HUNGARIAN LABOUR LAW
E - J O U R N A L

The 'Reserve Fund' as a Mechanism to Improve the Efficacy and Sustainability of Unemployment Benefits of EU Members States

Daniel Pérez del Prado*

1. Introduction. Between the need of more unemployment benefit expenditure and a lower public deficit

When William Beveridge proposed, within the scenario of destruction which followed the Great Depression and World War II, his remedies to achieve the objective of full employment in a free society, he knew perfectly that the problem of unemployment has many faces: "the greatest evil of unemployment is not physical but moral, not the want which it may bring but the hatred and fear which it breeds".[1] Fighting against unemployment not only means preventing the shortage of means, but also the emergence of major social problems.

Seventy years later, Europe has to deal again, not only with the problem of unemployment, but also with other political and social difficulties that are probably due to lack of sufficient work and enough social protection. The Great Recession, the biggest economic crisis since the Great Depression,[2] made most of the world's most important economies collapse, producing significant consequences.[3] Without a doubt, high unemployment rates are one of the most relevant in the social field. Some figures may illustrate the "social calamity"[4] that unemployment has meant during this period and, even, after it.

The following graph shows the evolution of unemployment rates and the disparities among EU member states. From a dynamic point of view, whereas some states, those with the lowest

* Associate Profesor at the Department of Social and International Law of Carlos III University of Madrid. daniel.perez.delprado@uc3m.es. ORCID: 0000-0001-7106-6769. This article is part of the research project "Technological change and transformation of Labour Law sources" ("Cambio tecnológico y transformación den las fuentes laborales: Ley y convenio colectivo ante la disrupción digital" (RTI2018-094547-B-C21).

1 William H. Beveridge: *Full employment in a free society: a report*. London, Allen & Unwin, 1944. 10.

2 OCDE: *Employment outlook 2009.* 2009.

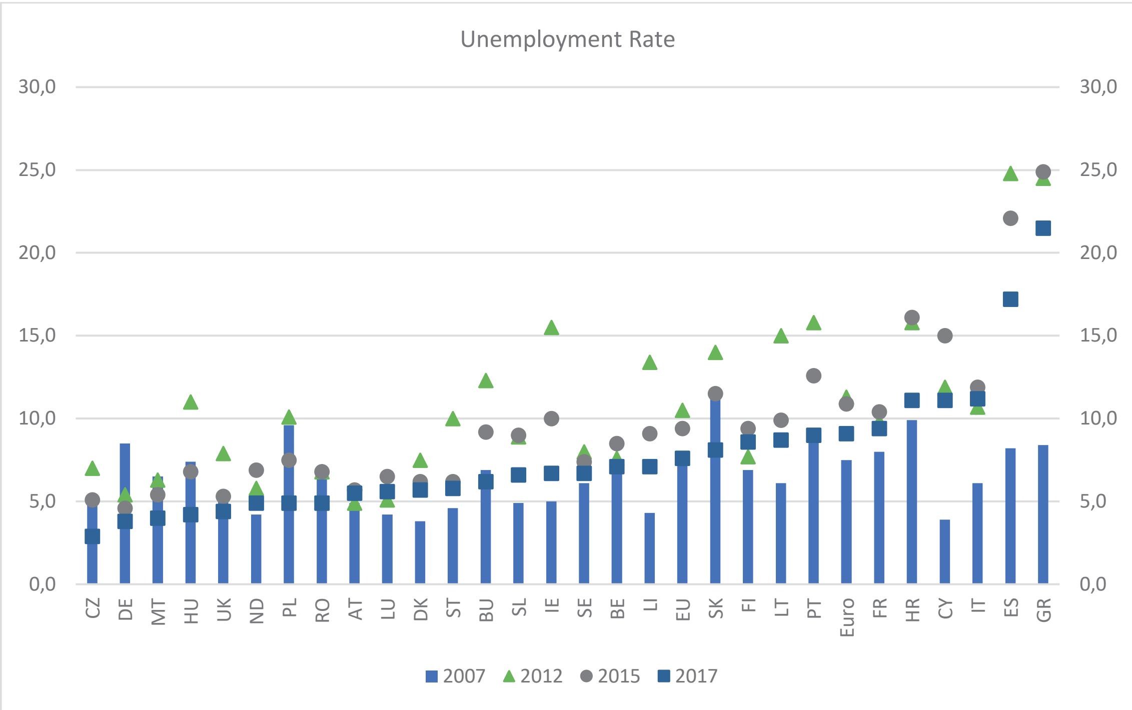
3 In detail, Marc de Vos: *After the Meltdown – The Future of Capitalism and Globalization in the Age of the Twin Crises.* London, Shoehorn Media Ltd, 2010.

4 Manuel Alonso Olea – José Luis Tortuero Plaza: El paro forzoso. Clases y aseguramiento. *Revista de Política Social*, Nº. 145., 1985. 10.

unemployment rates, have seen the number of unemployed people change scarcely (in the case of Germany, its unemployment rate was lower in 2012 – 5.4% – than in 2007 – 8.4%); others have shown a tremendous volatility. In the case of Greece and Spain, the unemployment rates rocketed from around 8% (in the European average) up to 24% in 2012.[5] This is also the case of other countries in the south of Europe such as Cyprus, Croatia and Italy.

From a static perspective, the differences between countries were huge. Spain and Greece, even with improvements, closed 2017, a decade later, with unemployment rates that were more than double the level of Member States with the lowest rate (Czech Republic, Malta and Germany). The magnitude of the problem is far from being similar and means common answers are difficult to achieve.

Graph 1.



Source: own elaboration based on Eurostat.

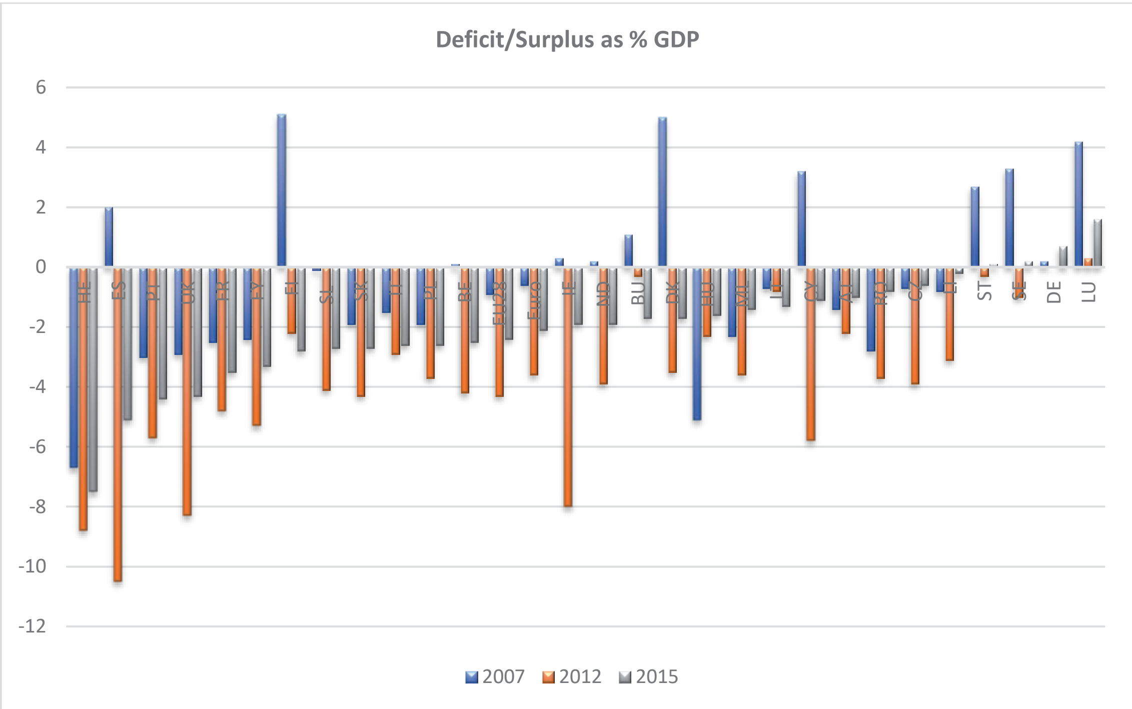
Data also evidences that unemployment was and still is the most important social problem in Europe. The logical consequence of an economic crisis became a widespread "evil" and, in some cases, with an intensity which had not been seen for decades. This was due to some particular difficulties that the EU and, concretely, the Eurozone had to overcome. The so-called "Eurozone crisis" arrived when several countries assumed private debts from their bailed-out banks. This produced high government structural deficits and accelerated debt levels. The measures adopted to fight against this new stage

