

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
 2. Sovereign Default from an EU Perspective: To Bail or not to Bail?
 3. The Greek Crisis: a Lawful Change of Paradigms?
- II. Perspectives for a European State Insolvency Regime
 1. Grinding Scissors for a „Haircut“ – the Lingering Need for a Sounder, and Composite, Approach
 2. Saying Farewell: Alternative Ways of Sovereign Debt Restructuring?

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)

Art. 143 – assistance in the event of difficulties flowing from balance of payments

Art. 122 para. 2

(Art. 122 para. 1, 222, ...)

Pro Self-responsibility

EU as a non-State

Economic Policy (exclusive EU competence)

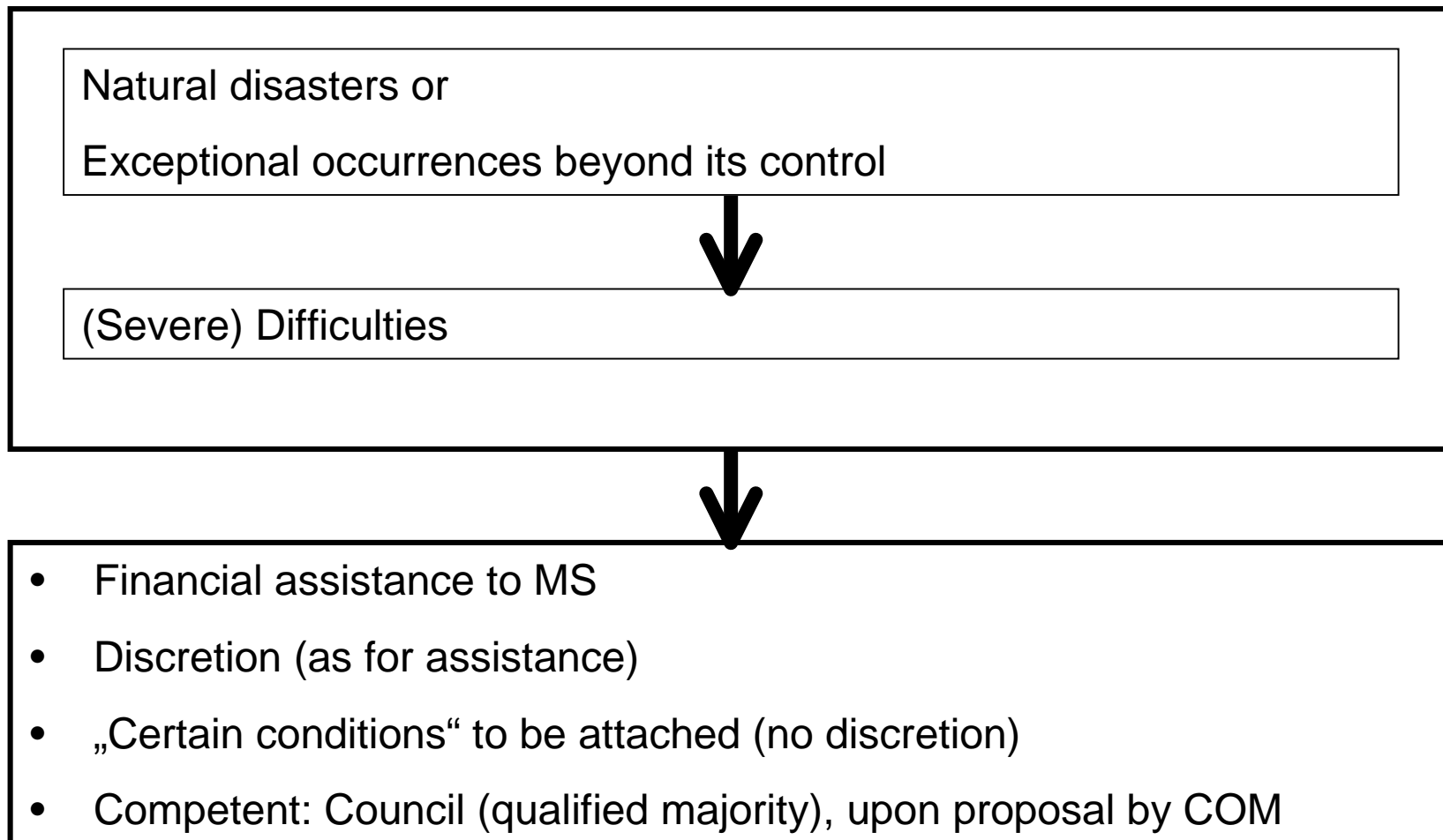
Art. 125 – no bailout

▪ *Prohibition of voluntary assistance by MS?*

Art. 126 – deficit thresholds

(Art. 121, 123, 124, ...)

Financial support pursuant to Art. 122 para. 2 TFEU



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 overthrown
- Fragility and limited efficiency
- Own creditworthiness of bails 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?*

