

THE EUBS AND THE PROTECTION FROM INVOLUNTARY UNEMPLOYMENT: TOWARDS A NEW MODEL OF SOLIDARITY IN EUROPE?

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This paper analyses the feasibility of introducing a European Unemployment Benefit Scheme (EUBS), which would work as an insurance mechanism against the risks of asymmetrical shocks among countries. The implementation of the EUBS presents a number of difficulties. It is necessary, first of all, to analyse the legal compatibility between the EU treaties and a form of the EUBS. Moreover, it is useful to explore the possible coexistence of the EUBS with the benefits of the national (in this case Italian) social security system, which provides for the involuntarily unemployed. After analysing these problems, it is crucial to analyse the administrative management of the system as part of a European multi-level governance, in a context in which the Open Method of Coordination (OMC) is to this day problematic, and in which there is no harmonisation among social protection systems. It is also interesting to analyse the possible link between the EUBS and a European Minimum Income. The question that inspired this paper is as follows: is the EUBS only a good economic stabiliser or could it be inspired by the principle of solidarity between Member States, in a context in which solidarity is overshadowed by the need for economic and financial stability in the Union?

Il presente lavoro si propone di analizzare la fattibilità di introdurre un Sussidio europeo di disoccupazione (EUBS), nato come strumento per far fronte ai rischi derivanti dagli shock asimmetrici tra Paesi. L'attuazione di un sistema comune europeo di disoccupazione, infatti, presenta una serie di difficoltà. È necessario, prima di tutto, analizzare la compatibilità giuridica tra i trattati UE e una forma di EUBS. Inoltre, è utile esplorare la possibile coesistenza di un EUBS con i sussidi nazionali (in questo caso italiani) a favore di coloro che si trovano in una situazione di disoccupazione involontaria. Dopo aver analizzato questi problemi è molto importante analizzare la gestione amministrativa di tale sistema nell'ambito di un governo europeo multi-livello, in un contesto in cui il Metodo aperto di coordinamento (MAC) presenta ancora oggi dei problemi, e in cui non esiste un'armonizzazione dei sistemi di protezione sociale. È inoltre interessante analizzare il possibile collegamento tra un EUBS e un Reddito minimo europeo. La domanda che ha ispirato questo lavoro è la seguente: l'EUBS è solo un buon stabilizzatore economico o potrebbe essere ispirato al principio di solidarietà tra gli Stati membri, in un contesto in cui la solidarietà è messa in ombra da esigenze di stabilità economica e finanziaria nell'Unione?

1. INTRODUCTION

According to the Eurostat database, in December 2015 there were 21.9 million unemployed men and women in the EU-28, 16.7 million of which in the Eurozone (EU-19). Within the EU-19, the unemployment rate was equal to 10.4% in December 2015,

on the rise if compared with the 9.2% figure from 2000. The current recession has thus evidenced two key problems for the Economic and Monetary Union (EMU): the lack of stricter fiscal coordination, and the lack of solidarity among its members. These issues find expression in the differences in unemployment rates across the various countries, with the largest disparity being that between Northern European and Southern European countries.

In spite of belonging to the same currency area, different EMU countries have different unemployment rates: in December 2015, the lowest rates were recorded in Czech Republic and Germany (both at 4.5%) as well as Malta and the United Kingdom (both at 5.1%, although the UK data were those of October 2015); the highest rates, on the other hand, were those recorded in Greece (24.5% in October 2015) and Spain (20.8%). Italy placed itself somewhat in the middle, at 12.9%¹.

It is clear that such disparities mirror the fact that the various Eurozone countries have different economic setups, labour markets and social protection systems, and also that they were differently affected by the economic crisis. The transformations of labour, as well as the consequences of the crises, have impacted on the job market in such a way that employment is typically intermittent in most Member States; protecting involuntary unemployment, therefore, is increasingly becoming a priority for all EU countries.

For this reason, the European Unemployment Benefit Scheme (EUBS) might constitute a feasible instrument to alleviate the negative effects of the economic crisis: by supporting the available incomes, it would boost the aggregate demand and function as an insurance mechanism against the risks of asymmetrical shocks among countries.

The idea of a common unemployment scheme is not a new one and over the last few years, various economic studies proposing different solutions for the implementation of an EUBS have been published².

¹ Cf. http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics.

