3.2.4.1 and 3.2.3.2), a future budgetary impact on the pension branch can be expected. Mostly, however, national experts do not consider this impact substantial: the number of cases in which extra pension entitlements would be created could turn out to be rather low, all the more so as some countries also credit periods of unemployment during which no benefits are received, be it only partially (e.g. CZ, FR, UK) or periods of receiving unemployment assistance benefits (e.g. AT). Likewise, the impact of the higher amount of unemployment benefits on the eventual pension entitlement might on the whole be limited, since the relevant basis for pension calculation may be capped (e.g. IT, PT) or it may simply disregard unemployment benefit income (e.g. BE).

A broadly similar picture prevails for the **sickness branch**. Above, we explained that in most (yet not all) member states, NUBS beneficiaries struck by temporary work incapacity receive sickness cash benefits for the duration of this incapacity. In some countries, the same applies in the branch of maternity, paternity and parental insurance (e.g. in ES, LV and SE, but not,

⁵⁸ In Croatia, exception is made for unemployed persons who have reached retirement age but lack up to five years of the qualifying period.

e.g. in LU). Furthermore, entitlement to sickness benefits in kind (i.e. healthcare) is mostly ensured for NUBS benefit recipients. Some degree of additional expenditure could therefore be the consequence of a broader scope of EUBS beneficiaries receiving longer benefit payments. At the same time, and even if of a more 'instant' nature, the budgetary impact would probably be smaller than for pension insurance. That is because unemployed persons with only an EUBS entitlement (left) would, also in the absence of the EUBS, likely have been insured against sickness on some other basis (e.g. residence, family member, simple status of the unemployed person or receipt of an assistance benefit). This is especially the case for sickness benefits in kind.

In fact, the discussion about the impact of the EUBS on other social security branches **cannot be seen in isolation** from the **financing of social security benefits** and whether unemployment benefits are **subject to taxation and social security contributions** in the member states. Without entering into detail, pensions and sickness cash benefits are, like unemployment insurance benefits, mostly funded by contributions (except for the national pensions in Scandinavian countries), while for healthcare the picture is more diverse, with state budget funding being prevalent in countries operating a national health service system. Looking at the fiscal treatment of unemployment benefits, the majority of member states (17) subjects them to general taxation. Conversely, social security contributions are deducted from NUBS benefits in only a few countries; these contributions payable may be directed to all traditional branches except unemployment and work injuries (ES), or to healthcare, pensions and long-term care (LU, NL) or only to old-age pensions (HU) or healthcare (FI, SI). In other countries, contributions from NUBS benefits are not payable by the beneficiary him- or herself, but are paid on his/her behalf by the state budget (e.g. for healthcare, BG and HR) or by the competent social insurance institution (e.g. for pensions and healthcare (and long-term care), EE, LV, RO (and DE)). Provided that the EUBS benefits were subject to the same fiscal and contributory treatment as the NUBS benefit, it is clear that the (budgetary) impact of the EUBS on other social security branches would be far less an issue.

Insofar as the **accumulation with other social security benefits** is concerned, it has been noted that unemployment benefits can typically be combined with social assistance benefits (except unemployment assistance) and family benefits, but not with sickness cash benefits. Other benefits in respect of which accumulation with NUBS benefits is usually allowed include (partial) disability benefits and survivors' pensions, and to a lesser extent (partial) invalidity and old-age pensions, long-term care benefits and benefits payable in respect of work injuries. Even if it is allowed in principle, it is quite common for the simultaneous receipt of unemployment and other social security benefits to be limited in some way. The accumulation may, for instance, be limited in time (in BE, the survivors' pension; in DK, the social pension) or subject to the value of the social security benefits to be accumulated not exceeding a certain ceiling (e.g. in EL, pensions not exceeding the minimum rate of the old-age pension; in PL, social security benefits not exceeding 50% of the minimum wage). Likewise, the amount of the unemployment benefit is often reduced by the value of the combined pension entitlement (e.g. in FI and LT, the invalidity and old-age pension; in LU, the survivors' pension). The corresponding application of NUBS accumulation principles to the EUBS does not seem to give rise to any specific barriers, even though some adaptation will be necessary in respect of the limitation modalities pertaining to accumulation.

Operationally, no specific barriers have been reported by the national experts with regard to the interrelation with other social security branches, other than the need to establish a rigorous exchange of information between the EUBS and the different national systems.

A few experts point out that, given the apparent higher rate of EUBS (as mentioned by IE) or as a result of increased complexity (as mentioned by SE), the risk of **wrongful use of (mutually exclusive) benefit systems** might increase. The unemployment and sickness benefit schemes would be particularly vulnerable in this respect.

3.3 *Specific issues as regards the top-up EUBS*

As seen in the introduction (1.2.2.2, *supra*), the basic and top-up genuine EUBS both concern minimum provisions: they offer eligible unemployed people (who were employed for three months out of the last twelve) half of their last gross wage, capped at one and a half times the ANW, for a period of nine months starting from the fourth month of unemployment. In the top-up variant, this provision takes the form of a guarantee, which is only effectively acted upon if the NUBS do not reach that minimum provision. A key difference therefore concerns which countries receive money from the EUBS: in the basic scheme, every country would be a beneficiary; in the top-up scheme, countries whose NUBS are more generous than the standard could not be beneficiaries, even though all would pay into it. Accordingly, the amount of contributions needed to finance the top-up EUBS would be much lower than those for the basic type.

General feasibility issues as regards the top-up EUBS, notably when it comes to adaptations of the national legal and organisational frameworks, have been dealt with in section 3.1. The dimension-specific feasibility analysis as regards the genuine EUBS (in 3.2, *supra*) is largely valid for the top-up variant as well. However, this EUBS type raises a number of specific issues that are the subject of the present section. First, we briefly investigate the cases in which the top-up EUBS would mostly intervene (3.3.1). Subsequently, a series of questions and obstacles that are characteristic of the top-up variant are elucidated (3.3.2).

3.3.1 *In which cases would the top-up EUBS intervene?*

The activation of the top-up EUBS is a **direct function of the level of NUBS provision**. Bearing in mind the dramatic differences in NUBS coverage and entitlements among the EU member states (see the comparative analysis in 3.2), it comes as no surprise that there is huge interstate disparity in top-up EUBS intervention. Depending on the country concerned, this disparity also applies within countries, based on the individual situations of the unemployed (e.g. previous income, insurance record and length of unemployment).

The top-up EUBS provision can take various forms, essentially depending on the dimension for which a top-up is provided. If it is paid for the dimension ‘qualifying period’, a **full EUBS provision** (i.e. 50% of the RW, capped at 150% of the ANW) will be granted to those who do not fulfil the NUBS qualifying condition but do satisfy the EUBS one. Like for the latter, the top-up EUBS provision for the ‘duration’ dimension will be paid to those who do not – in this case, no longer – have NUBS entitlement; the full European benefits will follow the national ones, after their expiry. Only the top-up EUBS provision payable for the ‘amount’ dimensions (i.e. replacement rate and capping) will apply to those unemployed simultaneously eligible

under the EUBS and the NUBS; it will consist of a **differential supplement** between the national benefit and the EUBS minimum provision.

The top-up EUBS is capable of being triggered in every member state, even the most generous ones, be it only on account of one or two dimensions. For example in Italy, which constitutes the only country where people who would qualify for the top-up EUBS would necessarily do so for the NUBS as well, the supranational scheme may be called upon to top up for the dimensions ‘amount’ (e.g. as of the fifth month of unemployment for those who earned at the ANW) and ‘duration’ (for those with a contribution period of less than twenty-four months). Likewise, in France, the small group of the unemployed with a short employment record (of more than three but less than four months) may receive a full EUBS provision, whereas those with an employment record of between four and twelve months would see an EUBS top-up at the end of their national entitlement. Even in countries paying high levels of NUBS benefits, like France, Luxembourg and the Netherlands, EUBS top-ups may arise for high-wage earners.

Whereas all 28 member states may be concerned by the top-up EUBS, it is obviously in countries with a less generous NUBS provision that top-ups by the EUBS would apply more frequently, in some cases to the point of becoming generalised on account of several or all dimensions:

- With respect to the **dimension ‘qualifying period’**, the leniency of the EUBS qualifying condition in relation to most NUBS would lead to a situation where significant groups of people, especially those with shorter employment periods completed in the recent past (see 3.2.2.1.1, *supra*), would be entitled only to the EUBS provision.
- In the bulk of the member states (i.e. all but BE, DK, FI, LU and SE), the possibility would exist for unemployed persons to obtain a full EUBS provision upon expiry of their national benefits. This would occur consistently in nine member states (CY, CZ, HU, IE, LV, LT, MT, SK, UK), whereas in the other fourteen the top-ups on account of the **‘duration’ dimension** would arise mainly for those with a shorter insurance/employment record and/or of a younger age (see 3.2.4.2.3, *supra*).
- If there is entitlement under both the EUBS and the NUBS, the top-up EUBS would be commonly activated, having regard to the relatively high EUBS benefit amount. This would be the case, on a constant basis, in countries paying low unemployment benefits (e.g. IE, LT, MT, PL). European top-ups for the **dimension ‘amount’** would also arise in other countries in respect of persons with above-average levels of previous earnings (e.g. AT, BE, CZ, ES), as a result of the very high capping applicable to the EUBS. It is worth mentioning that, as a result of the differentiating factors applied in a significant number of countries, the part payable from the top-up EUBS would gradually increase as unemployment lasts longer and might also be more important for people with short employment/insurance records and without dependants (see 3.2.3, *supra*).

The discrepancies that may exist in terms of accessibility and duration of benefits between the EUBS and the NUBS lead some national experts to the conclusion that this EUBS variant, despite its top-up nature, would actually become the dominant unemployment benefits scheme (as mentioned by, e.g. PL and SK). This can be best illustrated by the case of Hungary, where the NUBS benefit has a maximum duration of three months and hence would already be expired upon commencement of the top-up EUBS. It follows that there is effectively no

difference between the basic (with baseline values for the different dimensions) and the top-up EUBS; actually, both would be a simple continuation of the NUBS, replacing assistance-based (workfare) programmes. It is recalled that also in some other countries (notably, MT and SI) it is possible for the NUBS entitlement to be exhausted prior to commencement of the EUBS benefit.

3.3.2 Questions and obstacles in connection with the top-up EUBS

As already noted, the legal, operational and political obstacles outlined above in relation to the basic EUBS (at baseline values) generally apply in the same way for the top-up EUBS. That being stated, the latter variant may give rise to specific issues, and other problems may manifest themselves more markedly for this type of EUBS.

A **legal** question of a rather fundamental nature concerns the basis for assessing whether a top-up by the EUBS is warranted. The question is closely related to that of the interaction of the supranational scheme with assistance-based entitlements. As discussed earlier, unemployed persons who do not, or no longer, qualify for the NUBS provision may usually claim a categorical form of assistance benefit or, in the absence of such a benefit or upon its expiry, general social assistance benefits – provided of course they meet the relevant conditions. If these persons qualified for the top-up EUBS, the question arises as to whether they would be able to choose between the EUBS or national assistance provision, according to which one is more favourable (knowing that it will usually be the former). Or, alternatively, would they first need to exhaust their insurance-based (i.e. EUBS) entitlement? The latter possibility would be more consistent with the residual nature of social assistance, whose grant is typically contingent upon the person concerned having used up all other entitlements.⁵⁹ What is more, unemployment insurance and unemployment assistance cannot as a rule be combined under national law. But even if that option were retained, it is not excluded that low EUBS amounts could be topped up by general social assistance or other means-tested supplements and allowances.