5 The maximum was at 27.5% for Greece and 26.1% for Spain in 2013.

within the depression made it even deeper.[6] Again, data may help us to understand the result of these decisions on states' public finances.

Concretely, the following graph represents the evolution of the general government deficit or surplus as a percentage of GDP for 2007, 2012 and 2015. All countries worsened their public finances between 2007 and 2012, but the situations show a wide variety. Whereas in some countries, government finances changed dramatically (in the case of Spain, it changed from a surplus of 2% GDP in 2007 to a deficit of 10.5% in 2012; in Cyprus, from 3,2% to –5.8%), others experienced smother changes, even keeping rather sane finances (Luxemburg and Germany maintained surpluses during the full recession period). However, even considering the latter cases, the situation was still worrying at the beginning of the recovery. In 2015, two years after the end of the Recession, six countries kept a level of public deficit over 3%, including four members of the Eurozone: Greece (-.5), Spain (-5.1), Portugal (-4.4) and France (-3.5).

Graph 2.



Source: own elaboration based on Eurostat.

Hence, public finances were at the core of the second part of the recession, characterized by the difficulties of these states to repay or refinance their own sovereign debt. The special state of development of the Eurozone contributed in reinforcing the crisis, because some structures had not

6 European Commission: *Employment and Social Developments in Europe 2015.* Brussels, Directorate-General for Employment, Social Affairs and Inclusion, 2015.

been worked out and the traditional national tools linked to the monetary policy were no longer available.[7]

This produced a new phase within the recession, in which the so-called austerity measures took a leading role. Without other alternatives and in exchange for financial help, European countries in difficulties were forced to reduce their budget deficits severely. The final result was a longer crisis, higher unemployment rates and an increasing social vulnerability. Logically, the outcome of this new stage in the management of the crisis, the austerity plans, were translated to the public expenditure which supports national unemployment benefits.

The following chart shows the evolution of this variable. Except for the Czech Republic, Germany, Hungary, Romania and United Kingdom, countries with lower levels of expenditure on unemployment benefits after the crisis (2015) compared to pre-crisis period (2007), the first and main result of the crisis is the increase of the financial needs to cover unemployment benefits. This is the logical evolution if it is considered that unemployment benefit acts as a macroeconomic stabilizer and, as consequence, its costs must increase in bad times and reduce in good times.

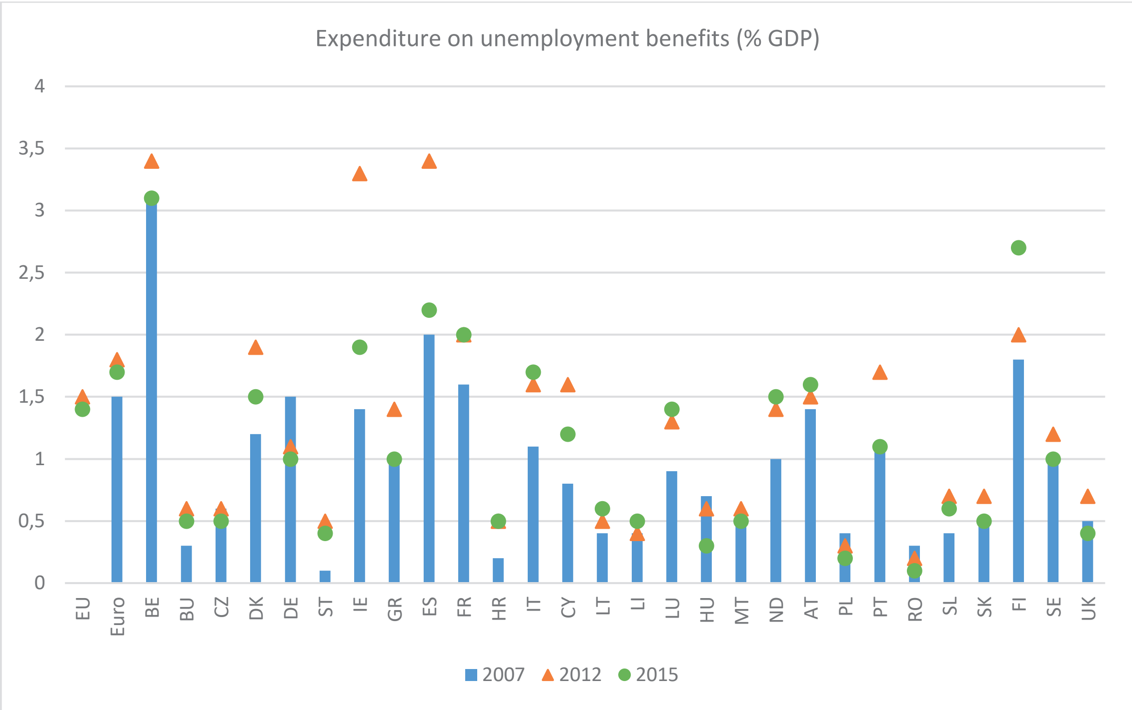
Nevertheless, the evolution of spending is not linked to unemployment in all cases. For example, in the case of Spain, one of the countries which suffered the crisis the most, this variable increased from 2% of GDP up to 3.4% between 2007 and 2012. Then it was reduced to 2.2% at the end of 2015, when the unemployment rate was still around 20%. The coverage rate was reduced from more than 80% to 55%.[8] This evolution is paradoxical when it is considered that the Spanish unemployment system generated surpluses until 2008.[9] At the end of day, data evidences that the system was under a "double contradictory pressure" because, on the one hand, more sources were necessary in order to cover the increasing number of unemployed people but, on the other hand, reducing public expenditure was imposed to achieve the deficit objectives for each year.

[7] E.g. currency devaluation.

[8] This was owed to both the incapacity of the system to keep the level of protection in the context of an over-long recession and the cuts implemented by the Government.

[9] Daniel Pérez del Prado: *Prestación por desempleo: intensidad, duración y control.* Valladolid, Lex Nova–Thomson Reuters, 2014.

Graph 3.



Source: own elaboration based on Eurostat. Data for Croatia 2007 is 2008. Data for EU, Euro and Poland 2015 is 2014.

But member states were not the only ones being forced to introduce structural reforms. The serious problems of the Eurozone described above have resulted in a profound reform of the European economic governance.[10] Nevertheless, the failures have been so important that some voices claim of going toward a greater fiscal integration. Hence, the so-called "Five President Report" (and, previously, the "Four Presidents Report" in 2012) suggested the inclusion of a "mechanism of fiscal stabilisation for the euro area as a whole".[11] The European Parliament has been also working in this direction and, specifically, analysing and promoting the debate on different options within automatic stabilizers.[12]

The idea which underlies these proposals is to compensate the restrictions related to the control of deficit and public finances to any sort of mechanism focused on stimulating the aggregate demand. Taking into consideration the effect of austerity measures on social protection and well-being, unemployment benefits arise as one of the most appropriate solutions. Moreover, they are one of the most important mechanisms of stabilization at national level.