² The main proposals run as follows: 1. the EUBS as a common intervention mechanism to be triggered in emergency situations; 2. the EUBS as a European scheme of minimal protection; 3. the EUBS as providing risk coverage within certain limits (cf. MEF, G. Becatti, G. Di Domenico, G. Infantino; *Un'assicurazione europea contro la disoccupazione: contesto, analisi e proposte di policy*, "Note tematiche", n. 1, January 2015). The first option envisages the implementation of a *European Re-insurance Fund*, regularly financed by national contributions and functioning in support of national insurance systems (for more details, see D. Gros, *Automatic stabilisers for the Eurozone*, October 2013). The second model (on which see S. Dullien, *Assessing the Stabilization Impact of a European Unemployment Benefit Scheme: Is the US Model the Right Point of Reference?*), on the other hand, envisages an EUBS including: a) an insurance for all EU workers; b) a replacement rate (i.e. the relation between salary and benefit) equal to 50% of the insured salary; c) a maximum benefit duration of 12 months. Within this model, the protection scheme would be funded through the transfer of social contributions paid in by workers and/or employers within each country, and its amount is conceived as "basic", i.e. time-limited and lower than that usually provided by national schemes. Workers would thus benefit from a protection system that combines a basic European scheme with a more substantial and more lasting subsidy granted by national institutions. Finally, the third model focuses on reaching the goal of "providing risk coverage within certain limits", which may be realised in different ways. Various proposals have indeed been advanced. For instance, S. Dullien (*Preventing Permanent Transfers under a European Unemployment Insurance: Can a Clawback Mechanism be the Answer?*, June 2014) proposes a European unemployment insurance mechanism that would allow preserving the stabilisation effect by setting a cap on subsidies. On the other hand, M. Beblavý (*The European Unemployment Insurance 2.0: the Reinsurance Mechanism*, June 2014) proposes an alternative scheme: basing his calculations on an unemployment risk coverage of 40% over 12 months, he estimates that the EU's overall expenditure would be between 0.6% and 1.0% of the GDP (year 2012), with the maximum peak being touched in 2009. Finally, the Trésor-Economics paper (*An unemployment insurance scheme for the euro area*, no. 132, June 2014) outlines a stabilisation fund established through an inter-governmental agreement and based on temporary transfers among Member States, to be implemented in accordance with the different phases of the economic cycle. This proposal links the EUBS to the cyclic aspect of unemployment; moreover, it proposes that the individual subsidy should be equal to 50% of previous earnings and funded through a European social contribution levied on salaries (instead than through pre-existent national contributions), without the EMU aggregate fiscal pressure being increased.

The implementation of a common EUBS, however, presents a number of difficulties. Although it is possible to envisage a juridical compatibility between the EU treaties and a form of EUBS, for example, the administrative management of such a scheme in the context of a multi-level European governance is particularly problematic. Moreover, it would be necessary to explore the compatibility and the possible coexistence of the EUBS with the benefits the Italian social security system provides to involuntary unemployed individuals.

The EUBS is inspired by the principle of solidarity among Member States, a principle that is often overshadowed by demands of economic and financial stability in the Union.

The question remains, therefore, regarding what model of solidarity Europe is striving towards, especially in the light of the European debate on “flexicurity”, which, in the last 10 years, has characterised the reflection on the yet-to-be-realised harmonisation of the European social protection schemes.

2. SOME OF THE MAJOR ECONOMIC ISSUES

The creation of a common European unemployment insurance scheme relies on the creation of a system of financial transfers from the regions with the highest levels of employment to those with the highest rates of short-term unemployment, in order to meet cyclical variability. A number of political, economic, and juridical questions are yet to be solved in the European debate. For instance, it has now widely been accepted that the EUBS should address short-term unemployment only, as this indicator is tightly tied to economic cycles, and that payments should have limited duration and be proportional to previous earnings. On the other hand, it is still under discussion whether the financial burden should be borne by the government entirely or whether the employed population should also contribute, for example through a tax on labour/a tax levied on wages and salaries.

Some key economic studies, in particular that of Andrea Brandolini, Francesca Carta and Francesco D’Amuri³, help us putting the most relevant issues into focus.

According to this study, the EUBS should be directed towards all the Eurozone independent workers that have paid their national insurance contributions for at least 12 months before becoming unemployed. Taking into account the differences in GDP per capita among the EMU Member States, the EU would provide an average insured wage equal to 80% of the national average wage, with a replacement rate equal to 50% of the average wage for a maximum duration of 6-8 months. The funding would be guaranteed by a system of taxation levied on both employers and employees and collected by the national administrations in charge of unemployment insurance.

The EUBS should be a flexible tool, capable of modifying in accordance with the Union’s overall economic performance. As for funding, a supranational fund would be established to transfer resources to the countries hit by recessive shock. Such a fund would be equal to the cost that each country sustains to pay unemployment benefits, determined in accordance with common European parameters. In order to limit the possibility of opportunistic behaviours on the national governments’ and individuals’ part, the transfers should just cover the compensation for short-term unemployment, to the exclusion of

³ Cf. Brandolini, Carta, D’Amuri (2014).

long-term unemployment, and be activated only in case of large negative macroeconomic shocks.