The above considerations apply to situations where the EUBS tops up for the dimensions ‘qualifying period’ and ‘duration’. But what about the interrelation with social assistance in those cases where the EUBS supplements a NUBS provision on account of the dimension ‘amount’? It would be uncontroversial, albeit chiefly theoretical, for the combined NUBS and EUBS provision to be topped up by an assistance-based benefit. But the real question may lie upstream: When calculating whether there is a need for a top-up by the EUBS, should the basic NUBS rate be considered, or should it be the basic amount complemented with any supplements that are payable to the individual NUBS claimant, such as means-tested household-related and housing allowances, or a general social assistance payment topping up to the subsistence level? Depending on the country, the answer to this question would have a great impact on the degree of intervention of the top-up EUBS. This would be the case notably in the UK, where the standard NUBS allowance can be far exceeded by child- and housing-related payments. Incidentally, the aforementioned question would arise also with regard to non-means-tested supplements to unemployment benefits or even, taking the argument to the

⁵⁹ Note, however, that in the special case of Denmark, where no mandatory NUBS exists, many people choose to obtain their income replacement benefits as means-tested social assistance, which is of a comparatively high level and not contingent upon the payment of contributions and membership fees.

extreme, to other social security benefits that may be combined with NUBS benefits, such as regular child benefits and disability benefits. This matter, which would affect the distribution of EUBS/NUBS costs, would preferably be settled at the European level.

Another issue that may arise in relation to the top-up EUBS was mentioned by the UK expert but is also likely to concern other countries where NUBS benefits are designed to reduce (whether after a certain disregard) to take account of additional income received by the claimant.⁶⁰ In order to avoid a self-defeating scenario whereby the supranational benefit, paid to raise the claimant's NUBS income to the level of the EUBS minimum provision (i.e. 50% of the RW, capped at 150% of the ANW) would result in his/her NUBS provision being reduced, which in turn would warrant a higher EUBS payment, and so on, the relevant national legislation would need to specify that EUBS benefits could be fully accumulated with NUBS benefits.

As previously noted, the top-up EUBS, despite its name, in essence corresponds to a basic provision, parallel or subsequent to the national one, in cases for which it is granted on account of the dimensions 'qualifying period' and 'duration'. Only when it tops up for the dimension 'amount' does it manifest itself as an additional provision on top of the national benefits. The unemployed person qualifying for the EUBS would have the prospect of receiving (higher) benefits at the start of the fourth month of unemployment, which would be payable at a constant level for a period of nine months, regardless of his/her individual situation. As previously stated, this is liable to pose incentivisation issues and could be seen as encroaching on national policies in terms of benefit levels and duration – including the differentiation therein according to such factors as age, insurance record and unemployment duration. **Operationally**, the management of two parallel systems of unemployment insurance, a European one (in the case of full EUBS provision) and a national one, the latter moreover being subject to possible supplements by the former, is likely to prove an administratively burdensome endeavour. EUBS top-ups for the dimension 'amount' require the competent institutions to proceed to double calculations. To a greater or lesser extent, depending on the design of the NUBS, these calculations are dependent on the individual circumstances of the claimant, and they are dynamic: whether a person is entitled to a top-up from the EUBS may, within a given country, vary not only according to his/her reference wage, but also such factors as his/her age, insurance record, household composition and the point in time of the unemployment spell. The top-up may be acquired only after a certain period of receipt of unemployment benefits, and its amount may need to be recalculated regularly (possibly even monthly) thereafter. All this would presuppose resort to dual registers and flexible arrangements allowing smooth transfers between them.

It follows from the foregoing discussion that, although the top-up EUBS would leave the set-up of the national unemployment insurance systems more intact than the basic variant, and thus probably require less legal adaptation, it could be more difficult to implement from an operational point of view than the basic EUBS. Indeed, whereas the latter would, to varying degrees, replace (a part of) the NUBS, the top-up EUBS would require more frequent and intensive interactions between the national and the supranational systems. This would hold true for the bulk of the member states, but less so for those providing the most generous

⁶⁰ See 3.2.2.2 above regarding accumulation with earnings from work and 3.2.6.2, regarding accumulation with other social security benefits.

benefits (where EUBS top-ups would be warranted only in a small number of cases) or those where the NUBS provision does not exceed three months (notably HU).

A situation of moral hazard related to the top-up EUBS may arise where insured persons have the possibility to determine the extent of their coverage, as may be the case for voluntarily insured groups. In Austria, self-employed individuals who wish to insure themselves against the risk of unemployment can choose between three different contribution levels, which are positively correlated with the value of the unemployment benefits. The self-employed (in the event that they would be covered by the EUBS) would thus be tempted to opt for the lowest contribution level, knowing that their low benefits would be topped up by the EUBS.

The top-up EUBS might, moreover, raise specific **political** objections, as some countries, solely on account of the design of their NUBS, would benefit much less from the top-up EUBS than others, while all would pay the same – albeit, compared with the basic variant, a lower – contribution. Incidentally, there is a risk that some countries could be tempted to reduce their NUBS provision so as to access additional EUBS entitlements, and it is doubtful whether the proposed claw-back could sufficiently mitigate this risk.

The prospect that the contributions to the supranational fund would be used to finance what often might not be a basic provision, but a (potentially very high) supplement for high-wage earners, might also undermine the political acceptance of the top-up EUBS.

4. Feasibility of the EUBS in the light of international and European social security instruments

4.1 Background

Until now, we have analysed the feasibility of the EUBS in the light of national social security legislation. This is not only consistent with the mandate for this report, it is also natural given the fact that social security, including unemployment protection, is regulated almost exclusively at the national level.

There are, however, a number of international legal instruments that may have a bearing on unemployment insurance in European countries and, therefore, on the EUBS. These may take the form of conventions, concluded under the auspices of international organisations, setting minimum standards of unemployment insurance. Several member states⁶¹ have ratified such conventions (section 4.2). Also at the EU level, and even though social security remains by and large a competence of the member states, several pieces of secondary legislation contain provisions affecting social security, including the unemployment branch. This is the case notably for Regulations (EC) No. 883/2004⁶² and No. 987/2009 on social security coordination (section 4.3).⁶³ Rather than setting qualitative standards, these regulations, which are directly applicable in the member states' legal orders, contain provisions to ensure that people making use of their right to free movement do not, on account of that mobility, lose social security rights.

The following sections by no means intend to present an exhaustive discussion about the interrelation of the EUBS with the aforementioned instruments. The scope of this report only allows for a brief overview of some general issues arising from this articulation.

4.2 International and European minimum standards of unemployment insurance

4.2.1 Introductory comments

This overview focuses on the conventions and a recommendation of the International Labour Organisation (ILO), as well as the European Social Charters (initial and revised) and the European Codes of Social Security (initial and revised) adopted under the auspices of the Council of Europe. It should be noted from the outset that not all these instruments apply to all member states.

When it comes to the **ILO conventions**, some member states have ratified the convention of the first generation, i.e. the Unemployment Provision Convention, 1934 (No. 44).⁶⁴ The

⁶¹ The term 'member states' in this chapter shall be taken to refer to EU member states.

⁶² See Regulation (EC) No. 883/2004 of 29 April 2004 on the coordination of social security systems, OJ L 166/1, 30.4.2004 (as amended).

⁶³ This section was written by Carlos Garcia de Cortazar.

⁶⁴ Convention No. 44 has been ratified by BG, CY, FR, IE, IT, NL, ES and the UK. See www.ilo.org, February 2016.

majority of member states have ratified the ILO flagship convention, i.e. the Social Security (Minimum Standards) Convention, 1952 (No. 102), many with Part IV on Unemployment Benefit and some without it.⁶⁵ Some member states have ratified the higher standard convention, i.e. the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).⁶⁶ In the light of the above, it can be argued that certain minimum standards of unemployment insurance do exist on the territory of the EU.

A vast majority of member states have ratified the **European Social Charter** (ESC, 1961), some with and some without Art. 12 (“The right to social security”). Under this provision, the contracting parties undertake to maintain the social security system at a satisfactory level at least equal to that required for ratification of ILO Convention No. 102. The **revised ESC** (1996) was also ratified by a majority of member states, again some with and some without Art. 12 (“The right to social security”). The revised ESC sets as a minimum standard of social security a level “at least equal to that necessary for the ratification of the European Code of Social Security” (ECSS, 1964). At the same time, both charters advocate higher standards, in what is referred to as the dynamic part of the right to social security according to the ESC.⁶⁷

Also, the **ECSS** has been ratified by a majority of member states, although once again some have not ratified its Part IV on Unemployment Benefit.⁶⁸ The revised ECSS (1990), which so far has been ratified by only one member state, i.e. the Netherlands, has not yet entered in force (for which at least two ratifications are required).

4.2.2 Definition

According to international standards, unemployment benefit should be provided in the event of a suspension of earnings to persons who are capable of and available for work, and cannot obtain suitable employment. Registration at a public employment service and compliance with national requirements may be among the additional requirements. Some standard-setting instruments distinguish between full and partial unemployment.

It should be noted that suspension of earnings implies that a person need only be covered by these provisions if they already had a job before they became unemployed. What constitutes ‘suspension of earnings’ is left to the national legislation and may cover voluntary and involuntary unemployment. Nevertheless, some instruments mention voluntary unemployment as a justifiable reason for the termination of unemployment benefit.

⁶⁵ Convention No. 102 with Part IV on Unemployment Benefit has been ratified by sixteen member states, i.e. AT, BE, HR, CY, DK, FR, DE, EL, IE, LU, NL, PT, SI, ES, SE and the UK. However, six member states have ratified Convention No. 102 without Part IV on Unemployment Benefit, i.e. BG, CZ, IT, PL, RO and SK. Six member states have not ratified Convention No. 102, i.e. EE, FI, HU, LT, LV and MT. See www.ilo.org, February 2016.

⁶⁶ Convention No. 168 has been ratified by only four member states, i.e. BE, FI, RO and SE. See www.ilo.org, February 2016.

⁶⁷ For more, see www.coe.int, February 2016.

⁶⁸ The ECSS has been ratified by BE, CY, CZ, DK, EE, FR, DE, EL, IE, IT, LU, NL, PT, RO, SI, ES, SE, UK. Part IV on Unemployment Benefit has not been ratified by EL, PT (although the corresponding part of ILO Convention No. 102 was ratified), IT or RO. See www.coe.int, February 2016.

