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THE OPPORTUNITIES OF MULTIPLE SOVEREIGN CRISES. THE EUROPEAN MARKET PHOENIX.¹

LUCA C.M. MELCHIONNA*

ABSTRACT

Sovereigns default cyclically. History shows that this is a common path. With the restructuring process, sovereigns can regain access to international market after little time has passed. The Euro and Greek crises, the biggest to date in terms of default, showed various issues: countries have an advantage when borrowing on the international market because they reinforce their status and identity as sovereigns.

This is a missed opportunity to render political leaders accountable for their wrong policy decisions. Accountability can be analyzed under tort and business standards. In addition, creditors and other sovereigns lack the power to control irrational and inefficient decisions adopted by the defaulter and this can be economically fatal for taxpayers who are not subject to the jurisdiction of the defaulter.

The European Union (“EU”), as designed today, is politically weak because member states are still leading in creating economic, financial and cultural divisions, and instability among European citizens’ welfare.

This paper intends to show that an economic crisis involving a small country, in economic terms, in turn shows the existence of other major crises within the EU community. Therefore, all the crises must be tackled to regenerate the European and global social fabric. In fact, a cultural or legal change takes more time and cannot be solved only with economic solutions.

Common problems like corruption, tax evasion, excessive public spending, evolution of legal cardinal concepts like sovereignty, and a lack of European identity have a profound meta-economic implication.

1. Luca C. M. Melchionna, Esq., Principal, Melchionna & Assoc., Paper Presented at the R.J. Reynolds Symposium “*Obstacles and Opportunities: The Role of Law in Doing Business in New and Old Economies in the Global Marketplace*” at the North Carolina Central University School of Law (Apr. 13, 2012).

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These are obstacles not only to a strong Union, but also to responsible global governance. For the EU institutions, this is a missed opportunity to reach a wise federation of states. As long as the EU is not taking a sharp direction, other economic crises are always looming.

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I. INTRODUCTION

Since October 2008, the European institutions (EU) and the governments of the 27 member states have injected approximately € 2 trillion (\$2.6 trillion) in the EU market to face the Euro/sovereign bond/Greek crises.² The main goal was to avoid the default of Greece and to control the domino effect potentially involving the most indebted sovereign countries of the Eurozone area, which includes Italy, Ireland, Spain, and Portugal.³

According to history, a country's default is a common occurrence, with 74 sovereign defaults happening between 1981 and 1990.⁴ History also shows that defaults occurred in clusters of countries⁵ and generally after a pronounced lending boom.⁶ In this regard, the sovereign bond European crisis, notwithstanding different triggering events, fol-

2. *Economic and Financial Affairs*, EUROPEAN UNION, http://europa.eu/pol/emu/index_en.htm (last visited Mar. 2012).

3. *Id.*; See also Michael Sivy, *Why Portugal May Be the Next Greece*, TIME BUSINESS, Mar. 27, 2012, available at <http://business.time.com/2012/03/27/why-portugal-may-be-the-next-greece/>.

4. Economics Focus, *Default Settings. Sovereign Defaults Do Not Typically Lead to Economic Catastrophe. How Much Comfort Should that Give?* THE ECONOMIST, Mar. 31, 2010, available at http://www.economist.com/node/15814868?story_id=1581468.

5. *Id.* (That is why other countries like Greece, Italy, Ireland, Portugal, and Spain briefly GIIPS, were involved)

6. Eduardo Borensztein & Ugo Panizza, *The Costs of Sovereign Default 5* (IMF Working Paper No. WP/08/238, 2008), available at <http://www.imf.org/external/pubs/ft/wp/2008/wp08238.pdf>.

lowed the U.S. credit default swap, affecting the world economy.⁷ EU institutions, similarly to the Federal Reserve and the U.S. government, intervened to avoid GIIPS' and Euro's default and to reassure institutional and foreign investors about the financial strength of the European economy.⁸

Sovereignties have an advantage when borrowing on the international market over corporations. After defaulting, they can benefit from a framework of mostly unwritten rules of restructuring and, after a short time, they are "back in business" selling similar instruments.⁹

If, in the long run, sovereigns have an advantage, what are the risks of sovereign bonds in the short-term? EU institutions and EU member-states were facing the risks of losing: global credibility; standing within the internal market; financial reputation; and global economic/political rank.¹⁰ The worst possible scenario would be to lose the EU's financial stability, diminish its lending reputation, and be forced to depreciate the Euro, hurting the overall EU economic output. A devaluation of the Euro would have meant rendering the currency less appealing to international markets and diminishing the borrowing capabilities (and the repayment strength) of the Euro zone economies.¹¹ European political leaders had to decide whether to bear the cost of allowing Greece to default- one of the 27 member states and one of the 17 Eurozone members- while assessing the risk to involve the GIIPS area or pay for its debts.¹²

