THE GREEK AFFAIR: A CAUSE OR A SYMPTOM OF THE EUROPEAN UNION INSTABILITY?

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Over the past year, the Euro has plunged from a strong world currency to a currency in crisis mode. Rescue packages have been put in place by the European Central Bank (ECB), supported by the International Monetary Fund (IMF), to rescue the ailing Greek economy. As a result, analysts and fellow Member States have labelled Greece as a major cause of the financial woes suffered by countries in the Euro zone. Spain, Portugal and Ireland appear to be the next in line for criticism, as these states teeter on the verge of economic crisis.

This article argues that the current Greek crisis is a symptom, rather than the cause of European Union (EU) instability. This major financial problem is not limited to financial or economic constructs but extends to the very structure of the EU. The enlargement of membership for economic benefit, prior to the establishment of an overriding Constitution at the inception of the EU, has resulted in Member States focusing on state sovereignty. Member States' sustained adherence to their individual political institutions, culture, language and legal systems, has been the primary cause for the failed attempt to create a unified political regime. Otherwise put, it is the absence of political unity, which is the source of economic and social instability.

The article examines the Greek financial crisis in the light of increasing scepticism towards the future success of the EU and the heightened frustration of Member States. The article further outlines the likely effect upon EU Member States in the future.

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I THE IMPLICATIONS OF THE GREEK FINANCIAL CRISIS

What started out as a Greek financial crisis has snowballed into a far more serious economic crisis, with world financial markets moving away from the Euro. A number of questions arise as a result, which this article seeks to address. Why did the EU choose not to expose the seriousness of the Greek situation until recently when it was well aware of the impending problem? Is it likely that Spain, Portugal and Ireland will follow suit? If this financial crisis deepens, to that extent will the EU fail to exist in its present form, that is, if it continues to exist at all?

Though the Greek financial crisis is attributable on the one hand to the failure by the Greek government to tell the truth about its public debt, which is estimated to be about 300 billion Euros i.e. about 115 per cent of its Gross Domestic Product (GDP), it is no secret that Greece has been in financial trouble for many years.[1]

The causes of Greece's woes are varied and multitudinous. Tax evasion in Greece has been rampant along with over generous pension schemes and an early retirement age of 60. In 2009, Greece imported US$64 billion against exports of US$21 billion. [2] In the same year Greece was placed under the EU's Excessive Deficit and told to bring its deficit back to a 3 per cent EU ceiling by 2010. [3] Prior to 2009 Greece posed a problem for the EU with a turbulent period leading up to its membership, which saw many rejections, because of its economic instability. In 1976, a Report issued by the European Communities stated that the Greek economy was unstable and could not meet the requirements of Article 237 of the Treaty of Rome. However, Greece pursued its goal of full accession for a number of reasons. It considered the Community was the institutional framework for stability in

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1 Ambrose Evans-Pritchard, *Greek Debt Crisis spreading 'like Ebola' and Europe must act now OECD warns* (2010) Telegraph <http://www.telegraph.co.uk/finance/financetopics/financialcrisis/7644709/Greek-debt-crisis-spreading-like-Ebola-and-Europe-must-act-now-OECD-warns.html> at 22 May 2010; Bureau of European and Eurasian Affairs, *Background Note: Greece* (2010) U.S Department of State <http://www.state.gov/r/pa/ei/bgn/3395.htm> at 22 May 2010.

2 Gavin Hewitt, *Europe's Days of Anxiety* (2010) BBC News <http://www.bbc.co.uk/blogs/thereporters/gavinhewitt/2010/05/europes_days_of_anxiety.html > at 31 May 2010.

3 Bureau of European and Eurasian Affairs, *Background Note: Greece* (2010) U.S Department of State <http://www.state.gov/r/pa/ei/bgn/3395.htm> at 20 May 2010.

the region. It saw the need to enforce its independence and political position particularly in relation to Turkey, which had invaded and occupied Cyprus in 1974 and appeared to be a major threat to the political stability of Greece. It saw the prospect of membership leading to modernization and development.[4] Success finally ensued when in 1981 it succeeded in attaining full membership.

An overview of Greece's major industries reveals an economy without a strong industrial base as its economy is primarily a service economy accounting for about 73 per cent of its GDP. It does however have a successful shipping industry owning 9 per cent of the world's merchant fleet, reputed to be the largest in the world. [5] However, its management of the public service sector has been deplorable. Over the past 10 years unsustainable public spending, handing out jobs for life, early retirement for its citizens and generous public/private sector contracts have come to bite the Greek economy in a bad way. [6] The result is high levels of public debt, a budget deficit of 12.7 per cent and virtual bankruptcy.[7] This paints a picture of an irresponsible country violating the very terms of its membership of the EU, which require the ability of a member to withstand the competitive pressures within the Union. [8] Greece has been a country with a high inflation rate and ongoing trade deficits, which have in recent years been buffered by the EU. Between 2002-2006 the EU granted aid to Greece, Ireland, Portugal and Spain, [9] and will continue to do so for the period 2007 – 2013, although Ireland is currently receiving a much lower amount.[10]

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4 Greek Ministry of Foreign Affairs, *Greece in the EU* (2010) Greek Ministry of Foreign Affairs <http://www.mfa.gr/www.mfa.gr/en-US/European+Policy/Greece+in+the+EU/> at 22 May 2010.

5 Bureau of European and Eurasian Affairs, above n 4.

6 Charlemagne, The myth of the periphery, *The Economist*, (Press Release, 27 March 2010) Issue 950.

7 Patrick Donahue, *Merkel Economy Adviser Says Greece Bailout Should Bring Penalty* (2010) Bloomberg Business Week <http://www.businessweek.com/news/2010-02-15/merkel-economy-adviser-says-greece-bailout-should-bring-penalty.html> at 22 May 2010.

