Moral Hazard within the Greek Economic Crisis: An Analysis of European Union Law Effectiveness in Dealing with the Greek Economic Crisis

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April 17, 2012
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Moral Hazard within the Greek Economic Crisis

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Juan R. Castro Jr.

Abstract

In this paper I will present the historical background of the current Greek economic crisis. I will delve into the causes of the fiscal and current-account deficits since Greece’s euro entry in 2001. In addition to the economic and financial information provided, I will also present cultural aspects and differences between Greece and its surrounding neighbors, primarily Germany, and how moral hazard has exacerbated the conflict. Further I will discuss the legality of the countermeasures and solutions presented and how these encroach upon European Union law treaties. Lastly I will conclude that in order for Greece and Germany to stabilize economically, Greece must leave the EU.

Introduction

Moral hazard is best described as a situation where one party is responsible for the interests of another, but has an incentive to put his or her own interests first.\(^1\) Although practically every EU nation has had a role to play in the current economic crisis, the spotlight seems to favor the two countries of Germany and Greece. There are several strong opinions in regards to which one of these two is the protagonist and which one is the antagonist in this economic drama. Public opinion is divided on whether Germany, Greece or the framework of the European Union as a whole is to blame for the current European economic and banking crisis. What is certain is that changes must be implemented, and implemented quickly, if the European Union is to be saved.

The moral hazard in the current situation is directly related to Germany's status as the world's second-largest exporter. About 40 percent of German gross domestic product comes from exports, much of them to the European Union.\(^2\) Obviously, Germany has an interest in facilitating consumption and demand for their exports across Europe. Many believe they have used the institutions and practices of the European Union and its legal treaties to maintain demand for their products. Through the currency union, Germany has permitted other Eurozone states to access credit at rates they would not have been able to secure but for their participation in the Eurozone. In this way, Germany encouraged demand for its exports by enabling reckless lending practices across Europe.\(^3\)

However Germany is not the sole culprit in the current crisis. This paper contends that the economic and legal policies inherent in the formation of the European Union and European Monetary Union were fundamentally flawed from the beginning. Specifically, the structure of the EMU that

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\(^3\) See Id.
created the euro actually encourages member states to run large deficits.\(^4\) Moral hazard exists because the common currency puts all Euro-zone economies “in the same boat” and thereby increases the probability that fiscally balanced states will intervene to backstop those states that enter fiscal distress.\(^5\) This is precisely what happened with Greece. Careful study of the unstable political and economic history of Greece will show that they should have never been let into the EMU in the first place. Greece (and arguably the rest of the PIIGS) cannot and will not conform to the Franco-German model of the European Union and therefore should be let go.

**History**

The Harvard economist Charles Bullock published an essay in 1929 on Dionysius the Elder, ruler of the Greek city state of Syracuse from 407 BC until his death in 367 BC.\(^6\) After lavish spending of the Greek treasury on his military campaigns as well as his lavish court and spectacles for the common people, he ran up a vast debt and found himself drastically in need of ready cash. No one wanted to lend him money and the tax supply was quickly dissipating. Dionysius then contrived to force his citizens on pain of death to hand in all their cash. Once all the drachmas were collected he simply re-stamped each single drachma as two drachmae.\(^7\) Thus he was able to pay back his lenders with the debased currency which his creditors begrudgingly accepted.

This is an extreme yet not totally divergent example of the way in which Greeks have solved their economic problems throughout history. However this “loose Keynesian” policy proves ineffectual in an EMU where Germany controls the euro through strict austerity. The question remains, can Greece conform to this new approach that goes against their understanding of economics and in effect asks them to give up their identity? As the proverbial saying goes, it would be easier to make a square peg fit in a round hole. Greece is grounded in its unique ideology and methods. History shows that there is a historical pattern of Greece defaulting on its debts. In the modern age alone Greece has defaulted on its debts 5 different times in 1826, 1843, 1860, and 1932.\(^8\)

Greece entered a period of recovery in the 1950s popularly labeled as the “Greek Economic Miracle.”\(^9\) This recovery was aided by several factors including U.S. financial aid through the Marshall Plan, a drastic devaluation of the drachma (Greek currency), attraction of foreign investments, significant development of the chemical industry, development of tourism and the services sector in general and massive construction activity connected with huge infrastructure