However, any kind of macroeconomic stabilizer, even unemployment benefits, must overcome the specific problems of the European context. Hence, in the next economic crisis, if member states

10 Jonathan Zeitlin – Bart Vanhercke: Economic governance in Europe 2020: socialising the European Semester against the odds? In: D. Natali – B. Vanhercke (eds.): *Social policy in the European Union: state of play 2015.* Brussels,OSE–ETUI, 2015.

11 Jean Claude Juncker: *Realizar la Unión Económica y Monetaria europea*. Bruselas, Comisión Europea, 2015.

12 European Parliament: *European Parliament resolution of 20 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup 'Towards a genuine Economic and Monetary Union'.* Strasbourg, European Parliament, 2012.

are obliged to adopt any type of financial constraints, the only way to avoid cuts on unemployment protection, strengthening its effectiveness as a stabilizer, is to obtain those resources from another level (for example, the EU) or from savings. Actually, both options maybe combined and focus on the role that reserve funds can play in Europe.

2. The Reserve fund as a possible alternative

2.1. The concept of "reserve fund"

Despite the concept of flexicurity having been playing a central role in political debates in recent years, the concern about the sustainability of national unemployment systems has not arisen. On the contrary, the trend has driven into the diminution of expenditure without considering the balance between income and costs.[13] This is rather paradoxical if it is considered that financial sustainability should contribute to strengthening the security side of the flexicurity model.

Concretely, a set of common themes among the changes taking place in unemployment systems have been identified.[14] Firstly, there is a gradual reduction in the scope of unemployment insurance from both an objective and subjective perspective. Secondly, control and sanctions are being stepped up, in association with social representations in which unemployment is increasingly seen as a matter for individual responsibility. Thirdly, as unemployment insurance narrows in scope, recourse to other types of social protection schemes, which are frequently less favourable to employees, are increasing. Fourthly, promoted by the European Employment Strategy, activation of these schemes usually appears to be a central concern of these reforms, which is usually developed through more control sanctions. Finally, it observes a lack of adaptation to new forms of professional activities, which produces an increasing number of outsiders. All these elements flow in the same direction: a reducing attention on unemployment benefits as a payment against social risks and to stabilize the economy in times of crisis. In other words, unemployment benefits have not been reformed considering their different roles depending on the economic cycle.[15]

Within this context, the constitution of unemployment reserve funds arises as an alternative to encourage the security side of flexi-security, powering both national and European social models, strengthening unemployment systems as a macroeconomic stabilizer and building a social complement to the European Economic and Monetary Union.

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13 European Commission. *Employment and Social Developments in Europe 2015*. op. cit.

14 Florance Lefresne: A comparative overview of unemployment benefit: striving to provide security for employees in their career paths. In: F. Lefresne (ed.): *Unemployment benefit systems in Europe and North America: reforms and crisis*. Brussels, ETUI, 2010. 10.

15 Torben M. Andersen: Tuning unemployment insurance to the business cycle. *IZA World of Labor*, 54., 2014.benefit duration, eligibility conditions

But, what is an unemployment reserve fund? It is possible to build the concept by starting with the closest terms, those related to social security general funding and pensions.

According to the ILO, "reserve" is the "net result of the accumulation of contributions, plus investment earnings, plus other revenue, less benefit payments, less administrative expenses, less other expenditure, under a scheme".[16] These reserves may be used to constitute "funds", which are capital accumulated by an insurance scheme to meet future expenses, particularly those arising from unforeseen circumstances.[17] The most frequent ones are those related to pensions or retirement pensions.

From an international perspective, all kinds of reserve funds linked to pensions are classified under the notion "public pensions reserve funds". This includes two categories. On the one hand, "social security reserve funds" are set up as part of the overall social security system and funded chiefly by surpluses from employee and/or employer contributions over current pay-outs and, in some cases, by top-up contributions from the government through fiscal transfers and other sources. They can be managed either as part of a national social security scheme or by an independent (often public sector) fund management entity. On the other hand, "sovereign pension reserve funds" are funds established by governments (independently of social security systems), who finance them directly through fiscal transfers. They are usually mandated to finance public pension expenditures at a specific future date. Some are not allowed to make any pay-outs for decades.[18]

According to these definitions, reserve funds are characterized by: i) they are frequently the result of surpluses of the scheme or system (income are higher than costs), despite fiscal transfers or other sources are also admitted; ii) these surpluses or transfers are utilized to constitute funds or accumulated capital; iii) reserve funds are destined to cover future unexpected circumstances or expenses.[19] As a consequence, a reserve fund may be defined as accumulated capital, obtained by surpluses, transfer or other sources, destined to cover future costs.

Despite this general definition, obviously there are differences depending on the long-term or short-term "investment orientation" of the scheme[20]. Under this temporal approach, when reserve funds are referred to temporary mismatches of income and expenditure of social security schemes related to short-term benefits, they are also called "contingency reserves".[21]

16 ILO Social Protection Glosary. http://www.social-protection.org/gimi/ShowGlossary.action?lettre=r&glosLang=EN

17 ILO Social Protection Glosary. In the English and French version, the notion is used to describe the reserve fund associated to the health micro-insurance scheme. No references are included in the Spanish language version http://www.social-protection.org/gimi/ShowGlossary.action?lettre=r&glosLang=EN

18 OECD Statistics, https://stats.oecd.org/OECDStat_Metadata/ShowMetadata.ashx?Dataset=PPRF&Lang=en

19 This definition is quite close to the common one. According to the Cambridge dictionary, a reserve fund is "money that is kept by an organization to pay for something that may happen in the future".

20 International Labour Office; International Social Security Association (eds.): *Financing social protection*. Geneva, International Labour Office, 2004. 339.

21 Ibid. 342.

Another close concept is a "rainy-day fund". This is defined as a legal tool which allows "states to save money during periods of financial health for later use during economic downturns; […] [offering] the ability to smooth out government expenditures without tax and spending changes, thus helping states to alleviate periods of fiscal stress".[22] In spite of that, there is a wide variety of them, any rainy-day fund must fulfil a set of requirements:[23] i) the fund must be a government-wide reserve for general purposes; ii) the fund must be used as a countercyclical reserve fund across budget cycles; and iii) the fund must have an enabling legislation as its legal basis. Rainy-day funds have received other names in the literature, including unreserved fund balance,[24] budget stabilization funds[25] or fiscal slack or slack resources.[26]

Taking into consideration that rainy-day funds have the macroeconomic stability as main purpose, it would be possible to use this name to refer to funds use to stabilize unemployment systems or other social security schemes. Nevertheless, it seems that, in the literature, this term has been used for wide reserves focused on general purposes.

So, "reserve fund" is more frequently used for social purposes. However, within this area, the field in which reserve funds have been developed more intensely is pensions and/or retirement pensions particularly. In the context of the increasing difficulties to deal with the financial problems of public pensions systems all over the world, reserve funds are raised as an instrument to provide resources to the system in moments of financial scarcity. According to the latest available data, 22 countries hold public pension reserve funds, from which 10 are members of the EU.[27]

Probably this type of tool does not resolve the structural problems detected in retirement pensions solely, but contribute, in addition to other measures, to palliate them. Additionally, despite being planned as a medium and long-term source of finance, it has been also used for punctual problems such as those related to the Great Recession. Hence, Spain utilized its reserve fund to pay part of pensions costs during the worst part of the recession, in a context in which the Spanish social security system went into deficit. This permitted Spain not to increase social security deficit and contributions and, from a general perspective, not to infringe its compromises with the EU.[28]

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22 C. Grizzle – L. Stewart – J. Phillips: Rainy day fund adoption in U.S. states: a case of learning or emulation. *International Review of Public Administration; Seoul*, vol. 20., n. 1., 2015. 17.