However, there were at least three certainties that backed the EU institutions' financial support: (1) costs of default are difficult to assess; (2) the EU is able to financially support a relatively small (in financial terms) country like Greece, but unable to face and autonomously sustain, namely without the intervention of the IMF or World

7. Jennifer E. Bethel, Allen Ferrell & Gang Hu, *Legal and Economic Issues in Litigation Arising From the 2007-2008 Credit Crisis*, in PRUDENCE LENDING RESTORED: SECURITIZATION AFTER THE MORTGAGE MELTDOWN, 163, 170-178 (Yasuyuki Fuchita et al. eds., 2009).

8. Don Melvin & Sarah DiLorenzo, *Eurogroup Chief: Lenders, Greece Should Agree Soon*, ASSOCIATED PRESS, Oct. 8, 2012, available at <http://www.usnews.com/news/business/articles/2012/10/08/eu-finance-chiefs-to-discuss-debt-crisis-greece>.

9. Jochen Andritzky, *Sovereign Default Risk Valuation, Implications of Debt Crisis and Bond Restructuring* (2006).

10. Michael Dooley, *International Financial Architecture and Strategic Default: Can Financial Crises Be Less Painful?*, 53 CARNIGIE-ROCHESTER CONF. SERIES ON PUB. POL'Y 361-377 (2000); Borensztein *supra* note 6 at 3. (Economists accounted for the following costs associated international sovereign default: reputational costs; international trade exclusion cost; cost to domestic economy through the financial system; political cost).

11. Jeremy J. Siegel, *Devaluation – Last Option to Save the Euro*, FINANCIAL TIMES, May 22, 2012, available at <http://www.ft.com/intl/cms/s/0/8626a02e-a35d-11e1-988e-00144feabdc0.html#axzz29NWIXFII>.

12. *Id.*

Bank, a crisis involving five countries;¹³ and finally, (3) the restructuring process has become progressively more efficient because of the intermediation of third parties and the willingness of the defaulting country to quickly re-enter in the international market.¹⁴

Economists and policy-makers thoroughly analyzed the causes of the global financial crisis.¹⁵ Each one of them has an opinion of the causes and remedies.¹⁶ Many agree that the Greek bond crisis triggered the Euro crisis, which affected the GIIPS countries and the banking system within the UE and the Eurozone.¹⁷

This paper intends to focus on two aspects: (1) the existence of other, less resonant, triggering causes: legal, cultural, and socio-political crises like excessive public expenditure, tax evasion and corruption; and (2) the fact that these other crises have a more complex “adjusting” process and healing time, and this affects the success of any solution that does not have an interdisciplinary approach.

Economic crises have more impact and media appeal on citizens, investors, businesses, and taxpayers’ welfare. In contrast, political, cultural, or legal crises have less visibility, but are equally, if not more, disruptive than economic ones and may ultimately take the form of economic crises.¹⁸ This is because political, cultural, and legal systems have a more circumscribed area of geographical influence.¹⁹ The EU institutions and member states, while looking for a political compromise on a common fiscal policy, are unaware of the influence that such a political body could exert globally.²⁰

In short, policy decisions taken in countries like Greece or Portugal have an effect within the whole Euro area, and European institutions

13. (The EMF has now \$1 trillion at disposal – however the GIIPS combined nominal GDP is approximately \$4.188 trillion) *Economic Outlook Database*, INT’L. MONETARY FUND <http://www.imf.org/external/pubs/ft/weo/2011/01/weodata/index.aspx> (last visited Apr. 2011).

14. Borensztein *supra* note 6.

15. Bill Marsh, *It’s All Connected: An Overview of the Euro Crisis*, N.Y. TIMES, Oct. 22, 2012, available at <http://www.nytimes.com/interactive/2011/10/23/sunday-review/an-overview-of-the-euro-crisis.html>; Adam Davidson, *The Euro Crisis is Back from Vacation*, N.Y. TIMES, Aug. 28, 2012, available at http://www.nytimes.com/2012/09/02/magazine/7-story-lines-to-watch-in-the-euro-crisis-this-fall.html?_r=1&pagewanted=all.