\(^4\) Martin Feldstein, *For a Solution to the Euro Crisis, Look to the States*, WASH. POST (May 18, 2010), http://www.washingtonpost.com/wp-dyn/content/article/2010/05/17/AR2010051702808.html
\(^7\) See Id.
projects. As a result, Greece experienced an “urban renewal” replacing the country’s largely rural population with a landscape of new modern buildings and architecture. During this time, the country’s GDP grew at the fastest rate in Western Europe, averaging 7.6% annually throughout the 1960s. In addition, industrial production grew at an average annual rate of 10% over this same period, second only to Spain’s performance in Europe. However, as before, Greece’s political unrest coupled with the energy crisis of 1973 adversely affected its economy. The military junta that was in power at this time followed a harsh policy of excessive spending, authoritarian brutality, imprisonment of opposing politicians and censorship. Consequently between 1971 and 1980 the annual GDP growth rate had fallen to 4.7% and then to 1.4% in 1981-90.

Causes of the Current Economic Crisis

Apparently Greece has yet to learn from its own past mistakes. In late 2009, the new government of Prime Minister George A. Papandreou announced that it had discovered that its conservative predecessor had falsified budget figures, disguising an inflated debt in the face of global economic crisis. This news started a domino effect as fears of a sovereign debt crisis grew among investors in regards to Greece’s ability to meet its debt obligations. This led to a crisis of confidence exemplified by a widening of bond yield spreads and increase in cost of risk insurance on credit default swaps compared to the other countries in the Eurozone. Fear and confidence are big words in the finance and investment world. If investors fear or lack confidence in an entity to pay back their loans, they will stop loaning and start calling back their already outstanding loans. After this 2009 report, many problems and inconsistencies were brought to light. False confidence during the early 2000s coupled with falling bond yields had allowed Greece to run large structural deficits. This is something that has been characteristic of Greece for much of its existence. As stated early, wars and internal struggles had many times left Greece impoverished both on a macro and micro level. For this reason its citizens have looked toward political and governmental figures for aid. In response Greek governments have run large deficits to finance public sector jobs, pensions, and other social benefits. Greek government deficit has risen dramatically over the past 10 years—from 3.7% of GDP in 1998 to 13.6% of GDP in 2009, which is one of the highest levels in Europe and more than four times the prescribed target for Euro-zone countries.
In addition, Greece is also known for its excessive military spending, the highest in the EU and second highest in the North Atlantic Treaty Organization (NATO) after the United States. This is due primarily to their uneasy relations with neighboring Turkey. In the past, before the Euro integration, Greece could devalue their currency in order to help finance and pay back the borrowing. However after integration of the euro in 2001, that devaluation tool disappeared. This fact coupled with the global financial crisis of 2008 was the beginning of Greece’s downward spiral. This global crisis had a particularly negative impact on Greece’s GDP growth rate. This is primarily due to the fact that Greece is in a unique situation geographically and politically in Europe. Greece has struggled in finding a comparative advantage amongst its neighbors. Its low competitiveness level finds its origin in poor quality Mediterranean soils preventing agricultural development and a series of stifling and controlling dictators that resisted modernity. Traditionally, Greece has survived on two industries: tourism and shipping, both of which are highly reliant on the global economy and business cycles and thus plummeted during 2008.

Another consistent problem that Greece has had is in the form of the government’s tax income. It is thought that the wealth in Greece has been accrued in the hands of a select few, most notably rich Greek shipping moguls who then turn around and stash their earnings in untouchable Swiss banks. This is obviously a problem when it comes to taxing these entities. Recently there has been a push from the Greek government to make these accounts more transparent. However the status of these attempts remains uncertain. What is known is that each year government tax income is several times below the expected level. In 2010, the estimated tax evasion costs for the Greek government amounted to over 20 billion euros per year. Further it seems that the wealthy are not the only ones to blame for hiding dirty laundry. In 2009, OECD estimated the size of the Greek black market to be around 65 billion euros (equal to 25% of GDP). This is an exorbitantly high number and one could make the argument that the Greek economy has been kept aloft by the black market itself. Transparency International, an independent corruption monitoring agency found that 13% of Greeks paid bribes in 2009, which was estimated to account for 787 million euros in yearly corruption payments. Furthermore it has been estimated that around 1 billion euros was paid by companies in the form of bribes to public institutions in order to avoid bureaucratic rules or to get other benefits. In total, the corruption in Greece amounts to an estimated 3.5 billion euros per year (equal to 1.75% of the Greek GDP).