23 J. Hou: Budget stabilization fund. In: J. Rabin (ed.): *Encyclopedia of Public Administration and Public Policy: K-Z*. CRC Press, 2004. 35.

24 L. S. M. Stewart: Examining Factors that Impact Mississippi Counties' Unreserved Fund Balance during Relative Resource Abundance and Relative Resource Scarcity. *Public Budgeting & Finance*, vol. 29., n. 4., 2009.

25 Isabel Rodríguez-Tejedo: *The determinants of the structure of rainy day funds.* Società Italiana di Economia Pubblica – Università di Pavia, 2009.

26 Justin Marlowe: Fiscal Slack, Reserves and Rainy Day Funds. In: H. Levine – E. A. Scorsone – J. B. Justice (eds.): *Handbook of Local Government Fiscal Health*. Jones & Bartlett Publishers, 2012.

27 Belgium, Finland, France, Germany, Ireland, Luxembourg, Portugal, Poland, Spain and Sweden. OECD: *Survey of Large Pension Funds and Public Pension Reserve Funds – OECD*, Geneva, OCDE, 2018. 10 and Annex. Data for 2016.

28 Borja Suárez Corujo: *El sistema público de pensiones: crisis, reforma y sostenibilidad*, Lex Nova, Valladolid, 2014. 241–243.

This example shows that reserve funds may play an even more important role in short-term schemes and, particularly, in unemployment systems, taking into consideration that their main objectives are guarantying a certain level of social protection and, from an economic point of view, acting as a macroeconomic stabilizer. In other words, reserve funds are more effective to cover inter-cycle contingencies than over-cycle necessities and, consequently, it fits perfectly with the legal and economic nature of the unemployment scheme. Actually, macroeconomic stabilization is one of the reasons because a sort of reserve fund was included in one of the oldest unemployment insurances, the US unemployment system.

2.2. The reserve fund in the American unemployment insurance system

The American unemployment insurance system[29] has been highlighted as a model to consider in the building of a European unemployment scheme. There are different reasons[30] but, for now, it will be useful to underline one of them: the system saves funding in good times for bad times. In fact, this characteristic has been shown as one of its most relevant strengths.[31] "Advance funding is generally recognized as the preferred unemployment insurance funding strategy to achieve long run trust fund solvency and ensure that the program acts as an automatic stabilizer during recessions".[32]

The American unemployment system is financed by two kind of sources. On the one hand, states may set a level of their own payroll taxes to cover deficit during the recessions. These taxes feed up the federal Unemployment Trust Fund (UTF), which is treated as part of the federal budget, even though the states raise all the money for supporting their own state unemployment systems. However, only five of the fifty States have had enough resources since 1970.[33] On the other hand, the federal

[29] Stephen A. Woodbury: Unemployment Insurance. In D. Béland – C. Howard – K. J. Morgan (eds.): *The Oxford Handbook of U.S. Social Policy.* Oxford University Press, 2015., chap. 26.development, functions, and challenges of American social policy. After the Introduction, the first substantive part of the handbook offers an historical overview of U.S. social policy from the colonial era to the present. This is followed by a set of chapters on different theoretical perspectives available for understanding and explaining the development of U.S. social policy. The three following parts of the volume focus on concrete social programs for the elderly, the poor and near-poor, the disabled, and workers and families. Policy areas covered include health care, pensions, food assistance, housing, unemployment benefits, disability benefits, workers' compensation, family support, and programs for soldiers and veterans. The final part of the book focuses on some of the consequences of the U.S. welfare state for poverty, inequality, and citizenship. Many of the chapters comprising this handbook emphasize the disjointed patterns of policy making inherent to U.S. policymaking and the public-private mix of social provision in which the government helps certain groups of citizens directly (e.g., social insurance. Concerning its historical origins and results, E. Witte: Development of Unemployment Compensation. *Yale Law Journal*, vol. 55., n. 1., 1945.; L. Katz – C. Goldin – K. Baicker: A Distinctive System: Origins and Impact of U.S. Unemployment Compensation. In: M. Bordo – C. Goldin – E. White (eds.): *The Defining Moment: The Great Depression and the American Economy in the 20th Century.* NBER – University of Chicago Press, 1998. 227–264.

[30] C. O'Leary – B. Barnow: Lessons from the American Federal-State unemployment insurance system for a European unemployment benefits system. *Upjohn Institute Working Papers*, 2016., at http://research.upjohn.org/up_workingpapers/264.

[31] The idea of stabilizing jobs and purchasing power was on core of the debate even before the adoption of the American Social Security Act in 1935. Indeed, in the academic debate and in the previous state unemployment insurances, the term "reserve" was used to designate the funds use to deal with unemployment. Witte op. cit. 25.

[32] W. Vroman – E. Maag – C. O'Leary – S. Woodbury: A Comparative Analysis of Unemployment Insurance Financing Methods. *External Papers and Reports*, 2017. 13.

[33] Ibid. 14.

administration lends sources by the Federal Unemployment Account (FUA) to finance states deficits. Additionally, it is also possible to extend the protection for those who have exhausted their benefits. This is financed by the federal Extended Unemployment Compensation Account (EUCA) and states' own sources.[34]

Regarding the first one, employers had to pay a payroll tax. The amount is calculated by applying a tax rate to a payroll tax base (or "taxable wage base"). On the one hand, the tax rate has two main components: a federal component (usually, 0.6 percent of taxable wage base for each employee) and a state component, determined by each state. States are free to set their tax rate, but all of them use two main elements. The first and usually most important one is an experienced rate at the level of the employer, so in principle each employer's tax rate depends on the extent to which that employer has laid off workers who have received unemployment benefits. The second element of the payroll tax is a flat rate. On the other hand, the tax base is also set by the states over the federal minimum of $7,000 per calendar year. Above this limit, states have set tax bases that vary widely up to $45,900 and $47,300, which are the highest base set by Hawaii and Washington respectively.[35]

Generally speaking, the state retains 90% of the payroll tax which is credited to the UTF. The remaining 10% of the payroll tax is paid to the federal government for administrative expenses incurred by both the federal government and state unemployment insurance systems.[36]

Concretely, the federal taxes[37] are used to pay share administrative costs, loans to states when state trust funds are insufficient to pay regular benefits and one-half of the cost of extended benefits during periods of high unemployment. The state taxes finance regular unemployment benefits. Each state has its own UTF account in the U. S. Treasury. Their deposits earn interest which also help to build reserves during good economic times. In other words, state taxes and their interest are the source of forward-funding of the American unemployment system.

The "principle of forward-funding" inspires the system and is defined as its main objective whereby it "should accumulate adequate funds during periods of economic health in order to promote economic stability by maintaining consumer purchasing power during economic downturns".[38] In other words,

34 See footnote 37.

35 US Department of Labor: *Comparison of State Unemployment Insurance Laws 2018*. US Department of Labor, Washington, D.C., 2018, at https://workforcesecurity.doleta.gov/unemploy/comparison/2010-2019/comparison2018.asp.

36 J. Wu: *Unemployment-Related Benefits System in the United States.* Hong Kong, Research and Library Services Division, Legislative Council Secretariat, 2000. 3.