According to this study, the EUBS would perform a non-negligible anti-cyclical function while limiting the scope for transfers across countries: without permanent cross-country redistribution, it would be possible to obtain a level of stabilisation equal to one seventh of what was already permitted by the correction of the balanced cycle envisaged by European rules. Such a level of stabilisation, moreover, would be almost doubled in case a minimum cross-country redistribution were allowed, with expenditure lower than 0.1% of GDP for the greatest contributor⁴.

One of the most controversial issues when it comes to the implementation of an EUBS in Europe concerns the potential imbalance between countries, as some of them would contribute to the fund while not benefitting from it as much as other countries that contribute the same or even a lower amount. In this perspective, the contraposition is envisaged between Northern European and Southern European countries, although both studies stress that the adoption of an unemployment scheme at European level is not aimed at Southern Europe but at the absorption of future crisis and recessions that cannot be predicted as of today.

Based on the economic data for the decade 2002-2012, the paper shows that, had such a social stabiliser been in place, countries like Spain would have registered an additional growth equal to 6% over four years, while countries like Germany and France would have been among the recipients of the fund, as Germany experienced difficulties in 2005. For, in case of recession, a European unemployment subsidy would support the consumptions of those who lost their job, thus potentially boosting the exports from other countries⁵. In short, the positive effects of an EUBS would be more significant than the costs sustained to finance it.

3. IS THE EUBS COMPATIBLE WITH INTERNATIONAL TREATIES?

In order to assess the compatibility between the implementation of a European unemployment subsidy and the European treaties, it is important to take into account the differences between the various versions of the EUBS that have been advanced, the most significant of which are the Equivalent EUBS⁶ and the Genuine EUBS⁷.

Therefore, the design of an EUBS mechanism favours an Equivalent EUBS financed through a specific supranational fund and compatible with the current European Community (EC) funding schemes. Such an approach would in turn further strengthen the model of policy coordination that employs specific funds. As it is well known, EC

⁴ Cf. Brandolini, Carta, D'Amuri (2015).

⁵ Cf. Brandolini, Carta, D'Amuri (2014, p. 20).

⁶ "An equivalent EUBS is one in which financial transfers from the supranational fund occur only from and to member states, and not directly to unemployed individuals. The transfers from the EUBS to countries are earmarked for unemployment benefits. This design, in principle, could leave member states free to distribute the money to unemployed individuals according to existing national legislation, reducing the need for harmonisation of national legislation" (Beblavý, Marconi, Maselli, 2015b, p. 13).

⁷ "A genuine EUBS is one in which financial transfers from the supranational fund directly target unemployed individuals. The national benefit schemes are responsible for collecting the payments from individuals, reporting data on the work history of individuals to the EUBS, and mediating in the transfer from the EUBS to citizens. A genuine EUBS would require more harmonisation of national legislation because citizens should be treated in the same way by the EUBS in terms of eligibility requirements and the duration and amount of the unemployment benefits" (ivi).

funds are split into two categories: resources that are directly managed by the European Commission, and resources that are managed by the Member States through their central and peripheral administrative bodies (the so-called indirect financing).

Over the last few years, further funding programmes have been instituted to tackle the exacerbation of Europe's economic crisis. We should recall for example the European Financial Stability Facility (EFSF), a special purpose vehicle agreed by the Eurozone members on 9th May 2010 with the aim of providing financial assistance to countries experiencing economic difficulties while preserving financial stability in Europe. The EFSF was subsequently replaced by the European Stability Mechanism (ESM)⁸, a permanent stabilisation device that was established by amending the European Treaty on 23rd March 2011. To these programmes, we must add the Single Resolution Mechanism, which was established by Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010.

When we talk about the “strengthening of the funding model”, therefore, we refer to the fact that a potential Unemployment Insurance Fund would probably be established along the same lines as the policy strategy that has been employed to address the crisis over the last few years⁹.

Although Article 125 of the Treaty on the Functioning of the European Union (TFEU) rules out all fiscal transfers among Member States (the so-called “no-bail out clause”), a legal basis for an Equivalent EUBS may be derived from combining the provisions of Article 122(2) TFEU and Article 352(1) TFEU. Indeed, Article 122(2) TFEU seems to allow for some “conditionality”¹⁰, insofar as it enables the Council, on the basis of a proposal from the European Commission, to grant the Union's financial support to a single Member State, provided that certain conditions are met. Such conditions are to be understood as “severe difficulties” that might affect one of the Member States not only due to natural disasters but also as a consequence of “exceptional occurrences beyond its control”; in this sense, Article 352(1) TFEU would strengthen the Council's deliberative power.

As for the proposal of a Genuine EUBS, i.e. a scheme that does not involve an “intermediation” between the EU and unemployed citizens legal bases may be found in Article 175(3) TFEU, which establishes that “If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies, such actions may be adopted by the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions”. It must be noted here that the phrase “specific actions” is open to interpretation¹¹; in this specific instance, it

⁸ Cf. Craig (2013, p. 3).

⁹ Cf. Patatzatou (2015, pp. 62 ss.).