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18 Id.
20 Alex, Greek Fiscal Crisis, Everything2 (Jun. 12, 2010), http://everything2.com/user/alex/writeups/Greek+fiscal+crisis.
22 See Id.
24 See Id.
Lastly, the failure of the EU Treaties to forecast this economic crisis and to administer its own sanctions has played a leading role in this unraveling economic drama. The Stability and Growth Pact (SGP) adopted in 1997 by the 27 member states of the EU and based on Articles 121 and 126 of the Treaty on the Functioning of the European Union (TFEU) was created to facilitate and maintain stability throughout the EMU. Not surprisingly it was Germany that proposed the pact in hopes of assuring their low inflationary policy.\(^25\) Initially the SGP stated that all countries in the Eurozone should aim to keep their annual budget deficit below 3% of GDP, and keep total public debt below 60% of GDP.\(^26\) If a country broke these rules, it would need to take measures to reduce its deficit. If it broke these rules for three consecutive years, the Commission could impose a fine of up to 0.5% of GDP.\(^27\) However when Germany and France broke these rules by running their own big deficits in 2003, no sanctions were applied against them. This diluted the effectiveness of the SGP and the Council of the European Union decided to suspend it. When bigger and more prominent countries effectively get away with undercutting the rules, smaller countries take note.

**Countermeasures**

After the discovery of 2009, Greece was quickly frozen out of the bond markets and in April of 2010 the Greek government requested financial aid in the form of a bailout package from its European neighbors.\(^28\) Shortly after Standard & Poor’s downgraded Greece’s sovereign debt rating to “junk” status, rumors of default quickly spread throughout the investor world and in response stock markets worldwide and the Euro currency declined. The Eurozone, fearing widespread apprehension of a contagion effect if Greece defaulted, jumped in and joining forces with the International Monetary Fund (IMF) put together a rescue package or €110 billion ($152.6 billion) for Greece.\(^29\) However this package came with the price of a series of strict austerity measures meant to cut the country’s deficit and restore investor confidence. Specifically it required the Greek government to simultaneously reduce public spending and increase tax revenues. Consequently and as per the requirements of the bailout, the Greek government announced that it would implement these series of austerity measures. These measures included pay cuts for public sector workers, a freeze on annual bonuses, extension of the retirement age, reduction in pensions, hike in value added taxes, increase in indirect taxes and plans to reduce tax evasion and corruption.\(^30\) As expected these measures sparked widespread public outrage. Several riots, protests and overall social unrest ensued culminating in three fatalities in Athens.

In 2010, the Greek Stability and Growth Program laid out objectives Greece plans to implement to reduce the effect of the crisis. The strategy revolved around five pillars of public


\(^{26}\) Id.

\(^{27}\) See Id.


\(^{29}\) See Id.

\(^{30}\) See Id.
finances and includes various actions.  

First of all, to restore credibility in fiscal statistics by making the National Statistics Service an independent legal entity and phasing in, during the first quarter of 2010, all the necessary checks and balances that will improve the accuracy and reporting of fiscal statistics. Second, it sought to improve transparency in fiscal management, by changing the process of budgeting, monitoring and evaluating its implementation, and moving towards a program-based budget. Third, it aimed to reform the tax system in order to make it simple, stable, transparent and fair, and to effectively fight tax evasion by improving auditing activities and exchanging of information between auditing agencies. The fourth objective was to achieve control of primary expenditures by containing personnel and other current outlays and reallocating expenditures more effectively. Lastly, it sought to implement the necessary structural reforms to enhance competitiveness and the efficient functioning of the economy. This program, along with a set of European legislative measures known as the “Six-Pack,” was to give teeth to the SGP. The Six-Pack is a set of five regulations and one directive aimed at increasing macroeconomic surveillance. The Six-Pack applies to the 27 member states with some specific rules for "euro-area Member States", especially regarding financial sanctions. The Eurozone institutions that would be lending money to Greece now had a legal basis for imposing austerity measures.