37 Federal payroll taxes are paid into the Employment Security Administration Account (ESAA), one of three Federally-administered accounts related to the unemployment system. The other two related Federal trust funds are the Extended Unemployment Compensation Account (EUCA) and the Federal Unemployment Account (FUA). The ESAA account finances administrative grants to states to pay the Federal share of the costs of administering the Unemployment Insurance and the Employment Service in every state. This account also finances certain administrative activities by the Bureau of Labor Statistics and Veterans Employment and Training Services. Transfers from ESAA to EUCA finance one-half of the cost of Federal-State Extended Benefits during periods of high unemployment. Transfers from ESAA to FUA provide loans to states when state trust funds are insufficient to pay regular unemployment benefits. Vroman et al. op. cit. 174.

38 Advisory Council on Employment Compensation: *Unemployment Insurance in the United States, Benefits, Financing, and Coverage: A Report to the President and Congress.* Washington, D.C., U.S. Advisory Council on Employment Compensation, 1995. 8. [Hereinafter: *Unemployment Insurance…]*

having money in reserves when unemployment increases means, on the one hand, states do not have to raise employer unemployment insurance taxes during recessions, which could drive the economy into a worse situation when business conditions are weak and, on the other hand, the system can sustain unemployed people's purchasing power without stressing its own finances, what helps to maintain the aggregate demand. "Accumulating reserves during economic recoveries puts a slight damper on expansions but helps avoid severe financing crises in the depths of recessions".[39]

Hence, the principle of forward-funding must crystalize in state reserves that should be "sufficient to pay at least one year of Unemployment Insurance benefits at levels comparable to its previous "high cost". For purposes of establishing this forward-funding goal, previous "high cost" should be defined as the average of the three highest annual levels of Unemployment Insurance benefits that a state has paid in any of the previous 20 calendar years".[40]

In 2010, this rule was put into place as a federal requirement for interest-free loans. Its enforcement is being gradually implemented. In 2014, it started to be phased in at a target rate of 50 percent of the total reserve and increases of 10 percentage points each year until it reaches the top in 2019.

Concerning the second one, excluding this case in which no interest is due, lending federal sources to finance states' deficits has not been traditionally understood as another element of the principle of forward-funding. The reasons are that this money is not considered another fund, but part of the UTF;[41] and that states that borrow must ultimately repay the federal loans, usually with interest. In those circumstances, state must raise their tax rates or add surcharges to repay loans. Furthermore, if loans are not repaid in a timely manner, the federal government may assess penalties, which means another tax raise to pay them (in addition to loans). If these tax increases occur in a weak economy and a slack labour market (as most states has during the Great Recession), it places a drag on recovery and hampers the ability of unemployment system to act as an automatic stabilizer.[42] Actually, states use other alternatives to finance their deficits and avoid federal loans, such as bond depts, which have become quite popular among them in recent years.[43]

In order to contribute to the principle of forward-funding, this legal instrument would have to change is configuration deeply. Particularly, the federal administration should act as an equivalent (and subsequent) mechanism of protection, accumulating reserves in good times for bad times, that is, becoming another parallel trust fund. Additionally, taking into consideration the negative effects of

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39 C. O'Leary – B. Barnow: "Lessons from the American Federal-State unemployment insurance system for a European unemployment benefits system", cit. 21.

40 *Unemployment Insurance…* op. cit. 9. Recommendation 2.

41 According to certain requirements, these amounts shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund. 42 U.S. Code § 1103.

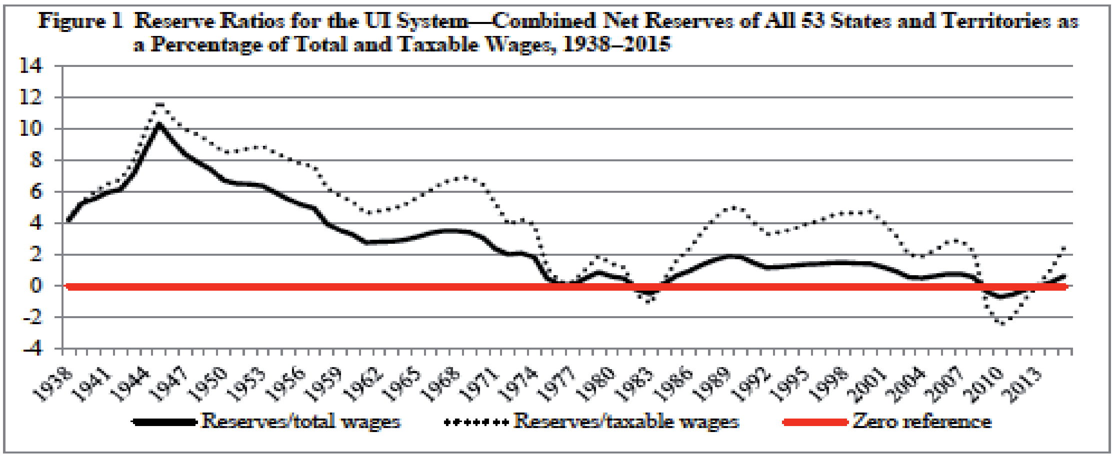
42 W. Vroman – S. Woodbury: Financing Unemployment Insurance. *National Tax Journal*, vol. 67., n. 1., 2014. 258.most states' unemployment insurance (UI

43 C. O'Leary – K. Kline: Are State Unemployment Insurance Reserves Sufficient for the Next Recession? *Upjohn Institute Working Papers*, 16-257, 2016. 13.

interest and penalties, both should be eliminated or, if moral hazard is a real risk, postponed until the state economic situation improves.

Despite the forward-funding objective and the federal loans, the system is not exempt from financial difficulties. During the Great Recession 36 of 53 states[44] took loans or issued state bonds to pay regular unemployment benefits. This means that most states exhausted their regular reserves and, consequently, these were not enough to cover the necessities during the crisis. Despite this recession being the most important one since the Great depression, the lack of capability of the American system to cover their financial needs is not because of (or not only) the size of the crisis, but because of some important intrinsic inefficiencies. The most important one is the reduction in the revenue-raising capacity of the system since the mid-forties. The following graph shows this trend:

Graph 4. Reserve ratios for the UI System-Combined Net Reserves of all 53 states and territories as a percentage of total and taxable wages, 1938-2015



Source: O'Leary & Kline, 2016.

The continuous and discontinuous lines describe the evolution of the reserves divided by total wages and total taxable wages paid in employment covered by the system. Both clearly show that these ratios declined from 10% in the mid-fifties to 2% in the nighties. Before the Great Recession, indeed, the level is even lower: the system reserves were only 0.80% of total wages (2.5%. of taxable wages). This means that the capacity of the system to collect money from wages has been reducing since the mid-forties and particularly since the seventies. This trend is explained by some political decisions focused on reducing payroll taxes paid by employers.[45]

Accordingly, concerning the purpose of this study, it is possible to conclude that the American model and, particularly, its objective of creating reserves to finance periods of crisis can still be

[44] The fifty states of the Union and Puerto Rico, Virgin Islands and Washintong D.C. which also participate in the system. The data is taken from ibid. 2.

[45] In detail, O'Leary–Kline op. cit.

useful for Europe because its financial constrains are not explained by structural characteristics, but its eventual current configuration. In other words, data shows that the system widely achieved the forward funding objective, despite its capacity to generate reserves being more reduced nowadays.

3. How to introduce unemployment reserve funds in Europe

3.1. Two alternatives for a common project

Back to Europe, according to available data, reserve funds have not been used to finance the deficit of unemployment systems in times of crisis. In those circumstances, some states include their intervention in order to provide sources to cover the excessive costs.[46] So far, there has not been any interest in using these kinds of mechanisms. The reason is that this excessive expenditure was not problematic because the state could compensate it with other mechanisms or during the recovery.