8 Petia Kostadinova, *Membership of the EU: Necessary and Sufficient Conditions* (2010) All Academic Research <http://www.allacademic.com//meta/p_mla_apa_research_citation/0/6/3/2/2/pages63220/p63220-36.php> at 22 May 2010.

9 John Bradley, Gerhard Untiedt and Timo Mitze, *Analysis of the Impact of Cohesion Policy* (2010) European Commission <http://ec.europa.eu/regional_policy/sources/docgener/evaluation/pdf/hermin07.pdf2 > at 29 May 2010.

10 Ibid.

Historically Greece has received massive injections of state aid from the EU. Between 1994 – 1999, US$20 billion was given to modernize and develop its transportation system as well as build a new international airport near Athens in order to host the Olympic Games in 2004. EU monetary transfers have continued with about US$24 billion allocated to Greece for the period 2007 – 2013.[11] In light of the above it is clear that Greece's downfall could not have been of any surprise to the EU. The question has to be asked, in light of what was an impending financial crisis why did the EU not act far more quickly by agreeing on a bailout package for Greece thus avoiding the current Euro crisis and the resultant instability of world currencies?

From a legal perspective Greece has violated Article 126(1) of the Treaty of the Functioning of the European Union (TFEU), which states that: *'Member States shall avoid excessive government deficits'*. The EU Commission in turn is required under Article 126(2) to '*monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors*' and has not been stringent in this regard.

The bailout has resulted in a massive dent in the Europe's coffers comprising a loan of €110 billion along with €40 billion more to stabilize the banking sector. Euro zone countries are to fork out €80 billion in bilateral loans along with contributions by the International Monetary Fund (IMF). Member States are to loan according to their respective holding in the European Central Bank's capital with the first payout due in May 2010 and lasting until 2012 attracting an interest rate of a low 5 per cent. In return Greece has to agree to ensure its GDP increases to 2.1 per cent by 2014 and its deficit in that year to reach 2.6 per cent. The public sector is subject to a pay freeze until 2010 with Christmas, Easter and summer holiday bonuses abolished. Public sector allowances are to be cut by an additional 8 per cent. Value Added Tax (VAT) tax is to increase by 2 per cent from 21 per cent to 23 per cent and additional taxes are to be placed on fuel, cigarettes and alcohol. The current retirement age of 60 years is now raised to 65 years for men and 60 for woman with all workers required to make a minimum contributions to superannuation funds from age 37 onwards.[12] Needless to say, these measures are extremely unpopular with the Greek community.

As outlined above Portugal Spain and Ireland, all members of the Euro zone, are also in financial trouble. Spain however argues it can pay its debts and

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[11] Bureau of European and Eurasian Affairs, above n 4.

Eurotribune.eu, *Greek Bailout Figures* (2010) Eurotribune http://www.eurotribune.eu/?p=10014&l=0&idioma=2 at 22 May 2010.

will manage to cut its deficit from 11.4 per cent to 3 per cent by 2013. [13] Portugal has reformed its pension scheme and frozen welfare spending until 2013. Yet it is ironical that these countries that are on the brink of bankruptcy are required to bail out Greece with Portugal required to contribute €2 billion towards the Greek bailout and Spain, €8 billion. Ireland is expected to contribute €1 billion.[14] This is an extraordinary situation considering that these countries are already receiving aid in order to stay afloat financially.

In light of this gloom and doom the question is now being asked whether the EU can continue in its present form. It is optimistic to hope that while the Euro as a currency may fail, it does not necessarily mean that the European Union (EU) will also fail. Clearly the EU would have survived without the introduction of the Euro as to date only 16 of the 27 Member States have adopted the currency. The Euro certainly heralded a further step towards economic integration but not necessarily a step towards increasing political unity. Though the political and legal structure of the EU can be compared to a federal type system of government, such as exists in the United States and Australia, its 27 members do not share national governments, national economic policy, legal systems, cultures and languages. This is why the EU is unique. What has evolved is a group of countries focusing on a free internal socialist economy in the broadest sense, gradually moving towards a cohesive political central decision-making power. This has occurred through the updating of the various treaties from the Single European Act, the Treaty of the European Union, the Treaty of Amsterdam, and the Treaty of Nice and in 2009 the Lisbon Treaty.[15] What it has not achieved is an all-encompassing European Constitution due to the failure of Member States to vote on its implementation. This can be considered to be the missing link for political unification and therefore, although the EU has succeeded in achieving economic expansion, political unity appears increasingly unattainable, particularly in light of the Greek affair.

It is now evident that broadening of membership for economic benefit, prior to the establishment of a rigid political union by the founding members, has produced a multitude of politically sovereign, irreconcilable states with diverse interests, cultures, religions, values and legal systems. For example the United Kingdom is the only Member State that has a common law

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13 Paul Belien, *The Euro Crisis: The Insolvent Are Expected to Bail Out the Insolvent* (2010) The Brussels Journal <http://www.brusselsjournal.com/node/4417> at 29 May 2010.

14 Ibid.

15 Josephine Steiner and Lorna Woods, *EU Law* (10th ed, 2009) 22.

system among primarily civil law systems. The nub of the EU's problems is due to 'sinking states', which render the purpose of the EU increasingly unattractive with political cohesion weakened through expansion. It has now reached the point where founding states are likely to reconsider their involvement in the EU, potentially leading to their withdrawal and the ultimate disintegration of the EU.

II EU SCEPTICISM ON THE RISE

While the EU's internal sources, such as 'www.europa.com' would suggest growing success, evidenced by greater control and increasing democracy, the reality may be otherwise. The four freedoms, allowing for the free movement of 'goods'[16], 'persons, services and capital'[17] underpin the structure of economic liberalisation. Primary legislation, such as the Lisbon Treaty, 'gives the European Parliament more power to shape Europe and its internal socialist market economy than ever before'[18], while the application of secondary legislation, such as the doctrines of 'direct effect'[19] and 'supremacy'[20]ensure that EU laws, regulations and directives are enforced by the Member States.