A person should also be capable and available (as well as searching) for work and should accept suitable employment. What constitutes 'suitable employment' has to be defined by national law, but it certainly opposes the concept of 'any work'.⁶⁹

4.2.3 Minimum scope of entitled persons

Protection should cover at least 50% of all employees (in employment-based systems) or all residents whose means during the contingency do not exceed certain limits (in residence-based systems). The trend is to extend the scope of employees (e.g. at least 55% according to the Protocol to the ECSS, 70% according to the revised ECSS or 85% of all employees, including public employees and apprentices, according to ILO Convention No. 168). Similarly, the revised ECSS advocates the inclusion of all employees (with possible exclusions not exceeding 15%) or at least 70% of the total economically active population.

Certain qualifying conditions, such as a qualifying period, might be set by national legislation, but only to the extent necessary to prevent possible abuse.

4.2.4 Minimum level and duration of benefits

The method of calculating unemployment benefits differs according to whether the system is based upon employment or upon a means test applied to residents.

Minimum standards provide that a periodic cash benefit must be paid in case of unemployment. Nevertheless, a certain number of waiting days could be set (e.g. a maximum of 7 according to ILO Convention No. 168). Although as a rule the unemployment benefit should be granted throughout the contingency, its duration may be limited to a certain number of days (e.g. not less than 156 working days per year, and in no case less than 78 working days per year according to ILO Convention No. 44) or weeks (e.g. 13 weeks according to Convention No. 102 and the ECSS, or 21 weeks according to the Protocol to the ECSS).⁷⁰ Hence, unemployment benefits should in any case not be paid for less than approximately 3 months (per year or per contingency).

Minimum standards also lay down floors for unemployment benefit amounts. The benefits should suffice for a standard beneficiary, i.e. in the case of unemployment a man with a wife and two children (corresponding to the single breadwinner model in the 1950s). It should be provided at a level at least equal to 45% of the total of the previous earnings of the beneficiary and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.⁷¹

As is apparent from later conventions, there is a trend of increasing the minimum level of unemployment benefits to not less than 50% of previous earnings, according to ILO Convention No. 168 and the Protocol to the ECSS. According to the revised ECSS, the minimum level of unemployment benefits for a beneficiary considered alone should not be

⁶⁹ See J. Nickless, *European Code of Social Security: Short Guide*, Council of Europe, Strasbourg, 2002, p. 37.

⁷⁰ In residence-based and means-tested systems, the benefits under the Protocol must be provided throughout the contingency as opposed to just 26 weeks according to the ECSS and Convention No. 102. According to the revised ECSS, the duration might be limited to 39 weeks (in a period of 2 years or for each unemployment spell).

⁷¹ See Arts 65 and 67 of ILO Convention No. 102, Schedule to Part XI of the ECSS.

less than 50%, and for a beneficiary with dependants (i.e. a person with a spouse and two children) it should not be less than 65% of previous earnings.

4.2.5 Legally non-binding measures

In June 2012, the ILO adopted Recommendation No. 202 concerning national floors for social protection, which calls on all ILO member countries to provide, as one of the basic social security guarantees to all in need, basic income security. The guarantee should reach at least a nationally defined, minimum level for persons unable to earn sufficient income, including in particular those not able to find sufficiently paid employment. This may be provided through different means, like unemployment insurance or assistance or through employment guarantees or other public employment programmes.⁷²

It appears that Recommendation No. 202 could be more important in providing basic income security in countries outside of the EU.

4.2.6 Concluding remarks

Minimum standards of social security and more specifically unemployment insurance apply to the majority of member states. When shaping the genuine EUBS, these minimum standards would have to be taken into account.

The genuine EUBS may even contribute to unifying these minimum standards across the EU, i.e. applying them also to those member states that have not adhered to such minimum standards.

Considered in isolation, the genuine EUBS could run counter to international minimum standards on account of its three-month 'waiting period' (in the baseline and variant 2 values for the dimension 'duration') and its 35% replacement rate (in the variant 1 value for the relevant dimension). Even if the genuine EUBS were conceived as a minimum provision and thus these parameters would in most cases be topped up by a parallel NUBS provision, instances could occur where there is only entitlement to the supranational scheme. Therefore, international minimum standards ought to be considered when assessing the feasibility of the genuine EUBS.

International minimum standards do not seem to impact the equivalent EUBS.

4.3 The EU coordination of social security systems

4.3.1 Introduction to the coordination rules governing unemployment benefits

Like their predecessors (Regulations (EEC) No. 3 and No. 4, and (EEC) No. 1408/71 and No. 574/72),⁷³ Regulations (EC) No. 883/2004 and No. 987/2009 provide for coordination of the

⁷² See ILO, "More than 70 per cent of workers lack unemployment protection", Analysis, 14 November 2012 (http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_193133/lang-en/index.htm), February 2016.

⁷³ See Regulation (EEC) No. 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 74, 27.3.1972 (as amended).

national social security systems. While leaving their (numerous and profound) differences intact, these regulations link together the various national systems, so as to ensure that people moving from one member state to another are not, as a result, penalised in terms of their social security rights.

In order to attain this goal, the Coordination Regulations use a number of key principles: non-discrimination on grounds of nationality; aggregation of periods of insurance, employment or residence; the waiving of residence rules or exportability of cash benefits (i.e. the principle that benefits under the legislation of one country can be paid to persons residing in another country); and the application of a single body of social security legislation (as a rule that of the member state of (self-)employment, i.e. the *lex loci laboris*).

As a rule, these principles also apply to unemployment benefits, although for this particular branch they are subject to a number of exceptions and limitations.

By virtue of the general principle of **aggregation of periods**, periods of insurance or (self-)employment completed in other member states can be taken into account for acquiring the right to benefits in a given member state, as though they were completed in that state. However, when it comes to unemployment benefits, the regulations deviate from the general aggregation rule in that they make a distinction according to the nature of the periods required by the legislation of the state where benefits are claimed. Moreover, except in the case of wholly unemployed frontier workers who resided outside the competent state, the application of the aggregation rule is subject to an additional condition, i.e. for the person concerned to have worked or contributed, immediately before becoming unemployed, in the country where benefits are claimed.⁷⁴

Contrary to other social security benefits in cash, unemployment benefits are **exportable** only under certain defined conditions and to a limited extent. The conditions include that the person must have remained available to the employment services of the competent state for a period of four weeks after becoming unemployed, that s/he must register as a person seeking work with the employment services of the state of destination and adhere to the conditions laid down under the legislation of that state. Upon satisfaction of all the relevant conditions, the person can export his/her unemployment benefits from the state where s/he became unemployed for a maximum period of three months. The competent institutions may extend this period to six months.⁷⁵

According to the general rule of *lex loci laboris*, the responsibility for providing unemployment benefits rests with the competent state of last employment or self-employment. But a strict application of this general rule of **applicable legislation** is considered to have undesirable results in respect of wholly unemployed workers who reside in a member state other than the one where they became unemployed. It is believed that this category of workers – in the overall majority of cases, this concerns frontier workers, i.e. persons working outside their state of residence to which they return at least once a week – have better chances of finding a new job in the country where they habitually reside. Thus, the regulations provide that these persons are paid unemployment benefits by the state of residence instead of the state of last (self-) employment, even though no contributions were paid to that state. The institution of the state

⁷⁴ See Art. 61 of Regulation (EC) No. 883/2004.

⁷⁵ See Art. 64 of Regulation (EC) No. 883/2004.

of residence will be reimbursed by the institution of the state of last (self-)employment for the benefits it has provided during the first 3 months (or during the first 5 months, if the person worked at least 12 months during the last 24 months in the state of last employment or self-employment), up to the amount of unemployment benefits that would be payable under the legislation of that state.⁷⁶

4.3.2 The equivalent EUBS

Taking into account that the equivalent EUBS leaves the NUBS untouched, no problem is envisaged for the aggregation and export of benefits. It nonetheless has to be stressed that the basic principle of the equivalent EUBS, i.e. a financial transfer from the supranational fund towards the member states, may generate some difficulties with respect to the application of Art. 65 of Regulation (EC) No. 883/2004, dealing with unemployed persons who resided in a member state other than the competent state.

Paragraphs 6 and 7 of Art. 65 provide for a refund corresponding to the full amount of the benefits paid by the institution of the place of residence during three or five months. This refund is at the expense of the institution of the state of last (self-)employment (i.e. the competent state). It would have to be established whether the financial transfer from the EUBS during these three or five months has to be addressed towards the competent state (option 1) or towards the state of residence (option 2).

If option 2 were chosen, the transfer from the supranational fund may overlap with the reimbursement from the competent state, which could lead to unjust enrichment and conflict with the principles of the Coordination Regulations. To avoid this, consideration could be given to declaring these paragraphs inapplicable in such cases, which would require an amendment of the regulations.

Option 1 might not be without problems either. Reimbursements between member states already suffer from significant delays. It is foreseeable that these delays would increase if the competent state waited for the transfer from the supranational fund to reimburse the state of residence. Moreover, administrative complications may stem from the fact that the supranational fund would have to transfer money first to the competent state and in a second stage, after three or five months, to the state of residence.

When considering the articulation of the equivalent EUBS with the Coordination Regulations on this point, account should also be taken of the prospect that the EUBS will not necessarily have been triggered in both of the member states concerned.

In the light of the above, a possible solution could be for the EUBS to pay the financial transfer consistently to the state of residence (option 2), and for the EU legislature to amend Art. 65 of the regulation in such a way as to do away with the refund by the competent state if the EUBS trigger is pulled in the state of residence. If it is not pulled, the refund mechanism would fully apply and the competent state could potentially claim the amount corresponding to the transfer to the state of residence from the EUBS.

⁷⁶ See Art. 65 of Regulation (EC) No. 883/2004.

4.3.3 A genuine EUBS

The following paragraphs are written from the perspective of the basic EUBS, but they hold true *mutatis mutandis* for the top-up variant as well.

They are based on the assumption that the genuine EUBS comes within the material scope of the Coordination Regulations – an assumption that finds support in the EUBS being contained in “legislation concerning the unemployment branch of social security” (cf. Art. 3(h) and Art. 1(l) of Regulation (EC) No. 883/2004).

4.3.3.1 Aggregation

Considered in isolation, no problems are envisaged with the aggregation of periods under the genuine EUBS. On the contrary, the specific aggregation provisions in Art. 61 of Regulation (EC) No. 883/2004 would even become largely redundant (and the general aggregation provision of Art. 6 would suffice) having regard to the fact that the EUBS qualifying period is made up of periods of actual employment, as opposed to periods of insurance and assimilated periods. Yet things become more complicated if the basic genuine EUBS is topped up by the NUBS.

Let us assume for the sake of example that a person has worked for 18 months in state A and subsequently for 2 months in state B, when s/he becomes unemployed. The aggregation mechanism operates easily and the EUBS qualifying period (in all variants) is fully covered (2 + 18). However, the problem arises when the legislation of state B offers protection for the first 3 months or beyond the 12th month of unemployment (in the baseline value for the dimension ‘duration’). For instance, the legislation of state B requires 20 months of insurance out of the last 3 years for acknowledging the NUBS benefits during 15 months. In this case, the aggregation mechanism has to be activated again, this time for the NUBS, possibly with different parameters (e.g. type of activity period, ‘preferential’ arrangements, see 3.2.2.1.2 and 3.2.2.1.3, *supra*).

This example goes to show that in those cases where a combined EUBS and NUBS provision generated additional rights, either simultaneously (on account of the dimension ‘amount’) or subsequently (on account of the dimension ‘duration’), a separate application of the aggregation mechanism, possibly using different specifications, may be necessary.