Nevertheless, as it was explained above, the Great Recession has showed us that this classical instrument would no longer be as effective as it used to be in the Eurozone. Whether member states may be forced to reduce their public expenditure in order to keep their finances under certain limits as a way to guarantee the stability of the currency, increasing (or, even, maintaining) the expenditure on unemployment benefits may be not possible. As a consequence, the efficacy of unemployment benefits as both social and macroeconomic policy may be seriously affected. Avoiding this effect is in the interests of both national and European authorities.

For this reason, the solution to this problem may be provided by the European Union as well. Reserve funds may be implemented in two ways. On the one hand, at the national level if each state decides to incorporate reserve funds into their national systems. Obviously, this option depends on the states' will, but it is the less complicated alternative from a political and legal point of view. The EU's role would be minimum, promoting its creation among member states. This option must take into account the different unemployment benefit systems existing in Europe. Three models may be identified:[47]

Firstly, "voluntary state-subsidized programs" are based on voluntary membership, often combined with contributions to an unemployment insurance fund. The state exercises a regulatory and supervising role, but has also often contributed to financing of benefits through state subsidies,

[46] Austria, Belgium, Finland, Ireland, and Slovakia, among Eurozone countries, and the Czech Republic, Lithuania, Poland and Romania, among non-Eurozone countries, cover deficits. Germany, Greece, Italy, Slovenia and Spain, among Eurozone countries, and Denmark, Latvia, Sweden and the United Kingdom, among non-Eurozone countries, provide a subsidy to unemployment insurance. There is no formal participation of the state in remaining countries. I. Esser – T. Ferrarini – K. Nelson – J. Palme – O. Sjöberg: *Unemployment Benefits in EU Member States.* Brussels, European Comissionn – Employment, Social Affaires and Inclusion, 2013. 17. Updated information may be found at https://www.issa.int/en_GB/country-profiles. Nevertheless, none of these sources includes detailed information about the financing of deficits.

[47] Here, it is used the classification and characterization provided by ibid. 5–7.

particularly in times of economic downturns and high unemployment. This is the model used in the Nordic countries, such as Denmark, Finland and Sweden.

Secondly, "comprehensive schemes" include both comprehensive basic security (Ireland, Malta and the United Kingdom) and comprehensive income security (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Portugal, Romania, Slovenia and the Slovak Republic). Both focused on ensuring a minimum standard of living for individuals (and their dependents) that have either no other means of financial support or whose resources fall short of a given level. They are also called "assistance unemployment benefits".

Finally, the "state corporatist unemployment insurance" is characterized by an insurance principle, that is, protection delivered by the system depends on previous work/insurance record. They are also named "insurance unemployment benefits". They are usually financed by contributions provided by employers and employees. Deficits can be financed by the states and the system can be complemented by assistance benefits.

In the case of the first and the last model, reserve funds may be financed by the differences between contributions and benefit expenditure in good times and other state's sources. Obviously, following the principle of separate sources, the first option would be the preferable, whereas both of them are quite usual from a practical perspective. In the second model, Government would have to assume the compromise of investing a certain amount of money every year depending on the evolution of the whole economy. In order to avoid political strategic behavior, automatic triggers should govern this investment. In all cases, the unemployment system assumes a new managing or financing principle, the forward-funding. This means that remaining funds will no longer be used for activation policies,[48] at least partially, and a new relationship between active and passive employment policies from a financial perspective.

On the other hand, reserve fund may be also created through the proposal of a "European unemployment benefit scheme" (EUBS). The basic idea which underlies this proposal is creating an unemployment benefit scheme for the EU. Nevertheless, there is not a single alternative to achieve this objective, instead there are diverse proposals which may be differentiated.

3.2. The reserve fund under the debate about the European unemployment benefit scheme

As it was mentioned above, the special difficulties suffered by Eurozone countries during the recession forced them to take some important measures and discuss alternatives to prevent a repeat in the future.

48 Juan López Gandía: El fondo de reserva de la Seguridad Social. *Temas laborales: Revista andaluza de trabajo y bienestar social*, 94., 2008. 190.

Within these proposals, there is a rather extended consensus among economists about the beneficial effects of introducing automatic stabilizers in the Eurozone.[49]

Despite a number of options existing, the debate has been dominated by EUBS, the attempt to set a common unemployment insurance at European level. Reserve funds have not appeared. In spite of that, they both have some common characteristics.

Literature about EUBS usually focuses on two main questions. On the one hand, the types of EUBS. It is possible to find two approaches regarding the mechanism itself. Some authors propose a "genuine" EUBS (also called "individual" or "direct"), that is, the classical unemployment benefits covering unemployed individuals directly at the European level. Others prefer the option of an "equivalent" EUBS (also named "State" or "indirect"), in other words, a scheme consisting in supporting the States' systems and, consequently, providing protection to individuals indirectly.

On the other hand, the debate also concerns a number of economic technical issues such as financing and cost, averting moral hazards, countries involved and stabilization impact. These are present in all proposals without considering the type. Nevertheless, these studies rarely comprehend other kinds of additional technical analysis, such as the legal viability of the hypothetical implementation of each alternative.

Obviously, each version has pros and cons in which these technical issues play a significant role. The equivalent EUBS requires the least grade of intervention or harmonization so, *a priori,* it would be the easiest form of implementation from a legal point of view. However, it also means some disadvantages such as "free riding",[50] that is, countries would be incentivized to increase the generosity of their unemployment benefit system considering it is covered by the Union. The genuine version means a higher grade of integration, which is both an advantage and a disadvantage. The first because it strengthens the effects attributed to a supranational coordinated system and the European project itself; the latter, because the legal (and political) difficulties also increase.

Regarding technical issues, financing is probably the most controversial one. Here, it is possible to find three different types of mechanisms. Firstly, the creation of new taxes or contributions, such as a payroll tax [51] or a corporate tax.[52] These alternatives have the advantage of being an exclusive source

49 R. Marjolin et al: *Report of the Study Group «Economic and Monetary Union 1980».* Brussels,European Commission, 1975.; D. MacDoughal: *Report of the Study Group on the role of public finance in European integration.* EUR-OP, 1977.; T. Padoa-Schioppa: *Efficiency, stability, and equity: a strategy for the evolution of the economic system of the European community : a report.* Oxford University Press, 1987.; M. Emerson: *One Market, One Money: An Evaluation of the Potential Benefits and Costs of Forming an Economic and Monetary Union*. Oxford University Press, 1992.; C. Allard et al: *Toward A Fiscal Union for the Euro Area*. International Monetary Fund, 2013.; C. Alcidi – A. Giovannini – S. Piedrafita: *Enhancing the Legitimacy of EMU Governance.* Rochester, NY, Social Science Research Network, 2014.; P. De Grauwe – J. Yuemei: *Flexibility versus Stability: A difficult trade-off in the eurozone | Centre for European Policy Studies.* Brussels, CEPS, 2016. (among others).

50 M. del Monte – T. Zandstra: *Common unemployment insurance scheme for the euro area. Cost of Non-Europe Report*. European Parliamentary Research Service, 2014.

51 Sebastian Dullien: *A European unemployment insurance as a stabilization device–Selected issues.* European Commission (DG EMPL), 2012.; Sebastian Dullien: *A euro-area wide unemployment insurance as an automatic stabilizer: Who benefits and who pays.* European Commission (DG EMPL), 2013.