¹⁰ We are talking here of a different “conditionality” from what you can find in the well-known judgment in Case C-370/12, *Pringle*, in which the Court of Justice of the European Union (CJEU) has ruled in favour of a “strict conditionality”.

¹¹ It recalls in this respect the judgment of the CJEU, Case C-166/07, *European Parliament v Council of the European Union*, in which the CJEU annulled Regulation (EC) No 1968/2006 as it was based on Article 308 TEC and decided that the appropriate legal basis was instead represented by Article 159, third paragraph TEC and Article 308 TEC. In that case the CJEU ruled that “Community financial contribution to the Fund, leaving aside

is possible to interpret the EUBS as a tool aimed at fostering the harmonious development of the whole EU and the reduction of disparities among Member States, as invoked by Article 174(1) TFEU: “In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion”.

This is not all; other articles seem to provide a sound legal basis for a general EUBS proposal. For instance, Article 121(3) TFEU (formerly Article 99 of the Treaty establishing the European Community – TCE, Chapter 1 “Economic Policy”) is also relevant, especially where it quotes the Council’s faculty to keep under surveillance the economic evolution of each Member State as well as the consistency of their economic policies with the general guidelines: “In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States”.

Again, the same approach inspires Article 136(1) (Chapter 4 “Provisions Specific to member states whose currency is the euro”), which explicitly refers back to Article 121 by stating that the abovementioned Council’s faculty applies also to Eurozone countries. The Council, it is said, has the power “to strengthen the coordination and surveillance of their budgetary discipline; and to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance”.

In other words, the unemployment scheme would be established as a complementary measure of economic coordination in the Eurozone to smooth negative spillovers of asymmetric shocks, foster convergence of economic performances, provide incentives to national reforms and maximise the benefits of the common currency. We may thus conclude that, from a legal point of view, the implementation of an unemployment insurance scheme would be compatible with the EU treaties as we could analyse below.

4. IS THE EUBS COMPATIBLE WITH THE NATIONAL BENEFIT SCHEMES?

Having discussed this crucial issue, I shall now introduce the second subject of my investigation, which regards the compatibility of a possible EUBS with the Italian social security system, and in particular with Legislative Decree no. 22 dated 4 March 2015¹², which introduced the New Social Insurance Provision for Employment (*Nuova prestazione di Assicurazione Sociale per l’Impiego*, NASpI), the unemployment allowance (*assegno di disoccupazione*, ASDI) and Dis-Coll (unemployment allowance targeted at people who have been hired under so-called ‘coordinated and continuative coordination contracts’ and are no longer in employment).

The first point worth making is the following: while the main objective of Legislative Decree no. 22/2015 was “that of creating a labour market based on principles of *flexicurity* – also given the significant level of ‘flexibility for individuals leaving the labour market’ that resulted from the implementation of the enabling act relating to contracts with growing levels of protection –, the universal application of protection measures was meant to represent the main instrument for achieving this along with active labour policies.

its legislative framework in which such, forms part of the specific actions which, when they prove necessary outside the Structural Funds to achieve the objectives of art. 158 EC, may be adopted in accordance with Article. 159, third paragraph, EC”.

¹² See Decreto Legislativo 4 marzo 2015 n. 22 – Gazzetta Ufficiale.

However, the price that was paid for creating this type of income-support system was the reduction of pension and social security benefits¹³.

Furthermore, Legislative Decree no. 22/2015 fails to provide universal coverage against unemployment: although the reform significantly extends social protection, it still excludes a part of “outsiders”¹⁴.

As the NASpI, ASDI, and Dis-Coll instruments fail to provide universal coverage, we may safely say that, in all likelihood, Italy would need to make use of a European unemployment scheme in order to broaden, if not to complete, its coverage of involuntary unemployed individuals.

This is even truer if we consider that NASpI, ASDI, and Dis-Coll feature eligibility criteria that are inferior to those envisaged by a potential EUBS, for what concerns both the contributory record and the benefit duration and amount. The different criteria notwithstanding, once the EUBS and the NASpI, ASDI, and Dis-Coll potential beneficiaries have been clearly defined, one may not rule out the possibility of an overlapping between recipients of national and European subsidies.

The issue may be rephrased as follows: should the EUBS be triggered *after* the activation of national schemes, to guarantee social protection to those workers that the national social security system cannot cover due to lack of resources, or should the two systems operate simultaneously?¹⁵

Such a question arises from the difficulty of giving a single interpretation to the words “workers” and “unemployment”, which repeatedly appear in the European Commission’s document but cannot capture the manifold conditions of workers, especially when it comes to countries like Italy in which working conditions are diverse, fragmentary and multifaceted¹⁶; suffices it to mention in this context the condition of “NEETs” (not in education, employment or training), of the so-called “working poor”, of “poor” workers working with a registered VAT number, of workers working with a fake VAT number, continuative collaborations, and so on¹⁷.