Nevertheless even with all the proposed measures and cutbacks Greece was still in economic crisis by early 2012 and in need of a second bailout package. Greece entered into negotiations with European officials, banks and hedge funds to see if they all could work out another deal. The members of the Eurozone join together and worked out a deal with Greece to provide them with a second aid package of €130 billion. The deal took shape in February of 2012 and outlined three requirements for Greece to comply with in order to receive the funds. The first requirement was that it would have to finalize an agreement with all private holders of governmental bonds to accept a 50% haircut with yields reduced to 3.5%. The second requirement was that Greece had to lower its budget deficit by implementing more demanding austerity measures. The final requirement was that Greek politicians would sign an agreement in support of the new austerity package (which is a contention of concern for many Greeks who are worried that Greece has in effect signed away its sovereignty in the numerous pages). In March 2012 an important milestone was reached as it was announced that 85.8% of private holders of Greek government bonds had agreed to the debt restructuring deal. This majority amount made it possible for the Greek government to in effect force the majority of bond holders to agree to the deal. In addition it was announced that 69.8% of private holders of Greek government bonds regulated by foreign law also had agreed to the debt restructuring deal. In short, the deal is the largest government debt restructuring in history.

34 See Id.
35 See Id.
Legality of Austerity Measures and Bailout

As stated previously, the austerity measures enacted by the Greek government has been met with disdain by the general public. The social effects of the austerity measures within Greece by its citizens have been severe. Many citizens have turned to NGOs for healthcare treatment and there has been an increase in children being given up for adoption as well as a 40% increase in the suicide rate.\(^{36}\) In 2011, at the announcement of the fourth austerity package by the Greek parliament, an independent United Nations official cautioned that these new austerity measures could potentially pose a violation of human rights if it was implemented without careful consideration for the people’s need for food, water, adequate housing and work under fair and equitable conditions.\(^{37}\) Cephas Lumina of the UN Human Rights Council in Geneva stated that “The implementation of the second package of austerity measures and structural reforms, which included a wholesale privatization of state-owned enterprises and assets, is likely to have a serious impact on basic social services and therefore the enjoyment of human rights by the Greek people, particularly the most vulnerable sectors of the population such as the poor, elderly, unemployed and persons with disabilities.” Further Lumina has urged the government to “strike a careful balance between austerity and the realization of human rights, taking into account the primacy of States’ human rights obligations,” and that “more time should have been allowed for the restructuring measures already in place to work.”\(^{38}\) This year, in 2012, it has been reported that 20,000 Greeks have been made homeless and that 20% of shops in the city center of Athens have been deserted.\(^{39}\)

An important question is: Under what authority are the bailout and subsequent austerity measures being imposed? The fact that this question even needs to be asked points toward shortcomings in the European Union treaties. Many would argue that the structure set out in the TFEU is not conducive to swift decision making in the face of a crisis. In particular, Article 294 of the TFEU requires an extensive drawn out procedure that can severely delay effective policy-making. It requires that the European commission initiate legislative proposals that then have to pass through the European Parliament and the European Council. The Parliament gives the proposal from the Commission a “first reading,” forms an opinion, and then sends it to the Council. The Council can then choose to either accept or reject the proposal. If they do reject it, the Council then sends its own position to the Parliament and the whole cycle starts over again.\(^{40}\) Obviously this procedure proves to be inefficient in the current Greek debt crisis where immediate action is preferred in order to quell contagion. As a result, EU member states have had to go around the TFEU to provide assistance to Greece and other ailing countries. The European Financial Stability Facility (EFSF) was the credit


\(^{38}\) See id.


facility created in 2010 to assist Greece and other struggling countries while at the same time circumventing much of the rigmarole of the TFEU.\textsuperscript{41} The EFSF is in effect a separate legal entity that consists of bilateral guarantees among Eurozone member states to loan money to each other in the case of an emergency. The EFSF along with the EFSM (European Financial Stabilisation Mechanism) financed the second bailout of Greece in exchange for harsh economic austerity measures, largely dictated by Germany. This has had the result of transferring a large part of Greek (as well as Irish and Portuguese) budgetary policy under EU jurisdiction.\textsuperscript{42} A Yale Law Review states, “Instead of relying on transparently negotiated treaties that pass popular approval, European integration has taken the rouge of backroom politics that circumvents, rather than utilizes, EU core treaties.”\textsuperscript{43} The Treaty Article being referenced is Article 125 which states:

\begin{quote}
The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments...
\end{quote}