16. Sebastian Dullien, *There is a Euro Crisis Solution – Use the European Stability Mechanism*, THE GUARDIAN, July 21, 2012, available at <http://www.guardian.co.uk/commentisfree/2012/jul/31/fix-euro-crisis-european-stability-mechanism>.

17. Jack Dullen, *In Euro Crisis, Fingers Can Point in All Directions*, N.Y. TIMES, Aug. 24, 2012, available at <http://www.nytimes.com/2012/08/25/business/global/in-euro-crisis-plenty-of-blame-to-go-around.html?pagewanted=all>.

18. Duncan Kennedy, *Two Globalizations of Law and Legal Theory*, 36 SUFFOLK U. L. REV. 631 (2003).

19. *Id.*

20. Harvey Morris, *Europe Slips in World Influence Stakes*, International Herald Tribunes, N.Y. TIMES, May 12, 2012, available at <http://rendezvous.blogs.nytimes.com/2012/05/12/europe-slips-in-world-influence-stakes/>.

and policy-makers currently do not have the instruments to face and tackle this reality.²¹ From a strict legal perspective, an excessive spending measure taken in one country could affect the taxpayers of other jurisdictions with a violation of their sovereignty and the “no taxation without representation” principle.²² Ultimately, taxpayers and creditors affected by these often irrational state members’ policy measures do not have any concrete legal tools to defend their interests because of the sovereign immunity doctrine.²³

The lack of common policies has become unsustainable.²⁴ The concept of sovereignty has lost traction and is evolving.²⁵ The Euro crisis shows the European jurisdictions suffer from a lack of controlling power from in preventing and controlling dangerous political choices adopted by other member states.²⁶ The EU is facing the need to reformulate the relationship with the member states because, at this early stage, an assembly of sovereigns carries much more political influence.²⁷ Ultimately, the EU is the legitimate forum for policies affecting European citizens.²⁸

This paper intends to contribute to the discussion of the aftermath of the global crisis affecting Europe, offering a multidisciplinary view for the purpose of creating a methodological guideline. Its primary objectives are to: (1) generate awareness about the existence of multiple crises interacting with each other that have a cyclical and inevitable recurrence; (2) to trigger discussion on multiple, but coordinated levels about the importance of the interactions of the various crises; and (3) ultimately draw possible methodological guidelines to develop coordinated solutions.

This paper is divided in two parts. Part I presents the sequence of events of the crisis in Europe with data support. After having exposed the European legal framework, this paper illustrates the characteristics of the European crises and the still vital opportunities of the bond market.

21. *The Euro Crisis: An Ever-Deeper Democratic Deficit*, THE ECONOMIST, May 26, 2012, available at <http://www.economist.com/node/21555927>.

22. Paul D. Marquardt, *Subsidiarity and Sovereignty in the European Union*, 10 FORDHAM INT'L. L. J. 616 (1994).

23. Jasper Finke, *Sovereignty Immunity: Rule, Comity or Something Else?*, 21 EUR. J. INT'L. L. 853 (2010).

24. Iain Begg, Dermot Hodson & Imelda Maher, *Economic Policy Coordination in the European Union*, 183 NAT'L INST. ECON. REV. 66 (2003).

25. Eric Engle, *Beyond Sovereignty? The State After the Failure of Sovereignty*, 15 ILSA J. INT'L & COMP. L. 1 (2008).

26. Begg, *supra* note 24 at 67.

27. Engle, *supra* note 25 at 8.

28. *The Policies of the European Union*, EUROPEAN COMM'N. http://ec.europa.eu/policies/index_en.htm.

Part II presents the opportunities and obstacles of the European political and cultural crises. Excessive public spending, corruption, and tax evasion will be considered as obstacles affecting the balance of the European emerging market and GIIPS countries. A few legal considerations will follow, among which are the political and economic controls that sovereigns used to have.

II. PART I

A. *Sequence of Events of the EU Crisis: the Data*

The Greek crisis is the first in the history of the 10 year-old Euro, and the largest in terms of debt when compared with other sovereign debts.²⁹

As a result of the 2008-2010 financial crisis in Europe, the total average Gross Domestic Product (GDP) of the EU's 27 member states fell from Euro 12.5 trillion (\$16.25 trillion) in 2008 to Euro 11.79 trillion (\$15.327 trillion).³⁰ The Eurozone area, comprised of 17 out of the 27 EU member states,³¹ accounts for 76% of this total.³² The Greek GDP amounts to \$309.231 (billion),³³ accounting for 2% of the EU area.³⁴ In other words, the GDP of Greece has a small relevance, at least on paper, to the overall economic output of the EU. Despite this, that share had a more profound political, legal and cultural impact.