¹³ Cf. Caffio (2015, p. 298).

¹⁴ See Pandolfo (2016), in which Pandolfo says that the contribution requirements of NASpI are “much more inclusive than the previous ones, but still be able to produce exclusions”. See also Giubboni (2016, p. 17). See also Raitano, Treves (2014). See also, Raitano (2015): “Based on these simulations we can say, therefore, that if we take into account all relevant circumstances and not only the expansion of the number of potential beneficiaries, the NASpI will not allow the general improvement that is under discussions. Naspi, that is, will produce losers. These will be those workers – and they are not few – who, in case of dismissal, would be protected for a shorter period, would receive minor performance and would obtain more modest figurative contributions. Moreover, as we saw with regard to the duration of benefits that a fair number of non-permanent employees might claim, the most affected could be the workers that are most exposed to the risk of frequent periods of unemployment”. See also Pratelli (2015).

¹⁵ The answer to this question is very complex, in the opinion of this writer; for that reason it might be useful to analyse the working paper of Wood (2017), that makes a comparison between the Canadian system and a possible EUBS for Europe; she writes at p. 12: “There is a world of difference between the interpersonal solidarity of a *genuine* scheme and the interregional solidarity of an *equivalent* scheme. Seen from a Canadian point of view, an equivalent scheme bears a strong resemblance to Canada’s equalisation programme, albeit conditional on member states demonstrating that they used the EUBS money for UI benefits. It would not touch the unemployed directly, and the EU contribution would be known only to those citizens who follow the intricacies of fiscal relations between their various governments. By contrast, the genuine scheme is closer to Canada’s federally operated EI programme. However, the administrative process would be different; by being delivered by the EU member states it bears more resemblance to the US unemployment insurance scheme that is delivered by the 50 US states under flexible federal rules”.

¹⁶ On these new forms of employment and the fragmentation of labour as a consequence of recent reforms, see Allegri, Bronzini (2015).

¹⁷ It is important to consider also that the Italian Parliament has recently passed an enabling law that would introduce a measure called “inclusion income”, which is targeted at poor people living below the absolute poverty line, but it may include some of the potential beneficiaries of the EUBS.

Following the line of reasoning pursued so far, we may be inclined to conclude that resorting to the EUBS once NASpI, ASDI, and Dis-Coll resources have run out might be more compatible with the subsidiarity and proportionality principles than the alternative option.

Such an issue is tied to a further, preliminary problem, which neither the European Commission documents nor the other available studies have so far clarified: how should the functioning of a perspective European unemployment insurance scheme and the existing Member States' social security services be administered? And, even more importantly: how to set up a system that respects the principle of subsidiarity?

In discussing these issues, we can only base ourselves on the way other funds currently function. The European Union Solidarity Fund's regulation, for example, establishes that "In line with the principle of subsidiarity, assistance under this instrument should be confined to major disasters with serious repercussions on living conditions, the natural environment or the economy"¹⁸. Moreover, "This instrument should allow a rapid decision to be taken to commit specific financial resources and mobilise them as quickly as possible. Administrative procedures should be adjusted accordingly and confined to the minimum absolutely necessary. [...] It may be desirable for the beneficiary State, in conformity with its specific constitutional, institutional, legal or financial context, to associate the regional or local authorities with the conclusion and the application of the implementation arrangements, the beneficiary State remaining in all cases responsible for the implementation of the assistance and for the management and control of the operations supported by Community financing"¹⁹.

It is evident that the analysis proposed so far overlooks a number of other complex aspects, in particular the compatibility of a possible EUBS with the *whole* system of social shock absorbers, i.e. not only the NASpI, ASDI, and DIS-COLL schemes.

Moreover, it would also be necessary to assess the impact the EUBS would have on the overall welfare system (in particular, we may think of the income-support tool that was recently approved by the Parliament within Law no. 33 dated 15 March 2017, which introduced the so-called "income of inclusion"). In other words, we may ask: would it be possible for a single unemployment scheme to be made compatible without thereby affecting the consistency of the whole welfare system?

A further unsolved issue regards the division of competences²⁰, that is, which body should perform a surveillance function in the *ex ante* and *ex post* stage of fund distribution. Indeed, a further argument against the implementation of the EUBS is the so called "moral hazard", both *ex ante* and *ex post*: the former concerns the Member States' temptation to reduce the allocation of national benefits in order to receive resources from the common fund; the latter concerns the governments' temptation to use the funds for their own political goals rather than for stabilisation purposes.

The question then ensues about whether such concerns apply only to Italy or they may pertain to other countries too.

5. THE EUBS BETWEEN HARMONISATION AND COORDINATION OF EUROPEAN SOCIAL POLICIES

The issue concerning the implementation of the EUBS is part of a broader discussion on

¹⁸ Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund, point 5.