52 J. Pisani-Ferry – E. Vihriälä – G. B. Wolff: *Options for a Euro-area fiscal capacity.* Bruegel Policy Contribution, 2013.

of the system and its close relation with it and the beneficiaries. Additionally, in the first case, it tries to replicate the national system at European level. On the other hand, the main disadvantage concerns the increase of labour or corporate tax and its effects on labour and capital factors. Second, it is also possible to finance EUBS by specific contributions to a fund or budget, as a percentage of GDP, fixed or variable. [53] This alternative avoids the problem of taxing productive factors, but it is not directly linked to the system and its beneficiaries. Finally, financing EUBS by debt and, particularly, by the so-called "Eurobonds" have been also on the table.[54] However, this is probably the most controversial option and it attracted strong opposition from those who do not accept the mutualisation of the debt in the Eurozone.

Within these parameters, what are the points in common between EUBS and reserve funds? One of the ways to implement reserve funds at the European level would be through a EUBS. Concretely, the equivalent version would act as a rainy-day fund if member states or the Union contribute to it during good periods in order to use it (automatically, if it includes a trigger, or under request) in case of need during the crisis. This would be a sort of mix of the two main elements of the American model, the reserve fund and the federal-state organization. Whereas in the American case, federal government funding does not act as a reserve fund, but as a loan, here the superior level is used to set a common fund to finance member states' (or members of the eurozone's) unemployment benefits. According to these characteristics, it would be possible to call it a "European reserve fund" to differentiate it from the other alternative, the creation of "national reserve funds".

3.3. Legal alternatives for articulating unemployment reserve funds in Europe.

Despite the role of the EU being much more active in the case of the creation of a reserve fund through the proposal of EUBS than in the option of national reserve funds, even in this last case the participation of European institutions is inevitable. The reasons are that there is a European interest involved, such as the future of the Euro; member states have not been concerned about creating this mechanism; and reserve funds will be more useful the more states implement them. Consequently, it is necessary to analyse different legal alternatives for both options based on European Law.

The Treaty on the Functioning of the European Union (TFEU) considers social policy (social security) as a shared competence (article 4 TFEU), but in which States keep a strong intervention.[55]

53 M. Beblavý – D. Gros – I. Maselli: *Reinsurance of national unemployment benefit schemes.* Brussels, CEPS, 2015.; M. Dolls – C. Fuest – D. Neumann – A. Peichl: *An Unemployment Insurance Scheme for the Euro Area? A Comparison of Different Alternatives Using Micro Data*. Rochester, NY, Social Science Research Network, 2015.

54 M. Beblavý – K. Lenaerts: *Feasibility and Added Value of a European Unemployment Benefit Scheme. Main findings from a comprehensive research project*. Brussels, European Commission (DG EMPL), 2017.

55 F. Pérez Domínguez: Unión Europea y Estado Social: más allá de las cartas de Derechos. In: E. C. Raffiotta – A. Pérez Miras – G. M. Teruel Lozano (eds.): *Constitución e Integración Europea: forma política, gobernanza económica, organización territorial*. Madrid, Dykinson, 2017.

Accordingly, if the proposal of a reserve fund remains within the limits of the Treaty, that is, within the competences of the EU, it would be possible to develop it through European legal mechanisms. On the contrary, if the project goes further than these limits, reform of the Treaty (primary legislation) would be needed, which means some additional political difficulties. Obviously, in the case of national unemployment reserve funds, there is no conflict because the intervention is minimum. In the case of the European reserve fund, whereas initial analysis concluded that EUBS would require the amendment of the Treaties; [56] nowadays, most papers set the contrary position, that is, recent literature concludes that most of proposals of equivalent EUBS could be implemented without reforming the Treaties.[57]

Hence, within the framework of the European Union Law, the Treaty provides two options. [58] a) harmonization that, according to article 4 TFEU, would require the inclusion of the issue (as it is the case) in the Treaty; b) another possibility is coordination (article 5 TFEU). Both mechanisms have a different scope. Whereas harmonization supposes the most intense way of approximation of national legislations, setting some minimum standards or common rules; coordination implies a lower level of incidence, because it aims to achieve some general common objectives, implying minor changes of national regulations.[59]

Considering the nature of the two options, national reserve funds could be managed by a coordination mechanism, whereas the European reserve fund would require a more intense intervention.

Concerning coordination of national reserve funds, the EU can promote the inclusion of national reserve funds by using soft law mechanisms and particularly, by introducing it as a recommendation within the European Semester framework.[60] This option is fully respectful of Article 153 (4) TFEU[61] but, obviously, it has a clear disadvantage, that is its non-compulsory nature, despite this, its effectiveness must not be underestimated, at least in times of crises. [62]

Nevertheless, taking into account this obstacle and following the American model, it would be possible to set any kind of incentive to promote the incorporation of reserve funds among member

56 European Commission: *A Blueprint for a deep and genuine Economic and Monetary Union: Launching a European debate.* Brussels, European Commission, 2012.; M. Fuchs: *Assessing the impact of an EMU UBS on diverse national benefits systems: (To what extent) Do we need common eligibility rules?* Brussels, Bertelsmann-Stiftung, 2013.; R. Repasi: *Legal Options for an Additional EMU Fiscal Capacity*. Brussels, European Parliament, 2013. In this last case, the author shows some doubts about the possibilities given by Articles 352 and 153(1) TFEU.

57 R. Repasi: *Legal Options and Limits for the Establishment of a European Unemployment Benefit Scheme.* CEPS–European Commission, 2017.

58 José María Miranda Boto: Las competencias de la Unión Europea en materia social: panorama y perspectivas de futuro. *Revista del Ministerio de Trabajo e Inmigración*, 92., 2011.

59 C. Herrero Suárez – M. J. Peñas Moyano: Normas comunes sobre competencia, fiscalidad y aproximación de legislaciones. In: R. Martín de la Guardia – A. Calonge Velázquez (eds.): *Políticas comunitarias bases jurídicas.* Valencia, Tirant lo Blanch, 2013.

60 Other more concrete mechanisms related to the European Semester, such as the Multilateral Surveillance Procedure seems to be inadequate because it focuses on budgetary discipline.

61 Which sets that any provision of the EU adopted in the social security and social protection field "shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof".

62 Paul Schoukens: *EU social security law: the hidden 'social' model*. Tilburg University Press, 2016.

states. As the creation of taxes is not possible, the alternative would be permitting the access to a European fund to co-finance national reserve funds. Article 175 TFUE would be the legal base by, either the European Social Fund, because according to article 162 it aims to "improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living" (the main problem is that ESF has never been used for passive employment policies, only for active ones); or the "other specific actions" mentioned in its paragraph 3. In all cases, this would be a sort of compromise between national reserve funds and the creation of a European one.

But, what would be the exact mechanism to set a European reserve fund? To clarify the analysis of these mechanisms, they are classified considering the payment side of the scheme and the conditions linked to it and the financing issues.[63]

Concerning the payment side, there are four main possibilities: the multilateral surveillance procedure (Article 121(6) TFEU), fiscal assistance in case of crisis (Article 122 (2) TFEU), funds concerning social cohesion (Article 175 (3) TFEU) and the so-called "flexibility clause" (Article 352(1) TFEU).

Firstly, multilateral surveillance is a macroeconomic stabilization instrument for policy coordination. This coordination requires Member States to follow the recommendations given by Commission's guidelines (Article 126(2)). Furthermore, Article 121(6) prohibits Union legislator to introduce other sanctions than those foreseen by Article 121(4). This means the whole multilateral surveillance procedure is built upon the basis of non-binding rules, which makes it an inappropriate instrument to set the EUBS and, consequently, the European reserve fund. This conclusion is not affected by Article 136(1) permitting to "adopt measures specific to those Member States whose currency is the euro" because its scope is also the multilateral surveillance procedure.[64]

Second, the Treaty permits to grant, under certain conditions, Union financial assistance to the Member States in difficulties or seriously threatened with severe difficulties (Article 122(2)) TFEU. This clear connection to economic and financial problems makes it an adequate legal basis for EUBS, especially for the equivalent type. However, it faces two kinds of limitations. On the one hand, it would be appropriate for the most severe situations, [65] connected to "natural disasters or exceptional occurrences beyond its control". On the other hand, it would require the parallel adoption of "certain conditions", which implies that financial assistance can only be granted on a case-by-case basis[66] and, therefore, it prevents the mechanism being applied automatically according to a certain trigger. Additionally, it does not include the possibility that financial assistance is provided by constituting an *ex ante* fund.