4.3.3.2 Export

To the extent that the EUBS benefits would only commence as of the fourth month of unemployment (in the baseline and variant 2 values for the dimension ‘duration’), and failing a top-up provision by the NUBS in this period,⁷⁷ the unemployed person would be unable to make use of the (limited) export possibility laid down in Art. 64 of Regulation (EC) No. 883/2004.

Consideration could be given to generalising the extension of the export duration to six months or, alternatively, to making the genuine EUBS fully exportable without any limitation.

⁷⁷ Note that assistance-based benefits are normally not exportable under the regulation, either because they are not covered by it (general social assistance) or because the benefits are classified as special non-contributory benefits within the meaning of Art. 70 (which is often the case for unemployment assistance).

Admittedly, this last option, while coherent with the EUBS as a European system, would likely complicate the application of the unemployment benefit export in the case of a combined EUBS and NUBS entitlement.

4.3.3.3 Unemployed persons who resided in a member state other than the competent state

The issues set out for the equivalent EUBS would also apply, generally speaking, to the genuine EUBS (see 4.3.2, *supra*).

In line with the rationale of the EUBS as a horizontal minimum provision, it could be envisaged that the refund mechanism of Art. 65 paragraphs 6 and 7 is abandoned in cases where no top-up is available under the legislation of the state of residence.

If the personal scope of the EUBS were extended to all economically active persons in Europe (see 3.2.1, *supra*), it could be argued that, depending on the EUBS variant, there would be less or no need to resort to the specific provision of Art. 65(a) of Regulation (EC) No. 883/2004, dealing with those self-employed frontier workers who are wholly unemployed and residing in a country without an unemployment insurance system covering the self-employed.

4.3.4 Concluding remarks

The introduction of the EUBS does not seem to give rise to any insurmountable problems for the application of the Coordination Regulations.

With its relatively simple set-up, the genuine EUBS by itself would be easily coordinated by reference to the general coordination principles alone, without there being a need for some of the very specific provisions of the regulations' unemployment chapters. But this finding does not detract from the fact that the EUBS would in most instances apply in conjunction with (in this case multiple) NUBS, and as such be liable to act as a complicating factor in a coordination mechanism that already faces numerous implementation challenges.

It would seem crucial that the consequences of the application of the Coordination Regulations are duly considered in the design of a future EUBS. Some amendments of these regulations might well be required, even if some matters could also be dealt with more flexibly by way of decisions of the Administrative Commission for the Coordination of Social Security Systems.

5. Summary of main legal and operational barriers to the genuine EUBS

5.1 General summary

The above analysis shows that NUBS are based on a great number of **detailed – and oftentimes interlinked – rules, concepts and mechanisms**. Moreover, they are **embedded in wider bodies of national socio-economic regulation**, encompassing the general social security system as well as such fields as labour market regulation and taxation. Finally, NUBS in Europe are characterised by an **enormous degree of diversity**, in terms of regulatory solutions, in terms of generosity and to some extent also politically, in terms of the philosophies underlying the systems.

It is against this backdrop that the genuine EUBS, depending on the case, would (partially) replace or top up the NUBS. Based broadly on the same (i.e. social insurance) principles as the large majority of the NUBS, the genuine EUBS as conceived in the terms of reference is designed quite rudimentarily, by reference only to a few dimensions.

Here we attempt to give a general summary of the feasibility of the EUBS, discussing successively its legal feasibility, its operational feasibility, its degree of generosity in relation to the NUBS and its political feasibility.

When considering the **legal feasibility of the genuine EUBS, amendments of national constitutions would mostly not be necessary**. Any constitutional obstacles would seem to arise in only a few member states, pertaining on the one hand to the constitutional principles of social insurance and on the other to the transfer of powers in social security matters to the international level. The former would be linked chiefly to particular aspects/types (i.e. the dimensions of ‘experience rating’ and ‘claw-back’; the top-up EUBS), whereas the latter barrier might prove to be of a political rather than a legal nature.

The introduction of the genuine EUBS would prompt a large legal overhaul in all member states. National regulations⁷⁸ governing social security in general and unemployment insurance in particular would need to be substantially amended to accommodate the genuine EUBS. The same would apply, to a lesser extent, to regulation in related fields, such as social assistance, the labour market and taxation.

Most of the challenges in terms of the legal feasibility of the genuine EUBS would arise from the interaction of the aforesaid detailed national concepts and mechanisms with the relevant parameters of the genuine EUBS. We reiterate here the following elements, discussed in detail earlier:

- the personal scope (coverage of groups beyond employees and coverage of voluntary insurance);
- non-contributory periods assimilated into periods of insurance/employment for the purposes of the qualifying period;

⁷⁸ Here these comprise statutory legislation, administrative regulations and in some countries collective agreements.

- the impact of interruptions of unemployment, on account of both work and other circumstances (e.g. sickness);
- the treatment of part-time employment, when it comes to both acquiring and retaining the right to unemployment benefits;
- the nature/origin of unemployment, i.e. whether and to what extent to allow persons who resigned themselves, or were summarily dismissed, the right to benefits;
- age limits for entitlement to unemployment benefits;
- sanctions for failure to cooperate with the employment services or to actively look for work;
- the impact of waiting periods and other factors potentially delaying the commencement of benefit payments;
- the treatment of periods of unemployment benefit receipt as assimilated periods for the entitlement and/or calculation of other social security benefits;
- the basis for assessing whether a top-up is required; and
- the financing and (para-)fiscal treatment of unemployment benefits.

It is apparent from this (non-exhaustive) list of legal challenges that it includes predominantly issues that have not been specified for the genuine EUBS in the terms of reference. Nevertheless, they constitute important aspects of unemployment benefits regulation that cannot remain unaddressed. For example, as seen above, whether to allow maintenance of rights in the case of short employment episodes significantly affects national activation policies. Likewise, the recognition or not non-contributory periods for the purposes of the qualifying period has a non-negligible impact on the scope of beneficiaries. More generally, aspects such as the personal scope, the entitlement conditions (over and above the qualifying period) and the financing of the scheme are essential features of any social security system, and they need to be regulated, not least for reasons of legal certainty, prior to the introduction of the genuine EUBS.

For addressing these issues, there seem to be basically two options: either they would be determined at the EU level, by a common EUBS arrangement, or they would be dealt with by having the national legislation apply *mutatis mutandis*. In our view, the latter should be the default option, for it would present the least legal barriers, be less intrusive and best capable of preserving the internal coherence of national policies and social security systems. Resort to the former should ideally be confined to those cases where the corresponding application of national legislation would lead to undesirable effects, notably unwarranted differences in EUBS provision among the different member states or situations of moral hazard. Incidentally, the application *mutatis mutandis* of national provisions to the genuine EUBS does not preclude that specific implementing rules may need to be devised to concretely organise this corresponding application. Examples include the articulation of national waiting periods and (temporary/gradual) sanctions in the event of a combined EUBS/NUBS entitlement.

It needs to be stressed that the **process of adapting national regulations to the genuine EUBS would need to be undertaken, in principle, regardless of the member state and of the**

genuine EUBS option.⁷⁹ Likewise, the above-mentioned challenges in terms of legal feasibility would be encountered largely in the same way in all member states and – disregarding the constitutional aspects – for all genuine EUBS options.

Turning to the **operational feasibility of the genuine EUBS**, for the institutions currently involved in the implementation of the NUBS, the very fact of being tasked with the administration of a parallel system of unemployment insurance would necessitate increased administrative efforts, translating into the hiring and training of additional staff, the purchase of software and hardware, etc.

Even if the genuine EUBS were conceived in a fairly straightforward way, the institutions would need to undertake a **double assessment of unemployed persons' rights**: Is the individual claimant entitled under both the EUBS and the NUBS, or only under one of them? And what is the amount of benefits due under either or both schemes, knowing that – depending on the country – re-evaluations might be necessary in the course of the unemployment spell?

Moreover, additional administrative burdens for unemployment insurance institutions and public employment services would also stem from the fact that the genuine EUBS, depending on the option, would **generally qualify more people and would do so – in many countries – for a longer period**. This increased burden might partially be offset as a result of reduced caseloads in assistance-based systems.

Discrepancies in the duration of benefits between the NUBS and genuine EUBS provision may be a particular source of operational problems, in that they may cause the unemployed person to shift multiple times between the national (NUBS or assistance-based) and European benefit systems. Such successive shifts between benefit systems – governed by different rules and capable of applying separately or in conjunction – would increase the risk of error, with insured persons possibly suffering delays or under-payments or, conversely, receiving over-payments leading to costly recovery procedures. When also taking the discrepancies between the NUBS and genuine EUBS benefit amounts into consideration, it becomes clear that these **shifts may be marked by significant income fluctuations**, which are at odds with a balanced provision of unemployment benefits.

As noted when discussing legal feasibility, numerous specific dimensions and modalities of the genuine EUBS have not been explicitly defined by the terms of reference. Also from an operational point of view, feasibility is best served with a corresponding application of national rules and procedures – in respect of which administrative capacity at the national level is established.

Unlike what is the case for legal feasibility, the **degree of operational feasibility may vary significantly according to the genuine EUBS option and the country**. In the preceding analysis, genuine EUBS options featuring the start of benefits after three months of unemployment (the baseline and variant 2 values for the dimension 'duration') or incorporating experience rating have been singled out as prone to specific administrative challenges, in addition to the top-up EUBS. From a country perspective, it should come as no surprise that member states whose NUBS are conceived (be it on defined aspects) relatively

⁷⁹ That is, with the proviso that the top-up EUBS might require less legal adaptation, depending on the (level of generosity of the) NUBS (see 3.3.2, *supra*).

similarly to the genuine EUBS, would find it comparatively easier to implement the EUBS (on those aspects).

Given the enormous differences in terms of the level of coverage and provision among the different NUBS, it is difficult to make general statements about the **degree of generosity of the genuine EUBS** in relation to the NUBS. Nevertheless, the comparative analysis carried out in this report indicates that **on the whole, at baseline values**

- **the genuine EUBS qualifies more people than the NUBS**, thanks to a short employment period (three months) covering a quarter of the reference period (twelve months). This holds true even if for the bulk of the countries, in particular as a result of longer reference periods, it would not be excluded for persons (especially those with a more distant work history) to qualify for the NUBS but not for the EUBS. The additional groups covered only by the EUBS would be mostly younger persons and/or persons with a recent, even if small, work record;
- **the genuine EUBS offers a relatively low replacement rate (50% of the RW) combined with a very high benefit cap (150% of the ANW)**. As a result, except for the less generous NUBS (found notably in Central and Eastern Europe and in the countries operating flat-rate systems), the genuine EUBS generally provides a similar or lower benefit to below-average earners. Conversely, in the bulk of the countries, above-average earners may expect to receive higher (or even much higher) benefits from the EUBS. Depending on the design of the NUBS, the generosity of the EUBS (that is to say, in relation to the NUBS) tends to increase in the event of lasting unemployment; and
- **the maximum duration of the genuine EUBS (until the end of the twelfth month of unemployment) more often exceeds that of the NUBS than not**. In half of the member states, this is always the case⁸⁰ (in some countries by double or even quadruple), while in four of them it never is. In the remaining ten, the EUBS benefit duration, generally speaking, exceeds that of the NUBS in respect of unemployed persons of a younger age and/or with shorter insurance records. In this regard, it should be kept in mind that there may be drastic differences in the maximum benefit duration within member states, whereby the shortest and the longest maximum payment periods may be well below and above twelve months, respectively, depending on the individual case.⁸¹ Disregarding any factors delaying benefit payment (see 3.2.4.2.1, *supra*), and provided entitlement thereto exists, the first three months of unemployment would be covered by the NUBS. In a few countries, however, younger unemployed persons and/or those with short insurance records would be confronted by a gap in coverage, as their NUBS entitlement would cease prior to the start of the EUBS.

