

Europäisierung des Sozialrechts Grundlage und Entwicklungstendenzen

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

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Introduction

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

Rationale of EUBS

- Cushioning of asymmetric macroeconomic shocks
 - Smoothing out shocks is traditionally the role for fiscal policy and Unemployment Benefits Schemes
 - At which level is the responsibility the best allocated? Member State/EA/EU?
 - In a Currency Union, macroeconomic shocks cannot be compensated by nominal devaluation but only by real devaluation
 - Prices and wages have to decrease (but are inflexible downwards)
 - in order to avoid harmful short-term damages, there has to be cushioning of exceptional expenses (e.g. short-term unemployment benefits)
- Promoting social cohesion

Basic features of EUBS I

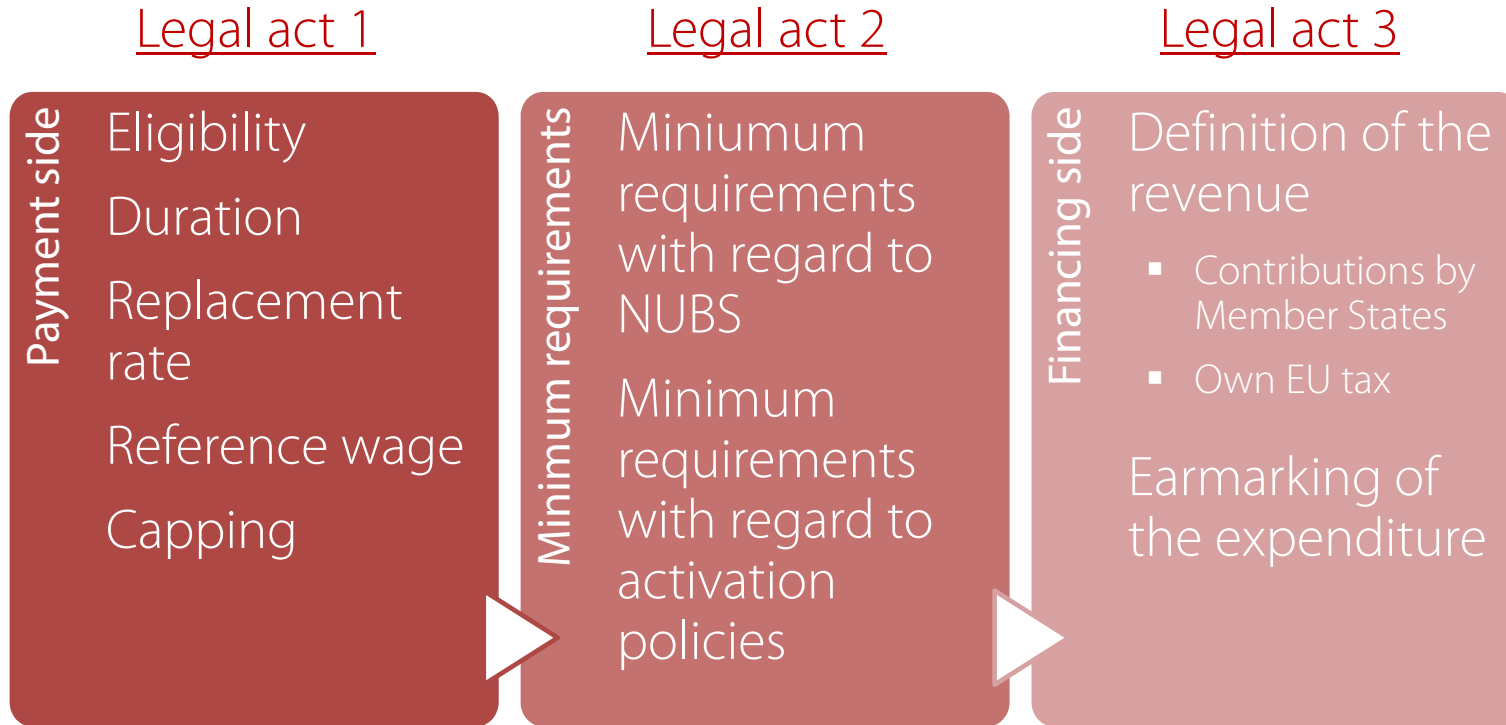
- Equivalent EUBS are to be distinguished from genuine EUBS
 - (1) by the presence of a **trigger**
 - No trigger for **genuine EUBS**
 - Main objective: insuring a social risk / social cohesion
 - Short-term unemployment rate exceeds a threshold: **equivalent EUBS**
 - Main objective : (macroeconomic)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

Basic features of EUBS II

■ Relationship between EUBS and NUBS

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

EUBS legal act



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

Payment side

EUBS legal act 1: Payment side

- Legal base

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

EUBS legal act 1: Payment side

- Legal base: Equivalent EUBS

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	Automatised application	■	■	■	(-)	(-)	■	■	■
	Autonomous fund	■	(-)	■	■	(-)	(-)	■	■
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EUBS legal act 1: Payment side