¹⁹ Council Regulation (EC) No 2012/2002, points 7 and 8.

²⁰ Cf. Tuori (2012, p. 2).

whether the EU should move or not from a stage of coordination to one of harmonisation of social policies. Over the years, however, the market has failed to draw the different social systems closer to one another. A real harmonisation would have required each social system to adjust, the rules of social protection to change, and supranational principles and common standards to be accepted.

From the mid-1980s on, in fact, the EU has given up on all plans of harmonisation and turned to the simpler idea of coordination of social and fiscal policies, with the aim of achieving a very limited number of common goals. Since then, the EU has proceeded to implement such policies, but instead of moving along the direction of adjusting the national social and fiscal systems to a common model, it has limited itself to “managing the differences”²¹ among systems, resorting to non-legislative tools – the so-called “soft law” – to overcome the obstacle posed by the unanimity requirement²².

It is in this context that the Open Method of Coordination (OMC) was designed. This is a non-binding soft law instrument, in that it represents a form of inter-governmental policy that cannot legally force EU members to introduce new laws or modify existing ones.

Over the years, the OMC has evidenced a number of methodological difficulties²³ linked to the lack of a common European welfare state model and to the problematic issue of the democracy deficit²⁴: which democratic participation tools would each Member State be left with, were the EU competences to include also the social sector?

Therefore, it is important to enter the debate on the introduction of the EUBS in this institutional context. An Equivalent EUBS, for instance, may be included in the project of coordination of social policies, as it would not require the different systems of social protection to be homogeneous; as I argued earlier, existing national protection systems might “co-exist” with the EUBS, with the principle of subsidiarity being used as the “priority criterion” of one system over the other. For what concerns a Genuine EUBS, on the other hand, if there were harmonisation of social protection systems, it might work better. The EU countries, in fact, are characterised by differences across national legislations on labour and social protection, so if the EU issued benefits directly to the unemployed citizens, it could create more problems in terms of compatibility between EUBS and NUBS.

The issue of harmonisation of social protection systems, moreover, is tightly connected to the issue of harmonisation of fiscal systems, which, in turn, is in contrast with the rule that lies at the basis of the EC treaties²⁵ and that states that direct taxation is an instrument of social policy and income redistribution that is within the Member States’ exclusive area of competence and may thus not be liable to complete harmonisation²⁶.

²¹ Cf. Torchia (2006).

²² See F. Gallo (2015, p. 20).

²³ See Dawson (2009). Cf. Napolitano (2011, p. 311). The commitment to the coordination of social policies was also restated by the Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions dated 2nd July 2008 and titled “A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for social protection and social inclusion” [COM(2008) 418 def. – Not published in the Official Journal].

²⁴ Cf. Napolitano (2011, p. 311).

²⁵ Cf. Gallo (2015, p. 19).

²⁶ This, however, has not prevented institutions from gradually becoming aware of the opportunities offered by adjusting the national taxation system to a common model. Suffice it to mention here the studies promoted by the European Commission in a now long-gone era, which were in favour of harmonising the taxes levied on national salaries (1962: Neumark Report and 1966: Segrè Report). See also the Communication from the Commission to the Council dated 26th July 1967, titled “Programme for the harmonisation of direct taxes”, in Bulletin of the European Communities, Suppl. 8, 1967, pp. 6-21.

It appears evident, therefore, that the proposal of a Genuine EUBS better suits the combined provisions of fiscal harmonisation and social protection systems harmonisation, as in this context it may represent the first experiment of redistributive policy at a European level. The same does not apply to the proposal of an Equivalent EUBS, instead, since the latter is still tied to the consolidation of the “fund model” for the redistribution of European resources.

All in all, it seems reasonable to think that, as long as the overall European approach to fiscal harmonisation remains the same, the harmonisation of social policies will not find complete implementation in the EU, and a coordination system will continue to constitute the standard.

6. THE EUBS AND THE EUROPEAN DEBATE ON THE INSTRUMENTS OF MINIMUM INCOME

If we consider the terms of the debate on *flexicurity* as it has been carried out over the last 10 years by the European Parliament and the European Commission²⁷, from the Green Paper to the new 2020 strategy, passing by the two European Parliament resolutions dated 6th May 2009²⁸ and 20th October 2010²⁹ on guaranteed minimum income, it seems that the envisaged social protection scheme was progressively moving towards the idea of providing universal income support, allocated independently from labour conditions and social security records.

It is evident, however, that somewhere along the line such an approach went lost. For the labour and social security policies that Member States have approved over the last few years fail to actuate the common principles on *flexicurity* that the European Council established in a document dated December 2007. Different labour and social security system legislations are still in place in Europe, with a specific dichotomy occurring between workfare and universal welfare systems.

Minimum income schemes³⁰ have not been introduced in countries that did not previously have it, like Italy and Spain, and in many countries, including Italy, the flexibility component of *flexicurity* has progressively taken over the security principle.