In effect, Article 125 states that neither the Union nor another member state shall bail out another member state. The legal justification used for the EFSF and the EFSM is that these are temporary emergency vehicles or Special Purpose Vehicles (SPVs) that are justified under Article 122 (2):

\begin{quote}
Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, union financial assistance to the Member State concerned.
\end{quote}

The key phrase here is “severe difficulties caused by natural disasters or exceptional occurrences beyond its control.” In the case of the Greek debt crisis, could one hold that their current economic problems are due to exceptional occurrences beyond their control? Those in favor argue that Greece is a victim of the global economic crisis and melt down of preceding years such as the U.S. subprime crisis and the recession of 2008. However as we have examined in the earlier part of this paper, Greece has a history of economic negligence and default. Moreover other countries have experienced periods of high deficits and recessions but have not reached the low point as Greece has. Greece is responsible for Greece. The high level of corruption and negligence by both the government sector and the wealthy business sector are the reasons for the Greece’s troubles, not any natural disaster or any other exceptional occurrence.

Another point of contention in the Greek bailout plan is the European Central Bank’s decision to purchase Greek junk bonds. Critics of this decision point to Article 123, clause 1 of the

\begin{footnotesize}
\textsuperscript{41} See Id.
\textsuperscript{42} See Id.
\textsuperscript{43} See Id.
\end{footnotesize}
TFEU which states “Overdraft facilities or any other type of credit facility with the European Central Bank…in favour of…central governments…shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.” Greek bonds are debt instruments and the ECB should thus be precluded from purchasing them according to this Article. However proponents of the ECB’s actions explain that the word “directly” is the key word here. The fact is that the ECB did not purchase bonds directly from Greece herself but from the secondary capital market. Practically speaking, the ECB did not engage in direct business relations with Greece but merely a routine bank transaction across capital markets. This goes to show the way in which European leaders have had to stretch, bend and go around the EU treaties. The truth of the matter is that the Treaties did not foresee this dilemma or at least did not incorporate effective means of handling an economic crisis of this magnitude. The next step therefore would be to amend the treaties to allow a more stable and permanent financial support mechanism. This “bailout” mechanism has taken the form of the European Stability Mechanism (ESM).

Chancellor Merkel of Germany and President Sarkozy of France have pushed for this institution as a solution for the legal challenges presented by the EFSF and EFSM. The ESM will be a Luxembourg based international financial institution which will serve to safeguard financial stability within the Euro area countries. In order to do this the European Council, comprising the 27 heads of state and government agreed to amend TFEU Article 136. Subsequently in March 2011 the European Council adopted Decision 2011/199/EU to amend Article 136 and allow Eurozone states to create their permanent financial support mechanism. The amendment states:

“The Member states whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.”

This Decision to amend Article 136 requires ratification by all Member States in accordance with their domestic constitutional traditions. The ESM treaty will in turn require domestic approval of Eurozone states and will come into force when member states representing 90% of the capital commitments have ratified it. Both the ESM treaty and the subsequent Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (SCG Treaty) that was signed in March 2012 by 25 of the 27 member states of the European Union, have been met with widespread criticism. One blatant discrepancy in these is that the date of entry into force of Decision 2011/199/EU is January 1, 2013, but the mechanism for which it seemingly makes provision is intended to be operational as of July 2012.

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46 See Id.

47 See Id.
The ESM will include a permanent €500 billion bailout fund made up of contributions of the 17 Eurozone members. Although this may seem like a large sum in relation to the internal Greek crisis is concerned, it will not be enough to stop the contagion throughout the other struggling countries. Simply put it will not be able to disperse the necessitated sums in the time required. Of the €500 billion, member countries will actually disburse only €80 billion in five separate annual installments that are not scheduled to begin until 2013. In the meantime the Eurozone has to rely on the EFSF pool that is already being quickly depleted. However the larger concerns with the ESM are found in five of its treaty articles. Article 9 of the ESM treaty states that ESM members irrevocably and unconditionally undertake to pay on demand any capital call made to them within seven days of the receipt of demand, while Article 10 provides for changes in authorized capital stock.

In Article 27 complete immunity is assigned to the ESM, its property, funding and assets from judicial process. Furthermore, Article 30 gives the governors of ESM immunity from legal process with respects to acts performed by them in their official capacity as well as inviolability with respect to their official papers and documents. Lastly, Article 36 states that the ESM will be exempt from direct taxation.