Current underlying tensions undermine this unrealistically sublime outlook. TIME magazine, for example, labels the United Kingdom Independence Party (UKIP) as one of the global 'top ten alternative political movements.'[21] This is an 'EU sceptic' organization, founded by alleged reputable individuals from the London School of Economics and has been gaining momentum since its formation in 1994. It has been heralded as the 'second most popular party nationwide.'[22]

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16 *Consolidated Version of the Treaty on the Functioning of the European Union (TFEU),* opened for signature 13 December 2007, Official Journal of the European Union 2010/C 83/01, art 28-9 (entered into force 1 December 2009).

17 Ibid, Title IV.

18 EUROPA, *European Parliament and the Lisbon Treaty* (2009) The Official Website of the European Union http://www.europarl.europa.eu/parliament/public/staticDisplay.do?language=EN&refreshCache=yes&pageRank=1&id=66 at 1 April 2010.

19 Van Gend en Loos v Nederlandse Administratie der Belastingen (C-26/62) [1963] ECR 1 (Van Gend en Loos).

20 Flaminio Costa v E.N.E.L (C- 6/64) [1964] ECR 585.

21 Kayla Webley, *Top 10 Alternative Political Movements* (2010) TIME http://www.time.com/time/specials/packages/article/0,28804,1975807_1975805_1975975,00.html at 27 March 2010.

22 United Kingdom Independence Party, *UKIP History*, United Kingdom Independence Party http://www.ukip.org/page/ukip-history at 27 March 2010.

A similar phenomenon is surfacing in Eastern European EU Member States. The Vienna Review highlights that Czech citizenship has 'become, for many, synonymous with EU scepticism.'[23] While the Czech Republic was due to accept the euro 'in 2016'[24], ever since the Greek affair, Czech officials have been reluctant to confirm a date. Mojmir Hampl, Vice – Governor of the Czech National Bank once again avoided the issue when asked in April, suggesting that 'the deadline for adopting the euro was very much up in the air.'[25] An economist from the Centre for Economic Research and Graduate Education Economics Institute, Lubomír Lízal, goes further by suggesting that 'the Greek crisis will eventually lead to an overhaul of the Euro zone's strategy for accepting new members.'[26] He indicates that there are not going to be any new admissions to the Euro zone'[27] until 'ways of handling public finances in Euro zone states'[28] improve. A recent survey confirms Czech scepticism, revealing that 'more Czechs are against adopting the euro than for it.'[29] A similar Euro-skeptic attitude is spreading in Poland. The Finance Minister of Poland, Jacek Rostowski recently alluded to joining the Euro zone 'in a few years, when the Euro zone is strengthened.'[30] Evidently, EU Member States, which are yet to be integrated into the Euro zone, appear to be grateful for their monetary independence in these times of financial turmoil.

Levels of scepticism on the periphery of the Euro zone are not all that different to attitudes in the core. A leading French bank, Société Générale, declared in February that the Euro is facing an 'inevitable break-up'[31], with any financial assistance to Greece, merely a 'sticking plaster.'[32] According to this view, an EU plan to save Greece from debt may marginally extend

23 Christian Cummins, *Art for Euro-Skeptics* (2010) The Vienna Review http://www.viennareview.net/story/02611-art-euro-skeptics at 27 March 2010.

24 Frida Ghitis, *World Citizen: Europe's New Democracies Dream of EU, Not Euro* (2010) World Politics Review http://www.worldpoliticsreview.com/articles/5567/world-citizen-europes-new-democracies-dream-of-eu-not-euro at 27 May 2010.

25 Jan Richter, *Will Greek debt crises impact Czech euro adoption* (2010) Radio Praha, http://www.radio.cz/en/article/127480 at 27 May 2010.

26 Ibid.

27 Ibid.

28 Ibid.

29 Ibid.

30 Frida Ghitis, above n 25.

31 Sam Fleming and Tim Shipman, *Collapse of the euro is 'inevitable': Bailing out the Greek economy futile, says FRENCH banking chief* (2010) Mail Online: World News http://www.dailymail.co.uk/news/worldnews/article-1250433/Greece-debt-bailout-EU-leaders-split-euro-crisis.html at 23 March 2010.

32 Ibid.

the life span of the Euro but will have little effect on the impending economic disaster of the Euro zone.
Negative undertones are rising to the surface in the media, as ‘German politicians and voters think further European integration translates to other countries grabbing German money.’[33] Nevertheless, Germany is well aware of the negative economic effects associated with reverting back to the Deutsche Mark. One broadsheet newspaper has suggested that ‘Germany has cooled on unity, except on its terms.’[34] The frustration will accentuate if other Member States, such as Spain and Portugal, follow in Greece’s footsteps- a growing concern among Member States and the international community. The provocative pun ‘Spain isn’t working’[35], which spun into the Economist, suggests that the Spanish unemployment rate is heading towards ’20 per cent.’[36] If Germany’s economic progress and success is restricted by failing states, Germany may reconsider its EU membership status.