The proposal of implementing a basic income³¹ stirred great participation among European citizens; however, after the European Citizens’ Initiative (ECI) rejected it, the debate on forms of income support independent from contributory record, contract conditions, and national legislation system, has disappeared once more from the European political debate. Similarly, the *more and better jobs* objective³², repeatedly evoked in the

²⁷ In order to better understand this reasoning, it is necessary to refer to the European Commission’s documents on *flexicurity* that, as early as in the mid-2000s, tried to show how important it was to revive and update the European social model. See Bronzini (2008, p. 109).

²⁸ European Parliament Resolution of 6 May 2009 on the active inclusion of people excluded from the labour market (2008/2335(INI)).

²⁹ European Parliament Resolution of 20 October 2010 on the role of minimum income in combating poverty and promoting an inclusive society in Europe (2010/2039(INI)).

³⁰ For an analysis of the various definitions of “guaranteed minimum income”, see Tripodina (2015, p. 16). Cf. also Granaglia, Bolzoni (2016).

³¹ In 2012 the European Commission refused to register the European Citizens’ Initiative (ECI) on basic income that had been promoted by a number of European associations, judging that the wording of the proposal was not compatible with the competences that the EU law ascribes to the Union.

³² Cf. Gottardi (2015, p. 240).

Lisbon Strategy, the 2020 Strategy as well as in more recent resolutions³³, is still far from being achieved.

For these reasons, it may thus be worth exploring not only the potentiality of the EUBS as an economic stabiliser and its legal basis, but also the possibility of introducing a European minimum income³⁴. While still directed towards unemployed individuals, this would also include the so-called *working poor* as well as all those people that remain outside the social protection net.

Such a provision might replicate the EUBS model through the creation a European Minimum Income Fund (EMIF), which would be financed not only through the Member States' contributions but also through a diversion of unused budgets derived from the European Social Fund (ESF) or from a tax levied on financial transactions³⁵.

In the light of what has been discussed so far, it becomes evident that the lack of well-functioning coordination, and even more so, of harmonisation of social protection systems reflects the lack of an overall vision of solidarity at European level. Such a vision, instead of broadening and deepening with time, appears to have shrunk, to be confined within national or even sub-national boundaries and to become increasingly selective and particularistic.

7. CONCLUSION

The process of European integration was born in the sign of what Mancini³⁶ has renamed “social frigidity of the Founding Fathers of European Union”, a feature, however, only of supranational law, certainly not of its Member States. This expression, however, must be contextualised contrasting, on the one hand, the “legislators of the capitalist countries” who have not implemented, but only started, the slow progress of the idea of equality, and secondly the “Founding Fathers of Europe, but also the Council and the Commission in Brussels”, who have never wanted to “reform” “the condition of man who sells his labour power”³⁷.

The result of this process would seem a progressive and growing construction of national systems and social protection institutions and, in addition, a construction of a common market, based on the well-known “four freedoms”.

For this reason, a tool such as the EUBS, is originated from the need to set in place a stabilisation mechanism capable of absorbing asymmetrical shocks at times of economic crisis, such as that Europe has been experiencing since 2008 and from 2010 on in particular.

³³ The last one being the European Parliament's Resolution dated 11th March 2015, the European Semester for economic policy coordination: employment and social aspects in the Annual Growth 2015, paragraph 1.

³⁴ Authors such as Pena-Casas and Bourget have hypothesised a guaranteed minimum income scheme at European level, called European Guaranteed Minimum Income (EGMI), arguing that, given the national actions' current inability to effectively counter social exclusion and involuntary unemployment as a structural feature of labour market, Europe could act precisely by virtue of the principle of subsidiarity. Even this kind of proposal would require the creation of a European Minimum Income Fund (EMIF), which may be either financed by quotas, like the Unemployment Insurance Fund, or by setting budgets tied to taxation on financial transactions. Further proposals have been put forth along these lines, and it would be important to analyse their economic and legal feasibility, in addition to the proposal of the EUBS. See Peña Casas, Bouget (2013). See also Granaglia, Bolzoni (2016, pp. 76 ss.). See also Bronzini (2011, p. 225).

³⁵ Cf. Granaglia, Bolzoni (2016, p. 89).

³⁶ Cf. Mancini (1988, p. 26).

³⁷ Cf. Benvenuti (2016, vol. I, p. 37).

It also originates from the need to tackle the Economic Committee and Monetary Union's "original sin", that is, the lack of fiscal coordination and harmonisation of social policies across Member States. The EUBS thus appears as a "contingent" provision, which was conceived to face difficult economic conditions and in particular to meet the effects of economic crises such as the present one.

Is it possible, however, to conceive of this instrument as something more than a mere economic stabiliser?