On several occasions in the course of the above analysis, reference has been made to challenges that could be described as being of a **political** rather than a legal or operational nature. These may relate to the very concept of the EUBS or to specific aspects of it, and have in common

⁸⁰ More specifically, this is so regardless of the individual case, but entails abstraction of factors delaying or suspending benefit payments (see 3.2.4.2.1 and 3.2.4.2.2, *supra*).

⁸¹ Coming back to the hypothetical example given above (3.2.4.1), the benefit duration for the 35-year-old unemployed person would exceed twelve months in nine countries, equal it in three and be shorter in the remaining sixteen.

that they are liable to undermine political and/or societal support for the EUBS, and thus to act as potential barriers to its introduction.

Notably, **the fact that the genuine EUBS would provide higher and longer benefits than is currently provided in many countries, could generate opposition from (different groups of) stakeholders.** This is all the more true given that the EUBS provision does not conform to the pattern of gradually decreasing benefits and that it is generally more advantageous to above-average earners.

Several elements of the EUBS provision thus described could meet resistance. A first one relates to **the cost of the scheme.** It needs to be kept in mind that the genuine EUBS is not financed by European funds, but rather by economic operators in the member states themselves, without (long-term) interstate solidarity (at baseline values for claw-back and experience rating). As a result, member states would effectively be increasing their social security expenditure, at a time when many countries are facing budgetary constraints and are seeking to reduce public spending. The fact that the financing would come, by hypothesis, from (equal) employers' and workers' contributions, would be a source of political controversy in itself, given that it would likely entail **higher contributions** overall, and hence an increased labour cost and/or tax wedge. It is recalled that in a number of countries, the idea of introducing unemployment insurance contributions payable by employees would be highly contentious.

The relative generosity of the EUBS would also clash with a policy preference in some countries towards limited benefits provision coupled with stringent conditionality as a matter of work incentivisation. In addition to this policy incongruity, which actually could be seen as a manifestation of more **fundamental differences in underlying social welfare models**, it is apparent from our analysis that the articulation of the EUBS and NUBS provision levels may give rise to **different anomalies from the point of view of employment policy.** Suffice it to refer to cases where the EUBS amount would approach the national minimum wage, or where unemployed persons would see their benefits dramatically increase after several months' unemployment.

Besides the costs associated with the level of the EUBS provision, also the costs connected with its operation could undermine EUBS support. As noted above, administering a parallel unemployment insurance scheme would require additional administrative resources, and thus **increased administration costs.** Hiring additional staff would be a poor fit with policies in several countries to reduce public employment and, more generally, public expenditure.

The ensuing **complexity** of the unemployment benefits provision has also been pinpointed in national reports as a source of concern, from the perspective of both the administering institutions and the unemployed. The introduction of the EUBS could reduce the transparency and predictability of unemployment benefit schemes that may already be highly complex, and could increase the risk of administrative error. Delays in the calculation and award of benefits could not be excluded.

Several of the above-mentioned political challenges could have the effect of detracting from social partners' support for the supranational scheme. That being stated, it should be noted that the pivotal roles played by trade unions and employers' organisations in some NUBS could in themselves constitute important barriers. The introduction of the genuine EUBS could indeed put into question the **(historically rooted) role of social partners** in the design and

management of some unemployment insurance systems, thus posing a major obstacle to moving forward (*infra*, 5.2).

Finally, **the top-up EUBS** could raise a number of specific political objections, the most important being that despite paying (largely) equal contributions, some countries would benefit much less from it than others.

5.2 Summary from the perspective of countries

Broadly speaking, there appears to be **an inverse relationship between the extent to which a given country would be affected by the EUBS and the degree of similarity of that country's NUBS with the genuine EUBS**. This holds true as regards both the generosity of the scheme (notably the level and duration of benefits) and its design.

The **level of generosity** of the NUBS has an impact on the extent to which it would be affected by the EUBS. If the NUBS provides for benefits whose amount and duration are fairly similar to that of the EUBS, top-ups in either way would generally be few and minor, thus reducing the impact of the supranational scheme. Discrepancies in terms of the level of generosity manifest themselves differently according to the type of genuine EUBS: the top-up EUBS (at least in theory)⁸² would leave the most generous NUBS unaffected, while consistent supranational top-ups would be required in less generous systems. The picture is different for the basic EUBS, at least insofar as the latter systems are concerned – they would largely be replaced by the EUBS. The more generous systems, by contrast, would be called upon to top-up the EUBS provision more frequently.

In terms of the **design of the scheme**, we already noted that member states whose NUBS are conceived in a relatively similar way as the genuine EUBS might find it comparatively easier to introduce the EUBS. This applies to the fundamental set-up of the system – as a compulsory social insurance scheme with earnings-related benefits, broadly corresponding to the conservative/corporatist welfare model – but also, and related to that, to its specific parameters and dimensions. While such ‘systemic similarity’ would *not* preclude the need for a substantial reform of the relevant legislation (which, as stated, would arise in all member states), it is plausible that legal amendments would be less far-reaching and easier to pass in schemes akin to the EUBS. It is, however, mainly on the operational (and political) side that systemic similarity between the NUBS and EUBS would facilitate the latter's introduction and operation.

Accordingly, and by way of example, NUBS using periods of employment, calculated in FTEs, for the purposes of determining the qualifying period would be less affected by the introduction of the EUBS than those relying on a minimum number of paid contributions. Similar arguments could be made in respect of other dimensions, for instance as regards NUBS benefits based on a single and stable replacement rate (vs differentiated, gradually decreasing rates) applied to the last gross wage (vs the average wage), with a ceiling placed on the benefit amount (instead of ceilings on reference earnings), and with a single (as opposed to a

⁸² In practice, as seen above (3.3.1), the top-up EUBS is capable of being triggered in each member state, as a full or top-up provision.

differentiated) maximum duration. It is understood that these elements do not necessarily apply in their entirety to a given country.

Bearing in mind what has previously been stated, **it is possible to single out a number of (clusters of) NUBS that would be particularly affected by the introduction of the EUBS.** As a preliminary remark, we note that the huge heterogeneity within the EU in terms of NUBS design and generosity also exists within the sub-group of countries belonging to the **euro area**. It should come as no surprise, therefore, that several of the countries identified below are part of the eurozone.

Among the countries that would be particularly impacted by the EUBS are, first and most importantly, Denmark, Finland and Sweden. It is recalled that these countries operate **Ghent systems**, in which earnings-related benefits are contingent upon voluntary affiliation with unemployment insurance funds, which are also in charge of administering the system. Unemployment insurance funds are linked to, but formally independent of, the trade unions, and they are typically organised by sector/profession. It seems that the only way in which these countries could implement the EUBS without substantially overhauling the fundamentals of their systems would be for the membership condition to apply accordingly to the EUBS; if that were the case, EUBS coverage would be necessarily linked to earnings-related NUBS coverage, and thus effectively be voluntary as well. If, however, the EUBS applied mandatorily to all employees or the whole active population⁸³ satisfying the EUBS qualifying period, unemployed persons would be in a position to obtain an earnings-related provision⁸⁴ regardless of their membership of an unemployment insurance fund. This would not only have a dramatic impact on the set-up of the NUBS in question, but would affect the entire model of labour market regulation in these countries. This regulation is based to a large extent on collective bargaining, whose effectiveness and legitimacy are preconditioned by high union density, which in turn is promoted by the Ghent system.⁸⁵ The political sensitivity of touching upon the voluntary characteristics of these systems was stressed in no uncertain terms by the relevant national experts.

It should be recalled, in this regard, that Finland is among the countries where the EUBS would possibly warrant a constitutional amendment, and that in Denmark, EUBS introduction would likely require a five-sixths parliamentary majority or, absent that, a referendum. While the outcome thereof can of course not be predicted with certainty, a potential attack on the voluntary nature of the system, coupled with a certain aversion towards supranational intervention in matters close to national sovereignty, might foreshadow a rejection.

Although its case is not directly comparable with that of the Ghent systems, **France** might also be mentioned among the countries particularly affected, as the EUBS could be regarded as a threat to the French 'historical compromise', giving competence to the social partners at cross-

⁸³ That is, in the case of Finland and Sweden, those covered by the basic allowance (see 3.2.1, *supra*).

⁸⁴ This provision would replace or top up the relatively low basic allowance, in the case of Finland and Sweden.

⁸⁵ For this reason, an alternative solution, suggested by the Swedish expert, whereby the non-union unemployment insurance fund Alfakassan would administer the EUBS benefit for those who do not wish to be a member of an unemployment insurance fund, would be politically unpalatable as well, in addition to facing organisational and financing obstacles. For a discussion, see the Swedish national report.

industry level to design the unemployment scheme and to manage it in cooperation with local Pôle Emploi institutions.

NUBS inspired by a **liberal welfare model** (IE, MT, PL, UK) would as well be among the most affected by the introduction of the EUBS. The divergent philosophies underpinning the two systems translate into fundamental differences between their ‘building blocks’. This applies particularly when it comes to the determination of the benefit amounts (flat-rate vs earnings-related) – which would clearly create administrative demands for these NUBS – but also insofar as the level of the benefits and their duration (both rather low) are concerned.

It could be argued that also other countries with **less generous NUBS**, characterised by relatively low coverage and/or low benefit amounts and payment durations (e.g. HU, LT, SK, RO) would be subject to a greater impact by the supranational system, for these schemes would be largely replaced by the (basic) genuine EUBS.

At the same time, the dominance of the EUBS provision in relation to these NUBS could also diminish the need for burdensome interaction between the two systems. This is illustrated by Hungary, for which the (basic and top-up) EUBS would effectively act as a continuation of the national scheme (in the baseline and variant 2 values for the dimension ‘duration’). Likewise, and on condition that the EUBS provision takes effect upon becoming unemployed (i.e. in variant 1 for the dimension ‘duration’), there could be a (theoretical) case for simply abolishing the thus ‘overshadowed’ NUBS.

5.3 Summary from the perspective of EUBS types

As indicated before, saving a few aspects, the different genuine EUBS types hardly differ from each other insofar as their legal feasibility is concerned. In other words, the need for legal amendments and any legal challenges would arise largely equally for the different EUBS forms. Where they do differ, and potentially substantially, is in terms of their operational feasibility and the degree to which they match the level of coverage and provision offered by the NUBS.