From the perspective of countries outside the EU, the 1990’s saw the EU as an ‘effective and highly organized regulatory order.’[37] Now global confidence in the EU is at an all time low, with heightened skepticism following the failures of the Copenhagen Conference and Greece’s financial crisis. In addition, third-countries (TCNs) are becoming increasingly frustrated with the EU’s bureaucracy, inefficiencies and failure to take an active position on the international arena. The 1990’s saw EU’s ‘magnetic attraction’[38] lead the United States and other nations to forge new relationships with Europe.’[39] Yet now the EU seems ‘unable to say what it thinks.’[40] For example, the EU has been scolded by the international community for failing to take an active interest in international affairs. Charles Grant, director of the Centre for European Reform has critically suggested that ‘when it comes to pressing international problems like Afghanistan, Pakistan or North Korea, the EU is either largely invisible or

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33 ‘Berlin forces hard line on Greece’, *The Weekend Australian* (Australia), 27-28 March 2010, 18.
34 Ibid.
35 ‘Spanish Unemployment: In search of a job’, *The Economist* (Madrid), 10-16 April 2010, 51.
36 Ibid.
37 Michael Longo, ‘The European Union: A “Ferment of Change” in the World’ (1998) 7 *Griffith Law Review* 124, 140.
38 Ibid, 141.
39 Ibid.
40 Ibid.

absent.'[41] As the Greek crisis begins to affect world economies, TCNs have become increasingly interested and critical towards the EU. George Soros, a billionaire and well-known financial speculator, commented that 'it is a make or break time for the euro and it's a question whether the political will to hold Europe together is there or not.'[42]

The crux of the matter it that as the EU still lacks a Constitution, it is essentially held together by economic glue. Therefore, if Member States reach the conclusion that the costs associated with remaining in the Euro zone outweigh the benefits, they will withdraw. If Germany is forced to support an increasing number of failed states, for example, the costs of bailout may exceed the temporary costs of the Deutsche Mark currency rises, exportation decline and other associated costs, such as reinstating the German Central Bank. At that stage, Germany, could well withdraw from the Euro zone. Other major states, such as France, would most likely follow suit as they are left to service the '3 trillion euro mountain of debt.'[43] Resource Investor author Julian Phillips, suggests that Germany's withdrawal from the Euro would be 'a disaster for the Euro' with the Euro slipping down 'an ever deteriorating slope.'[44] It is no surprise that if one of the leading Euro zone economies decided to unilaterally secede from the Euro, it would have a devastating, potentially irreparable, effect on the Euro and the EU itself. The exact legal operation of withdrawing from the EU and the potential effects will be further discussed below, but it is suffice to note here that, absent a Constitution, the choice of withdrawal will be decided by Member States essentially according to an economic cost-benefit analysis.

III THE LISBON TREATY AND THE EXIT CLAUSE

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41 Simon Robinson, *The Incredible Shrinking Europe* (2010) TIME <http://www.time.com/time/magazine/article/0,9171,1967702,00.html> at 1 April 2010.

42 Whitney Kisling and David Merritt, *Stocks, Euro, Greek Bonds Advance on Speculation of Bailout* (2010) Bloomberg Business Week <http://www.businessweek.com/news/2010-04-09/euro-gains-against-yen-credit-risk-drops-as-trichet-reassures.html> at 9 April 2010.

43 Stratfor, *Germany, Greece: Who'll Leave the Euro* (2010) Real Clear World <http://www.realclearworld.com/articles/2010/05/18/germany_vs_greece_wholl_leave_eurozone_98965.html> at 27 May 2010.

44 Julian Phillips, *What will happen to currencies if the Euro collapses* (2010) Resource Investor <http://www.resourceinvestor.com/News/2010/5/Pages/What-will-happen-to-currencies-if-the-Euro-collapses.aspx?utm_source=resourceinvestor&utm_medium=email&utm_campaign=traffic&cmpid=resourceinvestor> at 27 May 2010.

In December 2009, following the acceptance of the Lisbon Treaty, EU institutions and Member States were hopeful that the EU would be strengthened politically, as the Lisbon Treaty would provide for 'a more democratic and transparent Europe'[45], a 'more efficient Europe'[46], 'a Europe of rights and values, freedom, solidarity and security'[47] and 'Europe as an actor on the global stage.'[48] However, the events of 2010 have proved otherwise. Simon Robinson, of TIME, accurately suggests that 'the new EU will be run by a complex mechanism with four axis: the President and Foreign Minister; the country holding the rotating presidency; the President of the European Commission and national heads of state and government.'[49] This has been described in the following terms: 'the new setup looks like a parody of all that is wrong with the EU, bureaucratic and complicated, built on least-bad options and seemingly designed to encourage turf wars rather than action.'[50] The development is a second-best alternative, with the institutions exaggerating the improvements. There is little doubt therefore, that 'the changes embodied in the Treaty of Lisbon are far from radical'[51], proving to be an inadequate substitute for a binding, politically entrenched EU Constitution.

In addition, while the Lisbon Treaty is designed to advance unification, it provides Article 50 for the antithesis. There is now an 'exit clause'[52], which is produced below:

> *'1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*
>
> *2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the*

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45 EUROPA, *Treaty of Lisbon: The Treaty at a Glance, The Official Website of the European Union,* The Official Website of the European Union < http://europa.eu/lisbon_treaty/glance/index_en.htm> at April 2010.

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid.

50 Simon Robinson, above n 42.

51 Marcel Gordon, 'Welcome to Europe: An Introduction to EU Law for Businesses' (2008) 5 *Macquarie Journal of Business Law* 171, 171.

52 *Consolidated Version of the Treaty on the Functioning of the European Union (TFEU),* opened for signature 13 December 2007, Official Journal of the European Union 2010/C 83/01, art 28-9 (entered into force 1 December 2009).

> *arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*
>
> *3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.*
>
> *4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.*
> *A qualified majority shall be defined in accordance with Article 238(3) (b) of the Treaty on the Functioning of the European Union.*
>
> *5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.'*

Although the appropriateness of this article has been debated, the object is clear: to provide Member States with the option to withdraw from the EU. In the past, this was considered unnecessary, given the benefits of EU membership. The Hungarian Investment and Trade Development Agency in 2007 stated that EU membership was associated with 'stability, democracy, security and prosperity.'[53] Therefore, as a product of successful expansion, eligible countries were largely concerned with 'how to get into the EU' rather than 'how to get out of the EU.' This sentiment has certainly changed. Phoebus Athanassiou, Legal Counsel to the European Central Bank, elaborates upon the exit clause, indicating three major concerns:

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[53] ITD, *Benefits of EU Membership* (2008) ITD Hungary <http://www.itdh.com/engine.aspx?page=itdh_benefits> at 28 May 2010.

