A Debt Restructuring Mechanism for Sovereigns

Do we need a legal procedure?

edited by

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Preface

After decades of a wide-spread neglect of the problem, Europe was forced to take notice of the issue of defaulting states in the course of the Greek crisis. Even though almost every European state had experienced one way or the other situations of its debt unsustainability during the last two centuries, they were again caught by surprise when President Papandreou in early 2010 announced the imminent inability of the Greek sovereign to service its debts. The reaction was for months and years chaotic and politicians tried to handle the problems by measures determined primarily to gain time. They repeated thereby a pattern that is almost as old as the history of defaulting states: they looked for ad hoc-solutions.

Given this dreary repetitiveness, it is remarkable – and to the discredit of the legal profession – that no pre-figurated legal rules have been developed for the handling of these cases that pop up with a certain regularity. Even though the phenomenon of defaulting sovereigns reaches back deep into antiquity and even though a state like Spain managed to default three times alone under the reign of its king Philipp II and even though Germany has been bankrupt twice in the last century, there has not yet been developed a legal procedure for these situations. This is all the more noteworthy as not only a legal procedure brings with it the invaluable benefit of giving guidance and structure in chaotic circumstances; the absence of such rules is, moreover, irritating in times like the present ones in which an increasing compliance with the virtues of the rule of law seems to be on the general agenda – i. e. with predictability, accountability, reliability, and transparency.

To be sure, there are some procedures such as the ones of the Paris Club or the London Club. However, they deal only with pieces of the complexity – not with the problem in its entirety. This is from a lawyer's perspective astonishing since there does exist a legal instrument dealing with a parallel phenomenon in private law, namely insolvency law. The question, therefore, arises if a procedure (however close or however distant) akin to such a model would be a solution for the future sovereigns' default crises. Would the problems be better served when and if legal neutrality replaces politicians' actions?

The abundance of issues arising out of this question are discussed in this volume. The contributions reflect thereby a multiplicity of approaches – both in different nationalities and different disciplines (economists and lawyers). The point of departure for this volume was a conference held at the Humboldt-Universität zu Berlin in mid-January 2012 from which most of the contributions of this volume emerged. The conference was generously sponsored by the Fritz-Thyssen-Stiftung. Some of the speakers could not contribute to this volume, some new authors are adding to it. All in all, this volume offers a unique overview over the issues which Europe has learned in the last few years to be of relevance not just for emerging countries, but also for themselves.

This is the place, too, to thank my collaborators Mareike Bartels and Roman Nierlich who helped enormously to get this book finalized.

Berlin, March 2014 *Christoph G. Paulus*

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