In this regard, mention should be made of a certain tension that may exist between the feasibility of an EUBS type – understood as the extent to which a country would be affected by it – and the stabilisation impact of that EUBS option. For example, an EUBS whose scope would not extend to additional beneficiaries compared with the NUBS could be seen as the most feasible; however, it would also present the least added value.

Below, we briefly comment on the feasibility of the different values of the basic genuine EUBS dimensions, followed by some considerations dealing specifically with the top-up EUBS:

- **Qualifying period.** None of the three values would give rise to specific feasibility issues at the national level. Overall, *variant 2* (12 months out of 24) would tie in best with the situation at the national level, whereas *variant 1* (3 months out of 6) features an unusually short reference period. The *baseline* option (3 months out of 12) would on the whole be less stringent than national qualifying periods and generally qualify more people, particularly among those with a short yet recent employment history. While this might pose some operational challenges, it would be consistent with the rationale of the EUBS.

- **Replacement rate.** A replacement rate of 35% of the RW (*variant 1*) would be low compared with most NUBS, and hence give rise to frequent national top-ups. If considered a separate provision, it would, moreover, fall foul of international social security standards to which many member states subscribe. The other options are broadly in line with the situation in the NUBS: *variant 2* (60% of the RW) would more often exceed the NUBS provision than the *baseline* option (50% of the RW), and could be subject to controversy in some countries in view of its cost and impact on work incentivisation.
- **Capping.** This dimension cannot be seen in isolation from the replacement rate. The *baseline* value (150% of the ANW) seems over-high in relation to the EUBS replacement rates (especially in the option of 35% of the RW) and certainly in relation to maximum benefit amounts in the NUBS. It would render the EUBS provision particularly advantageous for above-average earners, thus raising issues of social justice and undermining the political feasibility of the scheme. The *variant-1* value (100% of the ANW), while still higher than in many NUBS, would on the whole ensure a more balanced EUBS provision. The *variant-2* capping (50% of the ANW) would, conversely, be lower than what is the case in most NUBS, correspond de facto to a flat-rate provision for above-average earners and be capable of generating frequent national top-ups.
- **Duration of benefits.** The options involving a start of EUBS benefit payments as of the fourth month of unemployment (*baseline* and *variant 2*) would present a number of barriers. For those only entitled under the EUBS, these options would involve a long waiting period (covered or not by a national assistance-based provision) that might, furthermore, be problematic in terms of compliance with international social security standards. For those entitled under both the EUBS and the NUBS, these options would entail shifts between different benefit systems, which would prove administratively burdensome and capable of being accompanied by significant fluctuations in benefit income. Gaps in unemployment insurance coverage in between those shifts would not be excluded in a few member states. In *variant 2* (months four to six), system shifts would be more likely to occur also at the end of the EUBS provision. In the *baseline* and *variant-1* options, the maximum duration of the supranational benefit (until month twelve) on the whole exceeds that of the NUBS, thus generally reducing resort to assistance-based schemes.
- **Cyclical variability, experience rating, claw-back and debt issuing.** No significant feasibility issues would arise regarding the presence or not of cyclical variability and debt issuing. Challenges associated with the dimensions ‘experience rating’ and ‘claw-back’ would mainly be of a political nature, pertaining to the question as to whether the EUBS should incorporate elements of long-term intra-EU solidarity. Experience rating, moreover, could also encounter operational and political obstacles connected with the adjustment of social security contributions.
- **Specific issues regarding the top-up EUBS.** Depending on the dimension for which a top-up is provided, this EUBS type can manifest itself as a full provision and as a differential supplement between the national benefit and the level of the EUBS minimum provision. The top-up EUBS is capable of being triggered in every member state, even though it will intervene more much frequently in countries with a less generous NUBS provision. Even if the top-up EUBS were to leave the set-up of the NUBS more intact than the basic variant, and thus probably require less legal adaptation, it could be more difficult to implement

operationally, given that it requires more frequent and intensive interactions between the national and the supranational schemes. It might, moreover, raise political objections, as some countries, solely on account of the design of their NUBS, would benefit less from the top-up EUBS than others, while all would pay the same contributions. Also the fact that the contributions to the supranational fund would be used to finance what would often not be a basic provision, but a potentially very high supplement, might undermine its political acceptance.

6. Conclusions

Whereas the equivalent EUBS would leave the NUBS unaffected, the same cannot be said of the genuine EUBS, which would effectively correspond to an actual unemployment insurance system, designed at the EU level but implemented through the respective national frameworks.

Apart from some points of attention in terms of compliance with constitutional law and fiscal rules, which should not pose serious problems as long as the equivalent EUBS were solidly based on international law, there is little doubt about the feasibility of this form of EUBS at the national level.

In contrast, for the genuine EUBS, which would articulate closely with the NUBS, numerous challenges have been identified in this report. In large part, these challenges are the result of three characteristics of NUBS regulations in Europe: their complexity, their diversity and their interrelation with broader areas of national socio-economic regulation.

The introduction of the genuine EUBS would require substantial legal reform in all countries. Moreover, its operation would inevitably entail a degree of additional administrative effort and complexity. That being stated, it is notable that some countries would encounter more challenges – be they of a legal, operational or political nature – than others. Generally speaking, countries with NUBS that are relatively similar to the EUBS, in terms of underlying philosophy, systemic design and level of generosity, would find it comparatively easier to implement the supranational scheme.

For the genuine EUBS to operate in an environment with the complexity, diversity and systemic interlinkage sketched above, it seems crucial that it would allow countries a certain degree of flexibility when it comes to the determination of defined parameters and rules of EUBS implementation. The principle according to which, apart from the essential EUBS dimensions (e.g. replacement rate and duration) fixed at the EU level, the specific arrangements governing the NUBS would apply *mutatis mutandis* to the supranational scheme, is a sensible one.

Furthermore, it is apparent from the report that the definition of these EUBS dimensions has a significant impact on the feasibility of the supranational scheme; some of the EUBS types considered in this study present more feasibility issues than others. The optimal definition, which may well be different from any of the options suggested in the terms of reference, should be carefully examined. In addition, when designing the EUBS, account should be taken of minimum standards contained in international social security instruments, as well as the consequences of the application of the EU Coordination Regulations.

It needs to be acknowledged that even a genuine EUBS that is characterised by appropriate flexibility and a sensible definition of its essential dimensions could meet strong resistance from different groups of stakeholders, opposing the (real or perceived) impact of the EUBS on the particularities of their system, on their acquired position or simply the idea of the EU intruding on national social sovereignty.

Annex 1. Glossary

Aggregation of periods. This is a general principle of international coordination of national social security systems, according to which the authorities of a given country, for the purposes of assessing completion of the qualifying period as an entitlement condition for social security benefits, consider periods of (self-)employment, insurance or residence completed in other countries as if they were completed under the legislation of the said country.

Capping. Unemployment benefits are capped if they cannot exceed a given proportion of the average national wage. For example, if the reference wage of an unemployed person is €3,000 and the replacement rate is 70%, then his/her expected unemployment benefit is €2,100. However, if the average national wage is €1,000 and there is a capping at 150% of the average national wage, then the aforementioned person will receive only €1,500.

Claw-back. Claw-back is a mechanism that reduces a potential, long-term negative (positive) net contribution by a member state by increasing (decreasing) the amount that the member state has to pay into the supranational fund. It is essentially a safety valve in the system that exists to provide a guarantee to member states that regardless of circumstances, member states' contributions and payouts should roughly balance over the long run. For example, say that a country comes to be a net beneficiary of the fund after a number of years in which the system is in place, meaning that this country has paid into the system less than what it has received. Then, its contribution to the supranational fund would be increased as a result.

For *equivalent* EUBS, experience rating and claw-back are substitutes and the claw-back coefficient is essentially the maximum value that experience rating can take. It takes the form of a single coefficient applying to all contributions by a given country at a given time where the coefficient = 2. It applies after three years of more than a 1% of GDP cumulative negative balance vis-à-vis the central fund until the balance declines below 1% of GDP. For the *genuine* EUBS, claw-back is also paid by member state governments (which then determine the financial source) rather than by employers and workers. It would be an annual 0.2% of GDP contribution that would start to be paid after three years of more than a 1% of GDP cumulative negative balance vis-à-vis the central fund and would continue to be paid until the balance declines below 1% of GDP.

Cyclical variability. Cyclical variability refers to the extent to which some of the parameters defining the EUBS (for example, the replacement rate or the duration) are a function of variables related to the economic cycle. An example of an unemployment benefits scheme exhibiting a certain degree of cyclical variability is that of the US, where if a recession is particularly severe, there are several options for providing the unemployed with 'extended benefits' (i.e. increasing the duration of the unemployment benefits). For the purposes of this study, cyclical variability is defined as an additional six months of benefits in the event of a recession (two consecutive quarters of negative growth) in more than half of the member states simultaneously.

Debt-issuing possibility. Debt issuing is possible if the supranational fund can borrow money from the capital markets in order to cover short-term imbalances. In the case of debt issuing, when the global balance of the EUBS becomes negative, the fund can bring it to zero by borrowing on the market.

If debt issuing is not possible, then the resources needed to avoid a negative financial position of the EUBS would be contributed by the member states, in proportion to their GDP. In the

equivalent EUBS, this would be done by increasing member states' contributions, in the *genuine* EUBS, it would involve asking for a special contribution from the member states, the funding mix of which would be determined by the national governments.

Duration of benefits. This term refers to the number of months during which the unemployment benefits are paid out.

Equivalent EUBS. The equivalent EUBS are those in which financial transfers from the supranational fund occur only from and to member states, and not directly to unemployed individuals. The transfers may still reach unemployed individuals indirectly, whereby the supranational fund pays the state, which in turn directs the funds towards its unemployed citizens. The equivalent EUBS are linked to unemployment through the trigger (which can vary in size) and through the earmarking of payouts. They are transfer schemes that leave, in principle, national unemployment benefit systems untouched (and as such are not supranational in nature). Four different equivalent systems are considered in the terms of reference, depending on four different dimensions: the size of the trigger, the presence or not of experience rating, claw-back and debt-issuing possibility.

Trigger. The trigger is the condition determining when financial transfers from the supranational fund towards a particular country should occur, in the context of an equivalent EUBS. A trigger is defined by the choice of an indicator and of a threshold. When the indicator for a particular country exceeds the threshold, then the supranational fund pays the country the agreed claim. The trigger is set as follows: the EUBS will pay the claim to a given country if its short-term unemployment rate exceeds 0.1% (rainy-day scenario), 1% (stormy day) or 2% (reinsurance) of its average in the last ten years.

Experience rating. In a system with experience rating, the payers into the system contribute to a different degree depending on their past experience with unemployment. For example, in the US, where the payers are employers, the tax due to finance the NUBS is higher for companies that have laid off more workers in the past. In a similar way, countries where the short-term unemployment rate is higher or more volatile may be requested to pay a higher contribution, relative to their GDP, than other countries.