It is easy to see how these articles produce uneasiness throughout the sovereign nations of the Eurozone. How does complete immunity and tax exemption encourage transparency in the EMU? It is lack of transparency and supervision that is responsible for the EU’s current problems. An article by Real Currencies opines “The ESM is nothing less than Fiscal Union by stealth. It will allow the EU’s finance ministers to steal trillions of tax payer money to pay off banks…Governments will [be] obliged to pay within seven days whatever the ESM demands. Governors of the ESM will enjoy legal immunity and the ESM itself cannot be challenged in court.” Several others have stronger warnings against the ESM declaring that it contradicts the basic EU convention. An Austrian international journal declares, “if this agreement would be signed, all EU-member states would be directed by an anonymous financial oligarchy without democratic legitimacy” and moreover, “it is an enabling act to install anonymous financial enslavement under the pretext of solidarity.” These are legitimate concerns and allegations that may significantly stall the ratification and implementation of the ESM.

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49 See id.
Germany’s Role in the Crisis

Throughout the crisis and the implementation of the austerity measures there have been mixed emotions. Germany has had to deal with allegations that it is concerned only with its own banks, which has lent billions of euros to the Greek government. Initially, Chancellor Merkel of Germany declined to lend any funds to Greece in order to prevent default. One reason may be because both France and Germany are already the most exposed to Greek debt. Although France has the higher overall exposure, Germany has a much greater government debt exposure. Public opinion in Germany has also opposed financial assistance to Greece, blaming its troubles on Greece’s own social welfare system that was too generous and on its inadequate tax collection policies. In response Greece is quick to remind Germany of its own history of default and of financial aid.

Many ask what legal right Germany has for imposing austerity measures on Greece? The answer is not so simple. It would seem as if Germany could claim it has creditor’s rights to collect from Greece given that they are the deep pocket of the EU and thus the major contributor of funds. In securing both bailouts, Greece signed memorandums in 2010 and 2012 that outlined austerity measures to be taken in order to start receiving funds. Further, it is hard to openly pin Germany down as the sole dictator of austerity in Greece (although it is no secret to anyone). It is not as if Germany is openly giving a check into the hands of the Greek government. The loans that have been given out of the German pocket have been passed to institutions such as the IMF, EFSF, and EFSM in order to effectively blanket Germany from direct responsibility. In this way Germany uses these institutions as well as the Six-Pack to impose financial sanctions.

Historically, Germany has been involved in some of the biggest national bankruptcies of the 20th century. Greece points to the fact that but for the aid of the United States, sacrificing large amount of money after both world wars, Germany would not be hold its status as a European economic powerhouse. Germany’s own economic historian, Albrecht Ritschl, points out that Germany has defaulted a total of three times; in the 1930s, 1953, and in 1990. He states, “After the first default during the 1930s, the US gave Germany a ‘haircut’ in 1953, reducing its debt problem to practically nothing. Germany has been in a very good position ever since, even as other Europeans were forced to endure the burdens of World War II and the consequences of the German occupation.” Further Ritschel reminds that “with the exception of compensation paid out to forced laborers, Germany did not pay any reparations after 1990 – and neither did it pay off the loans and occupation costs it pressed out of the countries it had occupied during World War II. Not to the Greeks, either.”

A spokesman at the Greek Embassy in London reiterates this allegation, “There was a loan, and we

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53 George A. Bermann et al., *Cases and Materials on European Union Law* 1273 (3rd ed. 2011)
56 *Id.*
57 *Id.*
have still not got anything back from Germany. The Germans deny it. They say: ‘We have helped you with reparations.’ But those were nothing compared with this sum. There have been reparations to individuals, but not to Greece itself." Moreover, many advocates of this sentiment argue that the worst Nazi war crimes during World War II were, in essence, economic. They point out that Hitler’s troops took goods and foods leaving thousands of Greeks destitute and starving. Also, that Hitler’s men raided Greece’s central bank and forced them to give Germany a significant war loan, which was never paid back. Some economists estimate that if Germany were to repay that loan today, it would cost them €60 billion.