1. *'The exit clause recognizes, effectively, a unilateral right of withdrawal as well as a possibility for a Member State to negotiate its agreed exit from the EU.'*
2. *'The exit clause only appears to be appropriate if only one or two Member States were to withdraw at a time, but not if there were to be a mass exit from the EU.*
3. *'Perhaps the most serious, concern, is that the exit clause contains no special provisions on the requirements for the withdrawal of a Member State which has adopted the euro.'*[54]

Athanassiou went on to label this clause as an 'abuse-prone provision'[55] and 'one of the major faults of the Constitution (and, by extension, also of the Lisbon Treaty).'[56] Nevertheless, undisputed international law gives effect to the concept of state sovereignty, which in turn, supports this clause. In other words 'the exit clause recognizes the practical reality that, politically, a sovereign Member State cannot be coerced into honouring commitments it no longer has an interest in.' [57] This extends to the commitments to the EU itself. Evidently there is value in a Constitution, which would politically unify the states and restrict states from this form of unilateral decision-making.

It is clear that the impact of the Lisbon Treaty is exaggerated, falls short of the expectations for further EU unification and, with the new exit clause, may be attributed blame for future member state withdrawal. While the intention of the exit clause may have been based on furthering the democratic rights of Member States, it may result in a self-fulfilling prophecy, where Member States employ the clause. Whether or not this is superstition, whether the framers envisioned state withdrawal as a probability or whether the provision was simply, as the institutions lead citizens to believe, for the furtherance of democracy, is a moot point. What is clear, however, is that following the Lisbon Treaty, states are provided with a right to withdraw from the EU.

IV FIVE KEY ROUTES AVAILABLE: LOOKING TO THE FUTURE OF THE EU AND ITS MEMBER STATES

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54 Phoebus Athanassiou, *Withdrawal and Expulsion from the EU and EMU: Some Reflections* (2009) Social Science Research Network <http://ssrn.com/abstract_id=1517760> at 28 May 2010.

55 Ibid.

56 Ibid.

57 *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

It is not the purpose of this article to cynically undermine the principles of unification. Unification, if conceived from a position of complete commitment and strategic determination can produce a positive outcome, which all sensible humans strive for, including: solidarity, greater prosperity, inclusivity, sustainable development, innovation and respect for the law and for fellow people.

It would be foolish to disregard unification, as a principle, simply because entities, which have attempted to unify have, or potentially will, fail. If the founding members were clear that political unification was the ultimate goal, which appears to have been the case, perhaps it would have been more effective to unite politically, at a time when Member States were few and when political interests were reconcilable. Establishing a constitutional system, binding Member States, could have resulted in sustainable expansion. This framework would have simplified the legal and political decision-making processes and, as a corollary, the economic progress of the EU. In other words, the EU would represent a durable unified interest, which then could benefit from further expansion, unlike the current situation witnessed by an inefficient administrative system, driven by economic interests. If unification is to be effective, Member States must sacrifice further power to the EU and the EU in turn would have to formalize this power in the form of a Constitution.

The question that has been surfacing in political, legal and economic circles is: what is likely to become of the EU and its Member States? While there is no definitive answer to this question, analysing several key EU strategies will shed light on the path forward. By analysing these strategies, the authors' shift the focus from the immediate crisis in Greece to the macro-structure of the EU. It is hoped that this will provide a foundation for further research and analysis in this area.

A Maintaining the Status Quo: Expansion

Expansion is not always an indicator of success. Insatiable expansion based on the principle that 'more is always good', has led to serious environmental concerns as well as the Global Financial Crisis. While this does not mean that we should fear *more* of everything, strategic prudence needs to be asserted in any structural framework, prior to expansion. The EU is a case in point. Since the six founding members gave life to the EU in the 1950's, the expansionary policy has seen a growth in membership rise to 27, with further sights on 'Croatia…Turkey…Albania, Bosnia & Herzegovina, Serbia and Montenegro.'[58] However, 'the bloc's enlargement to 27 countries in Eastern Europe, has diluted the sense of solidarity in Europe's West.'[59] Part of the reason for 'French and Dutch voters rejecting the EU's proposed Constitution in 2005'[60], was the fear of sacrificing Western European living standards as a result of poorer Eastern European influences. The rejection of the Constitution is an indication of the founding members' frustration for being forced to support poorer EU states. It is also an indication that the founding members wish to retain their sovereign powers, fearing that sacrificing their sovereignty, when such diverse interests are at stake, will diminish their control over their national economy, territory and citizens.

Although the EU has developed a policy of expansion, many Member States have been reluctant to promote the ideology of the EU and increasingly, feel the need to draw in its reins. This has been foregrounded in talks concerning Turkey's accession into the EU as Member States and citizens now feel the need to foster unity prior to expansion. A poll at the beginning of this year supports this proposition, indicating that citizens in France and Germany continue to oppose Turkey's accession by 64 per cent and 62 per cent respectively.[61] In addition, the EU's economic focus renders responses to political instability particularly challenging. There is evidence that the opposition to Turkey's accession, for example, is based largely on the religious and cultural differences between the predominantly Muslim country and mainland Christian- centered Europe.[62] The issues faced by Member States therefore transcend the superficial Greek affair and rely on a secure political unified system for a solution. However, as political unification is not forthcoming, insecurity, cultural conflict and economic

58 EUROPA, *Enlargement and Neighbourhood Policy,* The Official Website of the European Union < http://europa.eu/abc/12lessons/lesson_3/index_en.htm> at 1 April 2010.

59 'Berlin forces hard line on Greece', *The Weekend Australian* (Australia), 27-28 March 2010, 18.