For the *equivalent* EUBS, the experience rating is operationalised as follows: the contribution of a country will experience an increase equal to 0.025 of the base rate for each quarter in which it received transfers from the supranational fund in the last 40 quarters. For the *genuine* EUBS, the experience rating is a single coefficient applying to all individual contributions from a given country at a given time. The coefficient is the ratio of the ten-year national average of short-term unemployment over the ten-year average of short-term unemployment for the whole of the EU, and is updated every three years. In other words, if country X had a long-term average of 6% and the EU as a whole 4%, the coefficient would be 1.5. (Notice that from the point of view of an insured European citizen, the introduction of a country-level experience rating in a genuine system implies that a worker would pay a different cost for his/her unemployment insurance compared with a citizen in another country, but s/he would receive benefits that are defined in an identical way.)

Genuine EUBS. The genuine forms of the EUBS are those in which financial transfers from the supranational fund directly target unemployed individuals. They are supranational systems receiving contributions from and paying benefits to citizens. The genuine EUBS comes in two main forms, i.e. the basic and top-up EUBS, with the provision for each one defined in

terms of eight different dimensions (qualifying period, replacement rate, duration of payment, capping, experience rating, claw-back, cyclical variability and debt-issuing possibility). For the basic EUBS, these dimensions are set at a baseline value plus one or two variant values. member states can choose to further top up the *basic* EUBS through an additional national provision. The *top-up* EUBS guarantees that every eligible unemployed person obtains the set value for the different dimensions; only when the national provision is less generous does the supranational provision top it up.

Basic (genuine) EUBS. In a basic genuine EUBS, the supranational fund pays out the unemployment benefits according to the predefined replacement rate to eligible, unemployed persons for a predefined number of months. Each country is free to increase the amount paid or the duration at its own expense.

Top-up (genuine) EUBS. In a top-up genuine scheme, every eligible unemployed person is guaranteed a given replacement rate and duration. If the NUBS is generous enough to cover these costs, then the supranational fund does not contribute to the unemployment benefits of the unemployed citizens. If, however, the NUBS does not meet the minimal duration and replacement rate requirements, then the supranational fund supplements the payments of the national fund by the necessary amount to meet these requirements. (Notice that this implies that countries with a generous system only pay into the EUBS, but never receive any benefits.)

Qualifying period. The qualifying period refers to the number of months of previous employment, assessed within a given reference period, that must be completed in order to qualify for unemployment benefits. Only months of actual employment are taken into account for the EUBS – there are no assimilated periods. The previous employment need not necessarily be consecutive and is assessed in full-time equivalents. No exemptions or preferential arrangements for specific groups/situations apply. The EUBS qualifying period needs to be completed for every unemployment spell, as interruptions of unemployment, even of a short duration, have the effect of setting the ‘counter’ at zero (with no maintenance of rights).

Reference wage. The reference wage is defined as the last gross (i.e. before tax deductions and social security contributions payable by wage earners and retained by the employer) monthly wage, without capping.

Replacement rate. This rate refers to the proportion of the reference wage that will be paid out as an unemployment benefit, so that the unemployment benefit equals the reference wage times the replacement rate.

Top-up. When the EUBS or NUBS is more generous on account of the dimension ‘amount’ and/or ‘duration’ than the NUBS or EUBS respectively – in other words pays higher and/or longer benefits – the additional provision payable by the former scheme is referred to as a top-up. In the case of the basic genuine EUBS, any top-ups (where appropriate) are provided by the NUBS, while in the case of the top-up genuine EUBS it is precisely this scheme that may top up the NUBS, if necessary.

Unemployment protection. Such social protection (insurance or assistance) schemes provide income-replacement benefits to unemployed persons who are capable of working and available for the labour market.

Annex 2. EUBS Questionnaire

I. Legal descriptive part

Annex 4 constitutes a table containing a description of selected relevant aspects of your country's unemployment protection system, including basic principles, financing, legal basis, personal scope, entitlement conditions and benefit modalities. The information is taken from the MISSOC Comparative Tables Database (reference date 1 January 2015; 1 July 2014 for the UK), re-elaborated by Eftheia.

Each field is numbered (to allow easy reference where necessary in your questionnaire reply) and is accompanied by a short explanation (in the right column) of what particular information is (or should be) covered.

Please review and amend as necessary the information relating to your country's unemployment benefit system, thereby highlighting any changes you make. Amendments may concern updates occurred since the reference date or any additions as per the guidelines in the left column. In some instances, we have included specific requests (marked yellow) for elaboration in the light of the guidelines, but please do complement wherever you deem it necessary having regard to these guidelines.

II. Equivalent EUBS

II.1. Would the introduction and operation of the equivalent EUBS come into conflict with and/or require an adaptation of your national constitutional law? If so, please specify i) which aspects of the equivalent EUBS are concerned, ii) which constitutional rules would need to be adapted and iii) briefly describe the constitutional amendment process. If the answer is different for the various forms of equivalent EUBS, please differentiate it accordingly.

II.2. In case your country's legislation provides for limits with regard to public debt and/or deficit, please shortly describe these and indicate if and how these legal limits would interact with the equivalent EUBS. If the answer is different for the various forms of equivalent EUBS, please differentiate it accordingly.

III. Basic genuine EUBS

III.A. Dimension-specific questions

The questions under this heading are structured according to the eight dimensions of the basic genuine EUBS considered by the EC.

The first four dimensions correspond to eligibility conditions (1) and benefit modalities (2-4) which can be found in any unemployment benefit system. For these dimensions, three values (one baseline and two variants) were set in the ToR.

For the baseline value of each of these dimensions, you are invited to analyse how the EUBS would interact with the corresponding dimension of your national system, given its specific legal and operational set-up. Rather than reiterating the description of your national system (which was dealt with under section I) or merely listing the differences between both systems, you are asked to draw the consequences of their articulation. This implies identifying possible legal obstacles to the introduction of the EUBS and, conceiving its practical operation, possible implementing problems and administrative challenges. For the EUBS to be implemented and operate in practice, which changes of the national legal and administrative framework would be necessary and how easy or difficult could these changes be effected?

Next, you are asked to describe if/how the above would be different for the two variant values (vv1 and vv2), thereby avoiding needless repetition.

For each of the dimensions, an indicative list of issues to be considered is added. This list is not exhaustive and intended to structure your reply and help you think of potential obstacles and barriers. The idea is not that you answer all these questions individually, but rather that you take them into consideration when making your analysis and drafting your reply. Please avoid plain yes or no answers!

The other dimensions (5-8) are more specific to the concept of a EUBS. They are to be specified by the consortium and vary according to whether the EUBS form includes or not this particular dimension. The question here is each time whether the presence or not of the dimension concerned gives rise to specific legal or operational barriers in your country. And if so, which ones and how easy or difficult would it be to surmount them / change the national system?

Please refer to the Glossary for the definition of these dimensions.

III.A.1 the **qualifying period** for entitlement to the European benefit: eligible are those having been employed for at least 3 months out of the last 12 months

III.A.1.vv1. eligible are those having been employed for at least 3 months out of the last 6 months

III.A.1.vv2. eligible are those having been employed for at least 12 months out of the last 24 months

Issues to be considered (not exhaustive):

- Is the European condition more/less stringent than the national qualifying condition? (thus, less/more people qualifying, resp.)? If the national qualifying period varies according to certain factors (e.g. age, first-time claimants), for which groups it is more/less stringent?

- Is the definition of the EUBS qualifying period administratively workable?

- Do you expect particular problems in the light of any regulations governing your national qualifying period when it comes to: the type of period (e.g. weeks of insurance) or the modalities for its completion (consecutive or not, full-time or not?); any assimilated periods (e.g. child-rearing); any exemptions or other preferential arrangements (e.g. extended reference periods) for specific categories of people/ in specific situations; any provisions regarding the maintenance of rights in case of temporary interruptions of unemployment?

- Would people be eligible to the European benefit who are currently, according to your legislation, not entitled to unemployment benefits or only entitled to unemployment assistance / social assistance to which inactive people in working age have access (in case they comply with the means test)?

- If the European condition results in broader coverage than under the current national system, which operational problems do you expect, if any? E.g. problems with data collection to calculate entitlements? Staffing/capacity problems as a result of monitoring the conditions to retain entitlement (notably availability) for a larger group of people, etc.?

III.A.2. the **replacement rate** of the European benefit: the benefit equals 50% of the reference wage

III.A.2.vv1. the benefit equals 35% of the reference wage

III.A.2.vv2. the benefit equals 60% of the reference wage

Issues to be considered (not exhaustive):

- Is the European benefit lower or higher than the national benefit (both unemployment insurance and, where applicable, unemployment assistance)? If the national benefit varies according to factors (e.g. duration of unemployment, employment record, age, household composition) or provides for household supplements, as of when / for which groups is it lower or higher? Taking into account also any existing (NUBS) floors and (EUBS/NUBS) caps, does the answer to the first question differ between lower and higher wage groups?

- Is it legally / administratively feasible to calculate the reference wage as defined? Are there challenges in terms of data provision (e.g. is it feasible to determine the reference wage without undue delay for all the groups covered by the proposed EUBS)? Are there challenges connected with the fact that EUBS benefits are subject to taxation and contributions?

If your country uses net wages as a reference, consider also the legal/operational feasibility if it were given the option to define a new replacement rate to be applied to the net wage, in such a way that this rate would be equivalent to 50% of the gross wage for the average worker.

- You may want to consider interaction with the following national arrangements, where applicable: floors or caps for the reference wage; minimum benefit values (benefit floors); payment schedule (monthly, weekly, otherwise).

- Do you foresee administrative challenges? For example, a national top-up (for the dimension 'replacement rate') depending on the situation of the unemployed (insurance/employment history, age, duration of unemployment) might be difficult to administer. The same applies for a different reference wage for the national / European benefit and/or potential discrepancies in terms of caps.

- What would be the specific impact of the EUBS for countries whose system provides for flat-rate benefits (IE, MT, UK)? Which problems can be anticipated? Consider also the legal/operational feasibility if the option were given to these countries to convert the European benefit into a flat-rate benefit provided the latter is equivalent to 50% of the gross average wage.

-Systemic coherence: how does the European benefit rate relate to benefit values in your social security system overall? Would it be disproportionately higher or lower compared to the values of other income-replacement benefits, e.g. sickness benefit, pensions etc.?

III.A.3. the **duration of payment** of the European benefit: the benefit is paid out from the 4th up to (and including) the 12th month of unemployment

III.A.3.vv1. the benefit is paid out from the start of unemployment up to (and including) the 12th month of unemployment

III.A.3.vv2. the benefit is paid from the 4th up to (and including) the 6th month of unemployment

Issues to be considered (not exhaustive):

- Would the duration of the European benefit exceed or not that of the national benefit? If the duration of the latter varies according to certain criteria (e.g. employment record/insurance duration, age, region), please indicate for which groups of unemployed would it be longer or shorter.
- Would your national system top-up (for the dimension 'payment duration') in the beginning (for the baseline value and variant 2)? Would it top-up at the end? What are possible challenges/obstacles associated with the fact that people may in the first months of unemployment be covered by the national system, then switch to the EUBS and possibly, in case of lasting unemployment, return to the national system? Considering also the baseline value for the EUBS dimension 'replacement rate' (i.e. 50% RW), would the people experience important fluctuations in terms of the amounts they receive from the national and European systems?
- In case you apply waiting periods for unemployment (i.e. periods between the onset of the unemployment and the start of the benefit payment), how does this relate to the European benefit? Are there other factors which have the effect of delaying the start of unemployment benefit payment under your national legislation (e.g. entitlement to redundancy pay)?
- Considering the duration of the EUBS, would the European benefit interfere with your assistance scheme? (i.e. would the European benefit still be payable following exhaustion of the entitlement to the national insurance-based benefit, where this entitlement is normally followed by a possible entitlement to assistance-based benefit).