**Grexit or No Grexit?**

In some ways, the entrance of Greece into the European Union has contributed to the current situation. Many have questioned why Greece was allowed entrance in the first place. As we have previously stated, Greece’s problems with default are not new ones. Once Greece was allowed in, it gained direct access to the same cheap credit as German and France. The weak and undesirable drachma was replaced with a strong and reliable euro. Greece was able to borrow money at low interest and in return produce very little exports. Furthermore, European Union legal treaties do nothing to help in this situation. What did the Euro leaders of France and Germany stand to gain from a country as unstable and unpredictable as Greece?

Heavy criticism has fallen on the government of Greece by its citizens and others as it rushed to sign the agreement securing the second bailout package. As previously stated, many Greeks believe that the conditions set by the “Troika” are a breach of their nation’s sovereignty. Members of Parliament had just two days to read and sign a 400 page document to secure the bailout. As many as 40 Parliament members form Greece’s two major parties voted against the agreement. One of these was former Socialist Labor Minister Louka Katseli who states that Greece has abdicated its right to immunity over its assets. She states, “If, in the years to come, there is a problem repaying loans, our partners have the right to seize assets, including gold of the Bank of Greece.” Demonstrator Irini Lazana joins in the criticism saying that the agreement violates the country’s legislative foundations. Lazana says that “many of the articles of the constitution are not working anymore.” One of the most controversial conditions is the obligation to privatize all state-owned assets including utility companies and public lands. This has raised concerns that Greece’s lands are up for grabs at garage-sale prices. What’s more, the agreement with the Troika also includes the creation of a permanent task force in Athens made up of experts from the European Union. This task

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59 See Id.
60 See Id.
62 Id.
63 Id.
force is made up of a French team that deals with reform of the central administration, a Swedish team that will focus on health care, Dutch experts in charge of land register, and a German team in charge of reforming local councils and tax collection system.\textsuperscript{64} The message from the rest of Europe is clear, “We don’t trust you, Greece, to take care of your own problems.”

At the start of 2012, the German government even went as far as propose that a European commissioner be appointed to supplant the Greek government.\textsuperscript{65} Under this German proposal, the commissioner would hold power over the Greek national budget and taxation. This would in effect transfer control of the Greek government to the European Union, since whoever controls a country’s government expenditures, tax rates and monetary policy controls that country. The German proposal declares that the price of financial aid to Greece is the suspension of Greek sovereignty and the democratic process. The Greeks were appalled at the very notion of this proposal and although it was rejected by the European Commission, the pungent odor left is not easily dissipated. Greece is at a crossroads. Stay with the Eurozone, continue to receive bailouts and become an indentured servant or leave, default and face the unknown. Germany must surely recognize this and is trying to make Greece’s decision making easier. They are showing Greece the door out. Germany has been hesitant from the start to provide financial aid and only did so with the guarantee of harsh austerity measures it knew would not be implemented successfully. In short, Germany will suffer loss but in the long term will be able to recover their losses through an increase in overall stability in Europe. In addition, it would rather release itself from the ball and chain of Greece and instead make an example of it.

Some argue that Greece will suffer less if it leaves the Eurozone now. This belief seems to contradict the vast majority of Greek citizens and politicians that still seem to favor the austerity measures instead of default and a euro exit. Many suggest that the alternative to internal devaluation is for Greece to default on its debts and abandon the common currency altogether. A new drachma would depreciate massively, boosting Greece’s competitiveness almost overnight. Admittedly, that this is not an easy option and would most likely result in sovereign default, a run on the banks and bank defaults. However proponents point out that these things will most likely occur anyway. They concluded that what Greece needs right now is a reform from the inside and a chance to fix its own problems. The idea is that the threat of such a prospect might finally provide the impetus for a Greek government to get down to doing the hard work of structural reform, not because outsiders are telling them to, but because Greeks themselves see the options and commit to reforms.\textsuperscript{66}

Conversely, George Soros, a well-known American-Hungarian investor and philanthropist said in an interview with Reuters that “when people entered the Euro, they undertook never to leave it.” He further stated that “you can’t unscramble the omelet.” In effect, Soros believes that if Greece

\textsuperscript{64} See Id.


were to leave the Euro, the entire structure would suffer because the Greek system would be bankrupt and people with money in their banks would lose their money. However in his article, *Does the Euro Have a Future?,* Soros admits that “the possibility of an orderly default—paid for by the other eurozone countries and the IMF—would offer Greece and Portugal policy choices. Moreover, it would end the vicious cycle now threatening all the eurozone’s deficit countries whereby austerity weakens their growth prospects.” Soros believes that the crisis was initiated by a hidden weakens in the euro which is the lack of a common treasury. Nevertheless he believes that in order to prevent a financial meltdown, four set of measures would have to be taken. First, bank deposits must be protected. Second, some banks in the defaulting countries have to be kept functional to keep the economy from breaking down. Third, the European banking system has to be recapitalized and put under European, and not national, control. Finally, the government bonds of other deficit counties would have to be protected from contagion.