60 Ibid.

61 EURASIANET, *EU Accession: Opposition to Turkish Membership Remains Entrenched,* EURASIANET <http://www.eurasianet.org/departments/insight/articles/eav111105.shtml> at 23 May 2010; EU Business, *EU Promises Turkey Accession Progress by July* (2010) EU Business <http://www.eubusiness.com/news-eu/enlarge-turkey.4mr> at 23 May 2010; EU Business, *European Split over EU membership: Poll* (2010) EU Business <http://www.eubusiness.com/news-eu/enlarge-turkey.2ed/?searchterm=Turkey> at 23 May 2010.

62 Sarah Repucci, *EU Accession: Opposition to Turkish Membership Remains Entrenched* (2010) EURASIANET <http://www.eurasianet.org/departments/insight/articles/eav111105.shtml> at 23 May 2010.

instability are likely to ensue. Admittedly, the EU would have had to face cultural conflict at some stage, even if it had a politically enshrined constitutional system. Nevertheless it is trite to observe that the possibility for conflict elevates when many Member States are equally empowered as opposed to a situation where a superior representative body presides over Member States. As a result, expansion under the current system will merely add fuel to the fire as interests, cultures, economies and legal systems diversify and as a cohesive superior institution lack the power to reconcile these interests.

The current expansion has led the EU to where it is today. Perhaps it has been relatively effective up to approximately a year ago, if effectiveness is measured by economic success. Nevertheless, the writing was on the wall, from the outset, that true success- political unification- was unrealistic, under an economic expansionary policy. Political unity simply becomes increasing challenging as interests increase. Similarly, Member States will be less likely to sacrifice the remaining power they have over sovereignty, when other new Member States threaten to negatively affect the standard of living of their citizens. If the system is already economically unstable and political unity is already unattainable, the option of further expansion is simply nonsensical.

B Halting Expansion and Managing the Euro

This option appears to be the most conservative of the options available to the EU. As the debt crisis spreads and the potential spillover affects the very existence of the Euro, the focus has shifted away from expansion towards tightening up EU policy. While talks still surface regarding accession by new Member States,[63] there is a clear indication that solving the current economic crisis is a priority.

The EU has decided to develop procedures, which are aligned towards a financially sound union. Following the current discussion between EU finance ministers, it appears increasingly likely that new procedures will coerce Member States to submit their annual budgets to the EU and that national tax laws will be scrutinized. Nevertheless, there still remains little in the line of an enforcement mechanism to ensure that such procedures will be effective. It has been suggested that 'penalties could include the withdrawal

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63 Reuters, *Spain sees EU Progress for Turkey in two months* (2010) Reuters <http://www.reuters.com/article/idUSLDE6492QM20100510> at 23 May 2010.

of access to EU funding and loss of voting rights'[64] as well as ' 'financial and non-financial sanctions'[65], although, currently, the politically sovereign states appear reluctant to support this proposal. In a recent discussion, EU council president, Herman von Romey addressed four key requirements for the successful future of the Euro:

> *1. 'Greater budgetary discipline*
> *2. An effective crisis management system*
> *3, Stronger economic governance*
> *4. Means to reduce divergences in competitiveness between members of the 27-country bloc.'*[66]

Whether this tightening of economic policy solves the EU problem in the long-term is unresolved. The dilemma is that this approach appears to be a continuation of the same rhetoric, which seeks unification, while at the same time refuses to unify. Perhaps structures such as this will temporarily stabilise the Euro as positive speculation increases, however if long-term stability is desirable, the final conclusions drawn by the council in October will need to address issues closer to the core of the EU, namely, prioritising political unity.

Denying the existence of long-term strategic thinking would not be entirely accurate. There have been suggestions for further radical shifts in EU policy. One such concept is the initialisation of a European Monetary Fund, where Member States would establish a fully-fledged mechanism for future bailouts.[67] Nevertheless as precise figures have only recently been finalised by the IMF and the ECB over the current Greek situation, further details of such a fund have not been discussed. The idea appears to be a superficially attractive contingency strategy. Superficial, in that it must be taken into account that further funds would have to be drawn from Member States and, potentially the IMF or other TCNs. As states see what appears to be the light at the end of the Global Financial Crisis tunnel, they will likely remain resistant to donating large sums towards preventing potential further EU instability. Nevertheless, if this procedure is not secured, it is unlikely that

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64 Nikki Tait, *Europe- EU Ministers back harder line on fiscal rules* (2010) Financial Times: Europe <http://www.ft.com/cms/s/0/3d53b8e6-64cb-11df-aa4d-00144feab49a.html> at 23 May 2010.

65 Ibid.

66 Ibid.

67 Andrew Wills, *European Monetary Fund to Launch by June* (2010) Bloomberg Business Week <http://www.businessweek.com/globalbiz/content/mar2010/gb2010039_054891.htm> at 23 May 2010.

the EU would be able to support, or for that matter, gain external support, for another failing state. The UK has consistently flagged this issue suggesting that 'it seems inconceivable there could be another rescue package for, say Portugal, without Europe going up in flames.'[68]

Yet another radical suggestion in line with 'managing' the Euro is the development of a two-tier Euro. The idea, conceptualised by Cardiff Business School's Dr Michael Arghyrou and Nottingham University's John Tsoukalas, would see two independent currencies, both monitored by the European Central Bank. The new currency, labelled by some in jest as the 'neuro'[69] would be initially pegged to the Euro. Accordingly countries such as Greece, Portugal and Spain and potentially Italy, would adopt the 'nuero'. This would allow countries to 'be competitive with their northern trade partners again, helping them solve their trade imbalances and attract investment'.[70] Importantly, Dr Arghyrou, suggests, that 'a two-currency solution would mean that countries with strong economies would not have to bail out others'.[71] Similarly, a long-term sanction-based solution could be proposed where 'countries who do not keep control of their finances will be moved to the weak Euro zone. This would signal the credible endgame markets are asking for and would help stabilise the euro.'[72] There remains the question whether this system will complicate an already complicated legal and economic system, resulting in a further fall in positive speculation and continued volatility in EU markets. In addition, splitting the Euro zone into a two-tiered system where Portugal, Italy, Greece and Spain (the PIGS) are forced to adopt a lower-valued currency is counter-intuitive to furthering solidarity and unity among Member States. It is not difficult to imagine that such a system will create a rift between euro and 'nuero' zones and therefore the attractiveness of such a model, while potentially economically sound, may well be politically devastating.