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

EUBS legal act 1: Payment side

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

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

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

– EUBS is covered

- Article 125(1) TFEU: General principle that EU does not finance MS
- EU may only transfer funding to MS if there is an explicit legal base
- Otherwise, Article 125(1) TFEU sets the limits for any other transfer
 - CJEU, Case C-370/12, Pringle
 - 'Article 125(1) TFEU does not prohibit the granting of financial assistance [...] provided that the conditions attached to such assistance are such as to prompt that Member State to implement sound budgetary policies'
- Applies to EUBS as it is to be based (additionally) on Article 352(1) TFEU

– EUBS must set incentives for continuous reforms of labour markets

- Experience rating and claw-back mechanisms
- Supplementing legal act setting minimum requirements for activation policies based on Article 153(2)(b) TFEU

Financing side

EUBS legal act 3: Financing side

■ Two ways of designing the financing side

– (1) Within the EU budget

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

– (2) Dedicated fund outside EU budget

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

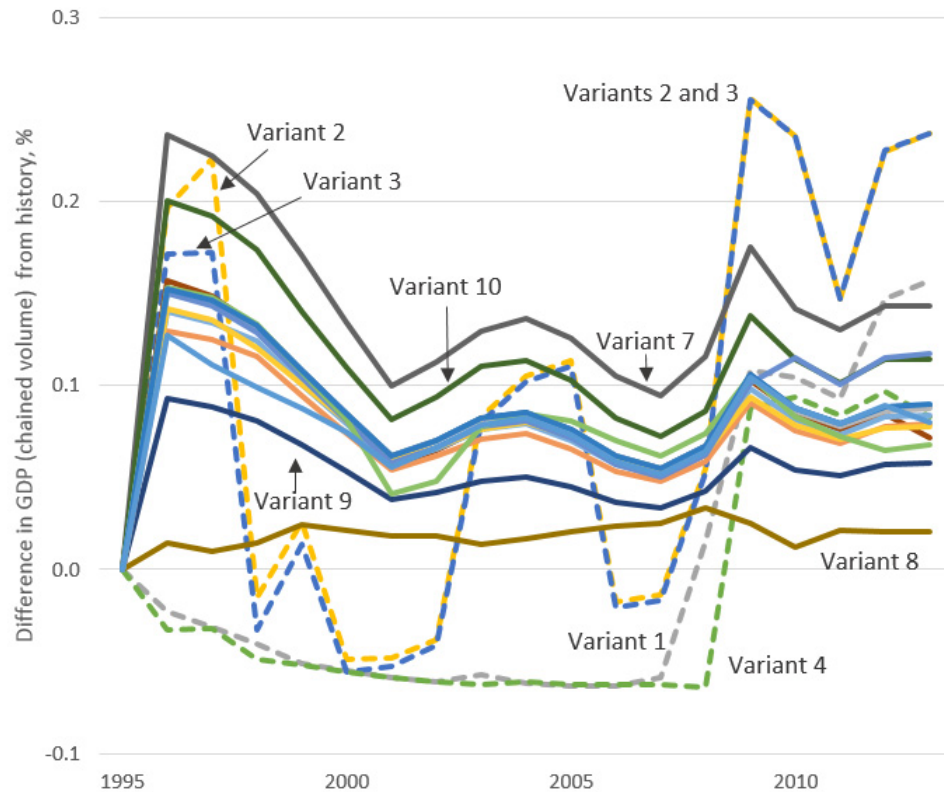
EUBS legal act 3: Financing side

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

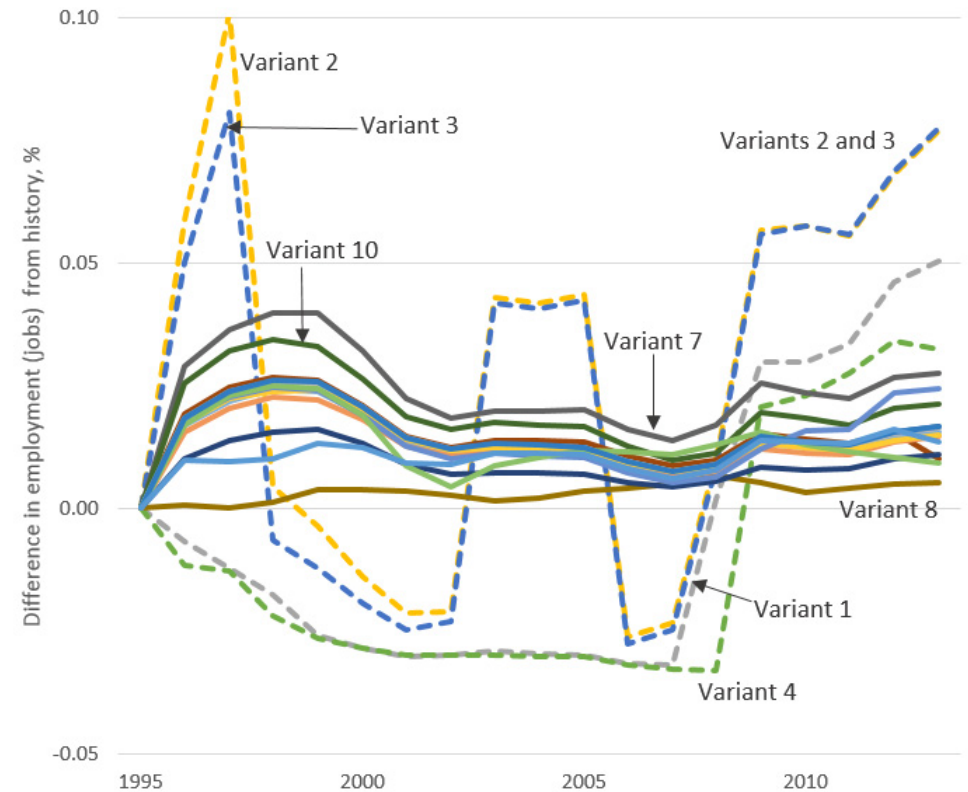
The economic effects

Economic effects

- Impact of EUBS variants on GDP

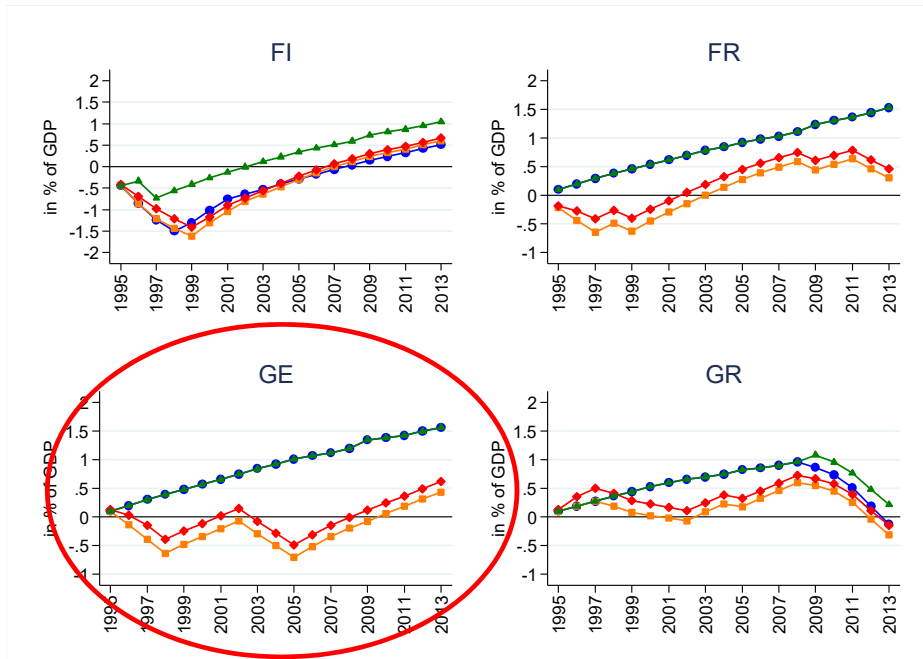


- Impact of EUBS variants on Employment

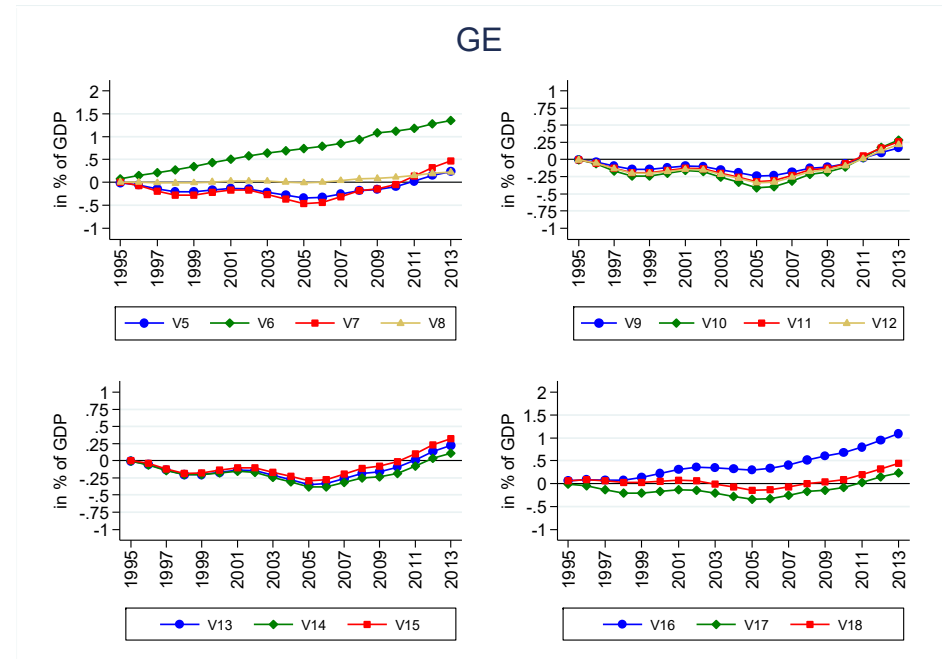


Economic effects

The issue of the 'Nettozahler': The cumulative net contributions in % of GDP between 1995 and 2013



Equivalent EUBS systems



Geniue EUBS systems

Thank you for your attention

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