III.A.4. the **capping** of the European benefit amount: the benefit is capped at 150% of the average national wage (ANW)

III.A.4.vv1. the benefit is capped at 100% ANW

III.A.4.vv2. the benefit is capped at 50% ANW

Issues to be considered (not exhaustive):

- Is it administratively feasible to determine the average national wage?
- How does the EUBS capping relate to any benefit caps or any reference wage caps in your country's NUBS?
- How does the EUBS capping relate to any benefit caps in other social security branches? (systemic coherence)
- See also the first dash under III.A.2 above.

III.A.5. no cyclical variability

III.A.5.vv. cyclical variability

Please describe here any legal and/or operational barriers arising specifically from the fact that the EUBS to be introduced incorporates or not a mechanism of cyclical variability (as defined in the Glossary).

The same applies, *mutatis mutandis*, to III.A.6 – III.A.8.

III.A.6. experience rating

III.A.6.vv. no experience rating

III.A.7. claw-back

III.A.7.vv. no claw-back

III.A.8. debt

III.A.8.vv. no debt-issuing possibility

III.B. General questions

The questions in this sub-section are of a more transversal nature. It is expected that their answers will be less subject to variation according to the different forms / dimensions of a basic EUBS. However, should they so vary, please differentiate your answers accordingly.

III.B.1. How would the introduction and operation of the basic genuine EUBS impact on:

- the general set-up of your unemployment benefit system?

How would your scheme be affected at a systemic level by the basic EUBS? This question first calls for a brief description of the basic principles of the system of unemployment protection in your country: how is it organised? Does it consist of different schemes (e.g. insurance and assistance, general scheme and special schemes, basic system complemented with a voluntary part, voluntary only etc.)? Which scheme(s) would be partially replaced by the EUBS?

- the administrative organisation of your unemployment benefit system?

In respect of the following functions (administration of the unemployment benefit regulations; financing of the system; payment of the benefits; monitoring of benefit recipients), please list the relevant bodies ((semi-)public, private, incl. social partners) at the relevant level (central, regional, local) which will directly be affected by the introduction and operation of the basic EUBS.

III.B.2. Would the introduction and operation of the basic genuine EUBS come into conflict with and/or require an adaptation of your national constitutional law? If so, please specify i) which aspects of the basic genuine EUBS are concerned and ii) which constitutional rules would need to be adapted. If the answer is different for the various dimensions and/or values, please differentiate it accordingly.

III.B.3. Which are the main laws and regulations that would need to be amended in order to accommodate the basic genuine EUBS? If the answer is different for the various dimensions and/or values, please differentiate it accordingly.

What would be the expected length of the legislative/regulatory amendment process involved? Would specific groups (e.g. social partners, regions) have co-decision authority or would they need to be obligatorily consulted?

In case of subsequent modifications of the EUBS (e.g. changed values of the dimensions), would these laws and regulations have to be amended each time as well to reflect the changes of the EUBS? Could such national amendments be avoided by providing for some flexible legislative arrangements at national level, without detracting from the rule-of-law principle?

III.B.4. Would the introduction and/or operation of the basic EUBS have an impact on other social security branches? In case the receipt of national unemployment benefits generates entitlements in other branches, and assuming that a EUBS would create similar entitlements,

where would you see legal and operational barriers? On a scale of 1 (no or insignificant impact) to 5 (very significant impact), how would you rate the budgetary impact of such assimilation?

For answering this question, please begin by listing the interconnections between your national unemployment system and other parts of your national social security system. Then proceed by considering the impact of the basic EUBS for each of the “interfaces”. Likely branches are: social assistance (see e.g. issues to be considered under III.A.1), pre-retirement, old age and invalidity (e.g. credited periods for pension calculation), sickness (e.g. specific arrangements for sickness cash benefits for unemployed temporarily incapable of work), family (e.g. specific arrangements for child benefits for the unemployed with children). Consider also any benefits capable of being accumulated with unemployment benefits under your country’s legislation.

III.B.5. What would be the legal and operational barriers associated with the corresponding application to the basic EUBS of your national legislation in respect of i) the personal scope, ii) the legal definition of unemployment, iii) entitlement conditions other than qualifying period, and iv) any other elements?

As shown in the Introduction (under A), national legislation is assumed to apply in respect of those dimensions of the EUBS not commonly defined by the EC. Problems in this regard could arise for example if your NUBS applies to self-employed persons (cf. i) or if benefits are provided in case of voluntary employment or partial unemployment (cf. ii).

III.B.6. What would be the legal and operational barriers associated with the fact that i) the basic EUBS would be financed exclusively by employers’ and workers’ contributions in equal parts and ii) these contributions would be collected through the organisational / administrative framework that is currently responsible for collecting funds for unemployment protection? Do you see any workable alternatives?

III.B.7. Assuming that benefits under the basic EUBS would be paid out through the organisational / administrative framework that is currently responsible for paying out national unemployment benefits, where would you see legal and operational barriers?

III.B.8. Which legal and operational barriers do you envisage when it comes to applying the sanctions which your legislation provides in case of failure to cooperate with the employment services or to actively look for a job, to the basic genuine EUBS?

For example, problems could arise in respect of the application of gradual sanctions (e.g. a partial suspension of benefits) in case of parallel application of the NUBS and the EUBS: which part is reduced? administrative capacity etc.

III.B.9. Having completed this section, which do you believe to be most important barriers for the introduction of a basic genuine EUBS? Please differentiate between legal and operational barriers. Please also indicate, for each main barrier identified, i) what actions are needed, ii) by whom and iii) in which timeframe, to overcome it.

III.B.10. Is there anything you would like to add as regards the legal and operational feasibility of a basic genuine EUBS in the light of your national system, which is not covered by the above questions?

IV. Top-up genuine EUBS

For the top-up genuine EUBS, the same analysis - mutatis mutandis - as for the basic genuine EUBS (section III) must be made. Whereas the difference between both is fundamental (see above, Introduction, under A), the replies for some questions are expected to be similar. If that is the case, you may refer to the reply to the corresponding question of section III. Please be specific when referencing and avoid loose ends!

IV.A. Dimension-specific questions

Below are listed the eight dimensions (with single value) that characterise the top-up genuine EUBS. Similarly as for the basic genuine EUBS (cf. sub-section, III.A), you are invited to describe how the top-up genuine EUBS would articulate with your national system (will it be topped-up by the EUBS?) and what would be its impact on your national legal and administrative framework (how would the national scheme need to be adapted and what would such adaptation imply?).

It is expected that your analysis will concentrate on three issues: the qualifying period (IV.A.1); the EUBS amount [replacement rate (IV.A.2) combined with capping (IV.A.4)] and the duration of payment (IV.A.3). For the other dimensions, issues specific to the top-up EUBS should normally not arise.

IV.A.1 eligible are those having been employed for at least 3 months out of the last 12 months

IV.A.2. the benefit equals 50% of the reference wage

IV.A.3. the European benefit is paid out from the 4th up to (and including) the 12th month of unemployment

IV.A.4. the benefit is capped at 150% of the average national wage

IV.A.5. no cyclical variability

IV.A.6. experience rating

IV.A.7. claw-back

IV.A.8. debt-issuing possibility

IV.B. General questions

IV.B.1. How would the introduction and operation of the top-up genuine EUBS impact on:

- the general set-up of your unemployment benefit system?
- the administrative organisation of your unemployment benefit system?

IV.B.2. Would the introduction and operation of the top-up genuine EUBS come into conflict with and/or require an adaptation of your national constitutional law? If so, please specify i) which aspects of the system are concerned and ii) which constitutional rules would need to be adapted and.

IV.B.3. Which are the main laws and regulations that would need to be amended in order to accommodate the top-up EUBS?

What would be the expected length of the legislative/regulatory amendment process involved? Would specific groups (e.g. social partners, regions) have co-decision authority or would they need to be obligatorily consulted?

In case of subsequent modifications of the EUBS (e.g. changed values of the dimensions), would these laws and regulations have to be amended each time as well to reflect the changes of the EUBS? Could such national amendments be avoided by providing for some flexible legislative arrangements at national level, without detracting from the rule-of-law principle?

IV.B.4. Would the introduction and/or operation of the top-up EUBS have an impact on other social security branches? In case the receipt of national unemployment benefits generates entitlements in other branches, and assuming that a EUBS would create similar entitlements, where would you see legal and operational barriers? On a scale of 1 (no or insignificant impact) to 5 (very significant impact), how would you rate the budgetary impact of such assimilation?

IV.B.5. What would be the legal and operational barriers associated with the corresponding application to the top-up EUBS of your national legislation in respect of i) the personal scope, ii) the legal definition of unemployment, iii) entitlement conditions other than qualifying period, and iv) any other elements?

IV.B.6. What would be the legal and operational barriers associated with the fact that i) the top-up EUBS would be financed exclusively by employers' and workers' contributions in equal parts and ii) these contributions would be collected through the organisational / administrative framework that is currently responsible for collecting funds for unemployment protection? Do you see any workable alternatives?

IV.B.7 Assuming that benefits under the top-up EUBS would be paid out through the organisational / administrative framework that is currently responsible for paying out national unemployment benefits, where would you see legal and operational barriers?

IV.B.8. Which legal and operational barriers do you envisage when it comes to applying the sanctions which your legislation provides in case of failure to cooperate with the employment services or to actively look for a job, to the top-up EUBS?

IV.B.9. Having completed this section, which do you believe to be most important legal and operational barriers for the introduction of a top-up EUBS? Please differentiate between legal and operational barriers. Please also indicate, for each main barrier identified, i) what actions are needed, ii) by whom and iii) in which timeframe, to overcome it.

IV.B.10. Is there anything you would like to add as regards the legal and operational feasibility of a top-up EUBS in the light of your national system, which is not covered by the above questions?

Annex 3. List of national experts

Country	National experts
AT	Elias Felten/Walter Pfeil
BE	Frank Vandenbroucke
BG	Ivan Neykov
CY	Gabriel Amitsis
CZ	Kristina Koldinska
DE	Stamatia Devetzi
DK	Bent Greve
EE	Gaabriel Tavits
EL	Konstaninos Kremalis
ES	Dolores Carrascosa
FI	Essi Rentola
FR	Jean-Philippe Lhernould
HR	Ivana Vukorepa
HU	Attila Kun
IE	Mel Cousins
IT	Simonetta Renga
LT	Audrius Bitinas
LU	Nicole Kerschen
LV	Ruta Zilvere
MT	Malcolm Scicluna
NL	Saskia Klosse
PL	Dorota Dzienisiuk
PT	Nazaré da Costa Cabral
RO	Magda Filip
SE	Ola Sjöberg
SI	Grega Strban
SK	Miroslav Beblavy
UK	Grainne McKeever



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