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68 Margareta Pagano, *Merkel needs a new back-up plan to save the euro* (2010) The Independent <http://www.independent.co.uk/news/business/comment/margareta-pagano/margareta-pagano-merkel-needs-a-new-backup-plan-to-save-the-euro-1980378.html> at 23 May 2010.

69 Derek Thompson, *The Summer the Euro Died* (2010) The Atlantic: Business <http://www.theatlantic.com/business/archive/2010/05/the-summer-the-euro-died/57003/> at 23 May 2010.

70 Margareta Pagano, above n 69.

71 Aled Blake, *Two-tier Euro is last resort to save EMU from destruction* (2010) Wales Online: Business News <http://www.walesonline.co.uk/business-in-wales/business-news/2010/02/17/two-tier-euro-is-last-resort-to-save-emu-from-destruction-91466-25848882/> at 23 May 2010.

72 Ibid.

C Failing Euro, Maintaining EU

The EU has existed without the Euro in the past. While the Euro zone can be construed as an extension of EU ideals, the collapse of the Euro does not necessarily translate into the collapse of the EU. Nevertheless, there is authority to the contrary. Angela Merkel has warned that 'If the euro fails, it's not only the currency that fails but much more, it's Europe that fails and with it the idea of the European Union.'[73] This is an indication that countries in the Euro zone consider the Euro inextricably linked to the EU itself. Further authority suggests that 'withdrawal from the EMU (European Monetary Union) without a parallel withdrawal from the EU would be legally impossible.'[74] This is an argument contrary to the idea that a state could withdraw from the Euro zone without having to sacrifice the broader EU benefits. This legal analysis, while valid and noteworthy, is an analysis based upon the current system. It should be remembered that without a constitutional framework, the EU's legal authority rests within treaties. It is a well-known fact that what can be done by states in a treaty can also be undone with the 'consent of the parties.'[75] Hence, if states decide to make changes for the effective withdrawal from the Euro, without eliminating EU membership, they may do so.

Withdrawal from the Euro would diffuse confusion and further skepticism among EU members and TCNs. Adopting the Euro was one step further along the road to unification. Withdrawing from the Euro would be one step backward. It should be noted, however, that while Euro zone countries are tied together by a common currency, they manage their own fiscal policies. Therefore, reverting back to a state-run economy would at least have the advantage of maintaining the individual fiscal policies. However, reverting back to previous currencies should not be taken lightly. There would be significant transaction costs involved, which would be particularly loathed by states in a period recovering from the ravages of the global financial crisis. Athanassiou delves into a theoretical cost analyses for Member State withdrawal from the EU. It would be an underestimation to label these costs as substantial for they include:

> *'(i) creating a new currency or re-establishing the old currency of the withdrawing Member State;*

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[73] EU Business, *Merkel warns if euro fails, so does Europe and the EU* (2010) EU Business <http://www.eubusiness.com/news-eu/finance-economy.4p1> at 23 May 2010.
[74] Phoebus Athanassiou, above n 55.
[75] Ian Brownlie, Principles of Public International Law (7th ed, 2008).

> *(ii) refunding the departing national central bank's (NCB) contribution to the European Central Bank's (ECB) capital, and reimbursing its foreign reserve assets transferred to the Eurosystem; and*
> *(iii) transferring full monetary sovereignty back to the seceding NCB, with all the practical difficulties and legal uncertainties that this would involve for outstanding monetary policy operations, especially in the case of unilateral withdrawal'*[76]

Similarly the volatility of the economies and currencies of Member States would send waves of uncertainty through Europe, with potentially devastating effects. In sum, if the Euro became a currency of the past, the EU may still live on, albeit in an uncertain and disturbed fashion.

D Forming a Constitution

It may be timely to stand back and question whether a Constitution is as valuable as has been suggested. Surely the EU system, with binding treaties as supreme EU law, is enough to guarantee an effective political unity? The answer to this question requires a comparative analysis of the EU with a Constitution to an EU without a Constitution. Under the current system, it is true that the treaties create binding laws upon Member States. Nevertheless the very idea of EU supremacy was created by the European Court of Justice (ECJ).[77] While it has been followed in many cases, the concern that such a fundamental principle was simply created by a judicial arm of government is of grave concern. The ECJ is not bound by precedent and therefore, while it is unlikely that such an entrenched judicial principle would be done away with, it is nevertheless a judicial decision. This point goes to the heart of the current structure of the EU. Firstly, the treaties themselves are created by the Member States, and secondly fundamental principles, which govern the EU, such as EU supremacy, are a product of the judiciary. This highlights the passive involvement of the citizen at an EU level- in other words the EU system fails to be representative. Such principles cannot be voted in by the people and cannot be amended by people. They are unilateral decisions, made by delegates of Member States, or, worse still, by unelected judges. The failure to create a representative government has been labelled by lawyers, such as Gonzalo Puig, as the cause for the 'democratic deficit'[78] in

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[76] Phoebus Athanassiou, above n 55.
[77] Flaminio Costa v E.N.E.L (C- 6/64) [1964] ECR 585.
[78] Gonzalo Puig, 'Why the European Union Needs a True Constitution' (2006) 8 *The University of Notre Dame Australia Law Review* 65, 74.

the EU. Hence, in the authors' opinion, the question as to whether the binding treaties are sufficient to guarantee an effective political unity must be answered in the negative.