As one can see, there are two sides to this story. There is no doubt that Greece faces a difficult decision of whether to remain with the euro or to exit. There are plenty of reasons to leave, these include: enabling Greece to devalue its own currency (drachma) and thereby helping in restoring competitiveness and reducing current account deficit, freedom from Troika’s austerity measures (at least to some degree), and encouraging political and social cohesion. However, there are also problems contingent with the Greek exit of the Euro, mainly that it could lead to capital flight as Greeks move savings and currency to other countries to protect the value of their capital. In addition there would be a serious blow to the reputation of Greece’s economy that would make borrowing difficult in the future.

Another problem is that the exit of Greece from the Eurozone does not have a legal basis. The TFEU does not specifically foresee the possibility of a country leaving the single euro currency but only provides for the possibility of leaving the European Union. Article 50 states, “Any member state may decide to withdraw from the union in accordance with its own constitutional requirements.” Thus in order to return to the drachma, Greece would need to forfeit its position in the EU and even then the legal ramifications of doing so are unclear.

**Final Analysis**

The future of Greece as it now stands is uncertain. It seems as if the prevailing sentiment from Greeks is that they do not want to leave the euro and would rather work things out. Perhaps the words of George Soros are a constant conviction and reminder that leaving would have dire global consequences. However the question remains, how much more can Greek citizens take? The austerity measures are no easy burden on a people that have been accustomed to a certain lifestyle and standard of living. What’s more, the German dimension of the equation is ever constant. How

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68 Id.
69 See Id.
much more can Germany dish out for the “nation building” of a country that is reaping what they have sown? Although the current crisis is very much a European one with other countries suffering economically and could very well extend to global proportions, criticisms seem to be flowing primarily between these countries of Germany and Greece.

In conclusion, the European Union’s honeymoon is coming to an end. The concept of a totally integrated monetary and economic union across nationalistic borders has reached its breaking point. The European Stability Mechanism Treaty and the Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union are not in line with the EU treaties. But then again, despite the façade of objectivity, the EU treaties seem to serve the big dogs of Europe when it comes to large sums of money. How is it that bailout packages were able to be delivered to Greece when it is clearly against TFEU Articles 123 and 125? An amendment was past later in order to remedy this discrepancy. Nevertheless when presented with the issue of Greece leaving the Euro, it is declared unlawful to do so without simultaneously having to leave the EU. Why not just add an amendment to the TFEU providing a way for Greece to temporarily leave the Euro while remaining in the EU? It seems that strong countries such as Germany and France are able to bend the treaties and then use as a tool to beat the PIIGS into submission. The idea of wolves and pigs (or should I say PIIGS) pursuing a prolonged romance is inconceivable and deadly. Countries like Spain, Italy and Greece will not be able to adjust to the ways of thinking, governing and managing of countries such as Germany, France and the UK. These stronger countries will always benefit from the fiscally weaker countries as long as they are tied to the same currency because these weaker countries will never be able to match their competitiveness. Moreover the countries are fundamentally different in language, culture, worldviews, legal systems, predominant religions, and backgrounds. In the case of Greece, history shows us that they have defaulted numerous times in the past and have never really had successful economic growth. Greece was only able to gain entrance into the EU by fudging numbers and maintaining corrupt accounting practices, much like a child would lie about washing their hands in order to get a piece of their favorite dessert. The European Union officials must come to the realization that although the concept of an integrated Europe is a good one, their means of obtaining this goal is overbroad and overly ambitious. Some things are better kept separate. That is not to say that they can’t benefit from harmonization and free movement in an economic sense. However, tying weaker and stronger countries to one currency will only result in exploitation and moral hazard. In our current situation, Greece tried desperately to fit the mold provided by Germany and France, which only resulted in them have to cheat to do so and consequently causing a Europe wide crisis. It is time for the EU to recognize that you cannot make a square peg fit in a round hole, and let Greece go.