Sovereign Defaults in the Euro Area: the Legal Perspective
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Overview

I. Sovereign Default: the Ambiguous European Approach
   1. Sovereign Default as Dealt with by Sovereign States and the IMF
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II. Perspectives for a European State Insolvency Regime
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Dealing with Sovereign Default: Strategies

- Solidarity within the federal order
- Equalization payments (horizontal, vertical)
- Payment is unconditional
- Threat of default not required

→ De facto bailout

Default prevention
No insolvency mechanism

- International community assists defaulting States
- Loans (based on stand-by arrangements)
- Payment subject to sovereign restructuring / austerity policy

Default management „Case to case“ insolvency
**Pro Solidarity**
EU as (quasi-)federal regime
Monetary Policy (exclusive EU competence)

**Pro Self-responsibility**
EU as a non-State
Economic Policy (exclusive EU competence)

Art. 143 – assistance in the event of difficulties flowing from balance of payments
Art. 122 para. 2
(Art. 122 para. 1, 222, ...)

Art. 125 – no bailout
- *Prohibition of voluntary assistance by MS?*
Art. 126 – deficit thresholds
(Art. 121, 123, 124, ...)
Financial support pursuant to Art. 122 para. 2 TFEU

- Natural disasters or
- Exceptional occurrences beyond its control

(Severe) Difficulties

- Financial assistance to MS
- Discretion (as for assistance)
- „Certain conditions“ to be attached (no discretion)
- Competent: Council (qualified majority), upon proposal by COM
The Greek Crisis: a Lawful Change of Paradigms?

Financial support by Member States
- Permissive only where TFEU provides for exceptions from Art. 125
- Not covered by Art. 122 para. 2 TFEU („Union financial assistance“)
- No limited participation of MS as for voting and refinancing
- Limited participation under Art. 126, 136 does not encompass financial support as such
- Art. 352 not applicable

The European Stabilization Fund
- Legal background: Art. 122 para. 2 TFEU
- Regulation on European Financial Stabilization Mechanism
- “Special Purpose Vehicle“
Perspectives for a European State Insolvency Regime

**Deficiency of anti-default mechanism**
- Ban on bailout is being overturned
- Fragility and limited efficiency
- Own creditworthiness of bail is at stake

**Structural hurdles**
- Extension of Economic Union ("economic government") would require deviation from Art. 125
- Amendment of TFEU unrealistic and time-consuming
- Constitutional reservations

**Suggestion for a „composite approach“, encompassing ...**
- Elements of State insolvency ("haircut" / participation of IMF)
- (Limited) solidarity among MS (Art. 122 para. 2, 143 TFEU)

Withdrawal / expulsion from € Area?