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63 It follows the ideas to implement a proposal of equivalent EUBS given by Sebastian Dullien; Daniel Pérez del Prado: *How to stabilize the euro area economy without creating political discord: a compromise proposal for a European Unemployment Insurance Scheme.* Madrid, FES, 2018.

64 Repasi op. cit.

65 Ibid.

66 Beblavý–Lenaerts op. cit.

Third, some authors have proposed that the legal framework of funds devoted to social cohesion (Article 175(3) TFEU) would be another legal basis to develop any kind of equivalent EUBS. [67] According to the first paragraph of Article 175 TFEU, the Union shall support the achievement of some objectives, among others social cohesion, by the action it takes through specific Structural Funds. Nevertheless, it will also be possible to adopt "specific actions" outside the Funds if they are necessary and in accordance with the ordinary legislative procedure (paragraph 3). According to these studies, this "specific actions" could include everything needed to implement EUBS. Nevertheless, other authors reject this legal basis because the equivalent system focuses on the macroeconomic stabilization effect in times of crisis and, consequently, it would not be a proper mechanism to reduce social and economic disparities related to social cohesion. [68] This criticism could be applicable to the European Reserve Fund.

Finally, the so-called "flexibility clause" seems to be the legal tool which raises wider consensus. According to Article 352(1) TFEU, its application requires the fulfilment of four conditions. First, the Union action must be necessary to achieve the "objectives set out in the Treaties". In the case of EUBS, Article 3(3) TEU calls for establishing "a highly competitive social market", aiming at "full employment and social progress" and promoting "social justice and protection", "economic, social and territorial cohesion" and "solidarity among Member States".[69] Second, this action must be developed "within the framework of the policies defined by the Treaties". In other words, it must be at least a shared competence, which permits the Union to act. Furthermore, it is possible to justify that the European level is the most appropriate to compensate asymmetric shocks.[70] Third, the Treaties must not provide for the necessary powers. The reference to the "policies defined by the Treaties" has to be understood as the use of this clause is possible if there are no other possibilities in the Treaties. As none of the previous alternatives are a clear legal basis, this would be the only solution. Finally, the European Union Court of Justice established a further limit, which is the prohibition of an implicit Treaty amendment.[71] This means that the distribution of competences must not be altered, and a constitutional saving clause must be respected. In this particular field, the latter requires that there will be no impact upon the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof (Article 153 (4) TFEU).[72] Concerning this issue, it must be highlighted that that a regulation establishing a EUBS on

67 V. Ferrante: The European unemployment benefit scheme: the way ahead. *I Quaderni del CEDRI*, vol. 3., 2016.; Ministero dell'Economia e delle Finanze: *European Unemployment Benefit Scheme.* 2016.; Ministero dell'Economia e delle Finanze: *A European Unemployment Benefit Scheme: Nine Clarifications.* September 2016.

68 Repasi op. cit.

69 These objectives have to be read, among others, in conjunction with Article 9 TFEU, according to which in "defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health".

70 This is clearly kinked to the principle of subsidiarity (Article 5(3) TEU).

71 CJEU, Opinion 2/94 [1996], ECR I-1759, para. 30.

72 And this links to the principle of proportionality (Article 5(4) TFEU).

the basis of Articles 352(1) TFEU always has to be adopted by unanimity in the Council, so Member States may raise their veto to safeguard their constitutional clause.

Nevertheless, Article 352 must not be applied solely because it is subject to the bail-out clause embedded in Article 125 (1) TFEU. Under this clause and according to the interpretation given by *Pringle* case law,[73] the transfer of funding from the EU level to Member States, in case such a transfer is not explicitly foreseen by the Treaties, must be justified by the adoption of any kind of contagion, such as the implementation of structural reforms. Concretely, three kinds of mechanisms have been considered adequate to function as a justification: experience rating, claw-back and minimum requirements with regard to activation policies.[74]

Regarding the financing side, there are two possibilities. On the one hand, EUBS may be financed by the general Union budget. On the other hand, it is also possible to finance it by a dedicated fund outside the Union general budget.

Concerning the specific line within the budget, Article 311 (2) TFEU sets out that the Union budget has two kinds of sources: "own resources" and "other revenues". Whereas "own sources" are primarily intended to finance the general Union budget, "other revenues" may be used to finance a specific purpose. The latter category is chosen because it has two clear advantages: its regulation is more flexible and it may be dedicated to a specific purpose.

On this basis, new contributions should be created and defined by the same legal act that established the legal framework for the payments (and the whole EUBS), which the contributions should finance. In this regard, financial contributions paid by EU Member States, which are additional to the contributions paid by Member States under the Own Resources Decision,[75] must, in principle, follow the rules given by Article 311(3) TFEU. In other words, the especial legislative procedure is required and, consequently, the Council shall act unanimously, after consulting the European Parliament and Economic and Social Committee and the Committee of the Regions and in accordance with their respective constitutional requirements.

Nevertheless, in the existing Union agencies (such as the European Bank Authority), it is possible to find some precedents in which this procedure is avoided by using a different legal basis. Consequently, it would be possible to create these new contributions on the basis of the aforementioned Article 352 TFEU, which only requires unanimity in the Council.[76]

On the other hand, States' contributions may finance an external fund. There are two possibilities.[77] On the one hand, Member States could sign an international treaty to create an intergovernmental

73 Case C-370/12, *Pringle*, EU:C:2012:756, paras 130–136.

74 Repasi op. cit.; Beblavý–Lenaerts op. cit.

75 OJ L 168, L 168/105, 2014/335/EU, Euratom: Council Decision of 26 May 2014 on the system of own resources of the European Union. 7.6.2014, p. 105–111.

76 Repasi op. cit.

77 Beblavý–Lenaerts op. cit.

organization, which operates under public international law, to provide access to financial assistance within the EUBS framework. This was the case of the so-called "European Stability Mechanism" (ESM). On the other hand, it would be also possible to create, using Article 352 (2) TFEU as legal basis, a Union agency with a legal personality distinct from the Union, whose budget is the fund.

4. Conclusions

Unemployment benefits play a very important role as social protection policy, but also as an economic stabilizer. The "Great Recession" has showed us that this classical instrument would be no longer as effective as it used to be in the Euro area. Whether member states can be forced to reduce their public expenditure in order to keep their finances under certain limits as a way to guarantee the stability of the currency, increasing (or, even, maintaining) the expenditure on unemployment benefits will be not possible. As a consequence, the efficacy of unemployment benefits as both social and macroeconomic policy can be seriously affected.

In order to avoid this problem in future crises, new mechanisms must be found. The so-called "reserve funds" or "rainy-day funds" emerge as an alternative to reserve surpluses obtained in periods of prosperity to be used in times of crisis. Inspired by the American model, this paper evidences that this tool can be implemented both at national level and at European level.

In both cases, the EU must play an essential role. In the first one, because it must encourage member states to implement it, even by supporting national initiatives with additional sources. In the second one, because the level of integration is high, expanding European prerogatives. In all circumstances, the development of this kind of proposal is not an easy task because very important national interests must be overcome. Nevertheless, more social integration seems to be inevitable to continue building the European project.