Through what has been analysed in this paper it can be concluded that there is a way to ensure compatibility between the introduction of a tool like the EUBS and EU treaties³⁸.

Issues remain, however, especially with regard to the administrative management of the European unemployment scheme and its compatibility with national benefits, the possible overlapping of recipients, and the division of competences when it comes to keeping surveillance over *ex ante* and *ex post* moral hazard behaviours on the Member States' part.

The difficulties that pertain to the Unemployment Insurance Fund management, on the other hand, depend on the structural weakness of OMC and thus reflect the solidarity deficit originally inbuilt in its conception. "The monetary union – when not associated to an at least partial unification of fiscal and economic policies and the creation of an adequate budget (that is, when it is not associated to a decisive impulse in the direction of a federal union) – has revealed all its fragility, as shown by the dramatic increase in the competitiveness and development differential among Member States over the last ten years. The monetary union might therefore turn out to be a disaggregation factor rather than fostering that tight and solidary union among European people the Maastricht Treaty's authors had envisaged"³⁹.

For these reasons, the discussion surrounding the EUBS might be useful to reignite the debate on the possibility of starting a process of harmonisation of social protection systems. However, the fact that the latter is so closely related to the issue of the harmonisation of fiscal policies entails a political complication that seems far from being solved in the near future.

Reopening the debate on the harmonisation of social protection systems is all the more important since the limitations of OMC are partly due to the "de-politicisation" of the deliberation processes. Such a de-politicisation is a consequence of the haphazard way in which soft law has been exploited to coordinate employment policies without thereby producing an enlightened bureaucracy or even establishing the primacy of regulatory States. It may be reasonably affirmed that, within a system that aims to become more integrated, the lack of sanctions towards defaulting or inefficient states relieves national administrations of responsibilities and thus undermines OMC⁴⁰.

Relieving national administrations of responsibilities, on the other hand, is perfectly in line with the overall approach to the EU crisis, which still falls under a normative framework whose key principles are financial austerity and balanced budget amendment. It is worth stressing, moreover, how the feeble solidarity aspects comprised in the functioning of the ESM are tied to a rigorous "conditionality"⁴¹: even forms of redistributive solidarity, such

³⁸ See paragraph 3, where the compatibility with various articles of the treaties is analysed.

³⁹ Cf. Giubboni (2012, p. 547).

⁴⁰ Cf. Sciarra (2013, p. 113).

⁴¹ Cf. Napolitano (2011, p. 335).

as that of ESF, are influenced by the political tensions that occur between Member States, and are seldom characterised by a genuinely altruistic spirit⁴².

In this perspective, the strictness with which countries like Germany approach the possibility of introducing the EUBS is not surprising. What they fear is the potential contraposition between more and less “virtuous” countries when it comes to government budget policies; and when such contrasts occur, we may suppose, “conditionality” would again be invoked as an instrument of resolution.

It is clear, however, that such a provision cannot be the only tool deployed against the economic crisis; it is necessary, therefore, to reopen the European debate on the need for universal income-support instruments, as for example the European guaranteed minimum income (EGMI), an instrument that is less strictly tied to the worker’s contract conditions.

For these reasons, it is necessary to rethink these subsidies by taking into account a more complex definition of the term “workers”, i.e. one that includes the structural modifications of labour and of non-labour as well as the emergence of new figures, such as the “working poor” and the “NEETs”.

In such a context, the implementation of a European unemployment scheme seems even more important, as it would contribute to reigniting the debate on the creation of a new model of solidarity in Europe. Indeed, it would be impossible to conceive of solidarity at European level without envisaging the Union as providing financial support to redistributive measures⁴³.

“Solidarity has always been a polysemic word, capable of assuming different, and at times even contradictory, meanings. Its latest semantic twist, shaped as it is by the principles of competitiveness and productivity, interprets the spirit of our time: a time that has forgotten the redistributive aspect of solidarity that was embodied in the historical forms of European welfare state; a time that has forgotten that ‘redistributive’ specifically means ‘corrective of social and income inequalities’”⁴⁴.

As Stefano Rodotà asserts, it is necessary “to resume the path towards ‘citizenship universality’, on whose achievement the very possibility of building a Europe ‘of citizens’ and not only a Europe ‘of markets’ depends; by this, we mean a Europe whose reference point is not merely a ‘market citizen’, but a citizen that is fully integrated in a network of solidarity relationships”⁴⁵.

On account of this, there is some hope that the discussion on the implementation of a European unemployment scheme may favour the reopening of the debate on the European solidarity model. In fact, the two issues should be placed on the same level, and the EUBS should be seen as an indispensable instrument for the maintenance of Europe’s financial and monetary stability.

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⁴² Cf. Patatzatou (2015, p. 54).

⁴³ Cf. Sciarra (2016, p. 15).

⁴⁴ Cf. Giubboni (2012, p. 553).

⁴⁵ Cf. Rodotà (2014, p. 33).

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