The EU has not completely disregarded political frameworks. The Human Rights Act and the Lisbon Treaty provide protection for individual rights. The new 'citizen's initiative'[79] in the Lisbon Treaty, for example, is a mechanism designed to improve the say that citizens have over EU affairs:

> ***Article 11***
>
> *'1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.*
>
> *2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.*
>
> *3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.*
>
> *4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.*
> *The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union'.*

This initiative will recognise proposals made directly by citizens. The requirement is that the petition 'must be backed by at least one million citizens from a minimum of one-third of EU countries'.[80] There have been criticisms that the clause does not specify a time limit- allowing the EU

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[79] Ibid.

[80] European Commission, *New exercise in democracy* (2010) The Official Website of the European Union <http://ec.europa.eu/news/eu_explained/100331_en.htm> at 23 May 2010.

Parliament indefinite time to re draft the law. The Commission has recently responded by suggesting that a 'one year'[81] time limit for collecting the data and a further '6 months would be appropriate for the Commission to examine and come to a conclusion on the initiative.'[82] It would be wrong, however, to assume that establishing this right was a panacea for the EU's constitutional quandary. Such a clause is an almost desperate attempt to find a way to bring EU citizen's voices to the bureaucratic decision makers' offices. It has been said that the European Parliament is 'gripped by the problem of structural remoteness'[83] and while one-million members now have the opportunity to change the law, the underlying political cohesion is limited by the absence of democratic authorisation in the form of a Constitution.

The adoption of a Constitution is obviously a favoured option. It is not mutually exclusive to options A, B or C in that, assuming the EU maintains itself, a Constitution may be a possibility. Whether it is a probability, however, is a different question. As solidarity dwindles through the Greek affair, it would take time to re-establish member state confidence. Asking states at this stage to form a Constitution would likely fail. If a Constitution was rejected when EU confidence was at a high in 2005, it would be highly unlikely that a more favourable outcome would transpire in a zone which staggered through the Global Financial Crisis only to be later hit by the growing debt among their failing members.

E Withdrawal and Collapse

As discussed above, the decision to remain in the EU is essentially an economic one. If Germany, France or even the United Kingdom decides to withdraw from the Union, it will be devastating to the EU. Economic instability would further ravage the EU, resulting in a chain reaction of state withdrawal. While EU loyalists suggest that the leading economies of the EU would never withdraw, given the negative effects of withdrawal upon their own nations, it should be reiterated that the decision to stay is one of economics. If the costs outweigh the benefits, there would be little reason for these states to remain tied to a sinking EU.

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[81] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the citizens' initiative* (2010) European Commission <http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/com_2010_119_en.pdf> at 23 May 2010.

[82] Ibid.

[83] Gonzalo Puig, above n 79, 75.

Financial analysts have forecasted various apocalyptic projections for the EU. Some commentators suggest that the economic powerhouses may decide to withdraw first. Others say that the PIGS will be forced to withdraw. European Central Bank President, Jean- Claude Trichet, indicates that the idea of Greece being forced to withdraw from the European Monetary Union is an 'absurd hypothesis,'[84] This is in contrast to Athanassiou, who suggests that, while marginalising member state 'would not be impossible'[85], 'none of the avenues available for achieving it would be ideal.'[86] It is the authors' opinion that while we cannot rule out these possibilities, the important point pertains to a wider issue. Regardless of which state decides, or is forced to withdraw, the EU will be operating counter-effectively. Withdrawal will therefore be construed as a failure by Member States and TCNs. It is suggested that if the EU itself did not collapse, following the withdrawal of Member States, it would be irreparably dismembered- structurally, socially and economically.

However, in the long-term, if the collapse of the EU did transpire, Member States would either remain independent or, given the benefits of collaboration, look at establishing further ties. The former may see the resurrection of the nation state and the development of multilateral treaties, while the latter may produce a smaller political integration, such as that of Germany and France or a gradual integration into a regional organisation.

V CONCLUSION

The current crisis in Greece is a product of a structurally deeper and broader issue. If political unity was the long-term goal of the founding members of the EU, which appears to have been the case, a well developed and defined EU Constitution with clear rights and obligations should have been adopted at establishment. Once economic and political stability had been achieved, a policy of gradual expansion may have been sustainable.

Gradual economic expansion, with the ultimate goal of political integration, however, is unrealistic. As the economic zone increases, the interests diversify and the willingness to sacrifice independence to a higher authority declines. Hence, disputes between Member States may lead to withdrawal and collapse, which would not have been the case under a unified constitutional system.

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[84] Reuters, *Absurd to talk of Greece leaving euro-ECB's Trichet* (2010) Reuters <http://www.reuters.com/article/idUSLDE60D0V820100114> at 28 May 2010.

[85] Phoebus Athanassiou, above n 55.

[86] Ibid.

While these postulations may be interesting or perhaps even accurate, the billion-dollar question that arises is: what will happen to the EU and its Member States? The answer to this is, of course, unknown. Nevertheless, by covering five alternatives, the authors indicate the possible strategies available to the EU. The authors' suggest that it is necessary to distinguish between what should be the case and what is likely to be the case. While it may be desired to enshrine a constitution, for example, state willingness to do so is at an all time low. Managing the euro may therefore be the best alternative. Nevertheless, the EU is essentially an economic union, where Member States may withdraw if their economic burden is greater than their benefits. If the EU does, therefore collapse, it will have a seriously destabilising effect upon the economies of Europe.

In spite of the impending collapse of the EU, humanities desire for political and social unification, coupled with the economic benefits derived from close collaboration, will likely drive states to alternative unifying measures. Either political unification among key euro states will transpire or, once the economic shock post- EU collapse has settled, states could begin to gradually sacrifice their powers to a broader authority, such as a regional organisation or, in the long-term, a new politically enshrined, constitutional zone. In sum, while it is clear what should have been done upon initiation, the future remains a conglomerate of mystified alternatives.