

Four Perspectives on EU events

Professor René Smits

Recent Events in Europe's Monetary Union,
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LAW: 'capital controls'

- ❑ Called 'capital controls', actually restrictions on freedom to make payments ([Article 63\(2\) TFEU](#)) and free movement of capital movements ([Article 63\(1\) TFEU](#))
- ❑ Justified on the basis of public policy exception ([Article 65\(1\)\(b\) in fine TFEU](#))
- ❑ Actual restrictions hard to assess without proper English translation of original or updated versions – *Allegedly, institutions promoted controls – yet:*
- ❑ No IMF approval ([Article VIII section 2 \(a\) Articles of Agreement](#))
- ❑ Apparent absence of ECB advice: not requested [in time] or not given in spite of requirement to consult ECB ([Article 2\(1\) Regulation 98/415/EC](#))
- ❑ Fundamental economic freedoms underpinning single currency violated (as in the case of Cyprus where [controls](#), instituted in March 2013, have been greatly liberalised since)
- ❑ Greek Cabinet Act, 17 July 2015:
“13. Any person acting in breach of the provisions hereof shall be punished by imprisonment of not less than three months and a financial penalty of up to one tenth of the amount of the breach. Moreover, the credit institution shall be required to terminate the employment or work contract of the person responsible for the breach.”
- ❑ MoU states: “The authorities will monitor and manage the process for the easing of capital controls taking liquidity conditions in the banking system into account while aiming to minimise the macroeconomic impact of the controls”

IMF Articles of Agreement

Article VIII - Section 2. Avoidance of restrictions on current payments

(a) Subject to the provisions of Article VII, Section 3(b) and Article XIV, Section 2, **no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.**

(b) **Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.** In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

LAW: MoU and EU legal acts

- ❑ MoU between Commission acting on behalf of ESM and Hellenic Republic and Bank of Greece: 32 pages plus extensive annexes
- ❑ EU legal acts – [Council Decision 2015/1410 pursuant to Article 126\(9\) TFEU](#) [EDP/SGP] and [Council Implementing Decision 2015/1411](#) based on Regulation 472/2013 [Member State in serious financial stability-related difficulties] – only summarise MoU
- ❑ In past and other bail-outs, EU legal acts specified full conditionality (reason for discrepancy: lack of time?)
- ❑ Discrepancies between MoU and EU legal acts may result in potential for challenges of individual measures – also in view of previous challenges of Greek measures, rejected by the Hellenic *Conseil d'État* on the basis of the supremacy of EU law
- ❑ **NB 1** legal challenges of 'capital controls' may be expected
- ❑ **NB 2** issue of use of EU budget-based fund for bridge loan (EFSM)

LAW: irreversible nature of euro

- ❑ The irreversible nature of the introduction of the single currency called into question by several EMU members
- ❑ Erroneous interpretation of the no bail-out clause ([Article 125 TFEU](#)) as prohibiting debt cuts in rules-based monetary union
- ❑ Need for an EMU-specific SDRM in Europe

DEMOCRACY: Greece and Euro Area

- ❑ Lip service: “**need for social justice and fairness, both across and within generations.** Fiscal constraints have imposed hard choices, and it is therefore important that the burden of adjustment is borne by all parts of society and taking into account the ability to pay. Priority has been placed on actions to tackle tax evasion, fraud and strategic defaulters, as these impose a burden on the honest citizens and companies who pay their taxes and loans on time.”
- ❑ “The correction of extreme imbalances in public finances in recent years has required an unprecedented adjustment and sacrifices from Greece and its citizens.”
- ❑ Actual conditionality: revoking rights of pensioners and “a gradual nationwide roll-out of a Guaranteed Minimum Income (GMI) scheme from 1 April 2016”
- ❑ Euro Area (European Union) democracy: nineteen parliaments and EP – need for stronger federal decision-making in economic policy shown by this crisis



TRANSPARENCY

European Stability Mechanism



- ❑ Research on the meaning of acronyms in MoU // Absence of accessible texts for EU citizens (also of 'capital controls')
- ❑ Misrepresentation of functioning of the ESM: no actual transfers from national or Union budgets to Greece but borrowing on the financial markets and on-lending to debtor State – no politician or medium outlet explains this > disingenuous attitude on this by politicians and media: neither serving their constituency
- ❑ There is an “ideological debate” (Raymond Aron) without proper facts basis, held at the a national, not Europe-wide level
- ❑ Lack of trust among discussion partners and nations [Angela Merkel, 12 July 2015, ahead of the meeting leading to a settlement: *“Die wichtigste Währung ist verloren gegangen, und das ist das Vertrauen und die Verlässlichkeit“* // „The most precious currency has been lost: that of trust and reliability“]
- ❑ Debate moreover coloured by cultural filters of which participants are unaware: *Schuld* = debt/guilt // *Sparmaßnahmen* (savings measures) = austerity – becoming conscious of these filters may lead to **true listening**

COMPASSION

- ❑ Greek (and Portuguese) pensioners helpless against State (EU) interference with accumulated rights
- ❑ Absence of the 'Lagarde list', or of the Greek oligarchs in the MoU
- ❑ Only when practising compassion is this Union worthy of embrace and celebration, in this as in other crises

COMPASSION



Commemorative coin of French Republic
30 years of European Union flag
Official Journal EU, No. C 290/9, 4 September 2015



Turkish police officer Mehmet Ciplak
with body of drowned boy Aylan Kurdi
Image: *The Guardian*, 3 September 2015

The projection of imaginary Europeans joining around the European flag on this € coin stands in stark contrast to the reality of the lack of unified response to the human misery on Europe's shores....