In early 2010, Greece was close to defaulting because it was unable to honor its bond obligation on the domestic and foreign market, and

29. *Europe in Figures, Eurostat Yearbook 2011*, EUROPEAN UNION, 34 (2011). http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-CD-11-001/EN/KS-CD-11-001-EN.PDF.

30. *Id.*

31. *Economic and Financial Affairs*, EUROPEAN COMM'N., http://ec.europa.eu/economy_finance/euro/index_en.htm (last visited Mar. 2012). (Members are Belgium (1999); Germany (1999); Ireland (1999); Spain (1999); France (1999); Italy (1999); Luxemburg (1999); the Netherlands (1999); Austria (1999); Portugal (1999); Finland (1999); Greece (2001); Slovenia (2007); Cyprus (2008); Malta (2008); Slovakia (2009); Estonia (2011)).

32. *Id.* at 34. (The 27 EU member states are: Austria (1995); Bulgaria (2007); Cyprus (2004); Czech Republic (2004); Denmark (1973); Estonia (2004); Finland (1995); France (1952); Germany (1952); Greece (1981); Hungary (2004); Ireland (1973); Italy (1952); Latvia (2004); Lithuania (2004); Luxemburg (1952); Malta (2004); Netherlands (1952); Poland (2004); Portugal (1986); Romania (2007); Slovakia (2004); Slovenia (2004); Spain (1986); Sweden (1995); United Kingdom (1973). Of these, 10 countries do not participate to the Euro and they are: Bulgaria; Czech Republic; Denmark; Hungary; Latvia; Lithuania; Poland; Romania; Sweden; United Kingdom.) See also *Countries*, EUROPEAN UNION, http://europa.eu/about-eu/countries/index_en.htm (last visited Mar. 2012); See also *Convergence Report of the European Commission*, EUROPEAN COMM'N., http://ec.europa.eu/economy_finance/eu/convergence_reports/index_en.htm (last visited Mar. 2012).

33. *World Economic Outlook Database, September 2011 5*, INT'L MONETARY FUND, available at <http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx> (last visited March 2012).

34. Domenico Lombardi, *Is the Euro-Cure Worse than the Disease?*, BROOKINGS, Jan. 31, 2012. available at http://www.brookings.edu/articles/2012/02_euro_cure_lombardi.aspx?p=1.

because over the last three decades³⁵ it “produced” and amassed more debt (comprising of interests) than revenue that it is still unable to pay back.³⁶ This economic outlook should be kept separate from the political, legal, and cultural crises. From an economic perspective, the inability of the Greek government to repay its bonds was connected to a fiscal crisis, mainly (1) a high level of public debt and (2) a severe budget deficit.³⁷

The “public-” or “government-debt” is the debt owed by a country or sovereign to banks, public or private institutions, or to its national or foreign institutions or citizens.³⁸

To put the Greek number in context, between 2008 and 2009, the government-debt *ratio* to GDP of the EU 27 area rose from 61.8% to 74.0%; within the Eurozone, comprised of 17 EU member states, from 69.8% to 79.2% in 2009/2010.³⁹ In 2007 in Greece alone, the government debt-to-GDP ratio was 105%; in 2008, 110.3%; in 2009, 126.8%.⁴⁰ In May 2011, the government debt accounted for 142.76% of Greece’s GDP⁴¹ because the debt amounted to Euro 327 billion (\$470 billion) (Table 4), when the debt overcame the national economy (IMF data).⁴² There is a slight discrepancy with the OECD data that does not change the substance of the economic situation (Table 1).⁴³

35. July 23, 1974: *Greek Military Rule Gives In To Democracy*, BBC: ON THIS DAY, http://news.bbc.co.uk/onthisday/hi/dates/stories/july/23/newsid_2515000/2515819.stm (last visited Mar. 2012) (namely after the fall of the military dictatorship in 1974).

36. Dody Tsiantar, *Go Ahead and Default Greece!*, CNN MONEY (May 18, 2010, 8:24 AM), http://money.cnn.com/2010/05/17/news/international/greece_sovereign_default.fortune/; See also Nelson D. Schwartz & Eric Dash, *Banks Bet Greece Defaults on Debt They Helped Hide*, N.Y. TIMES, Feb. 24, 2012, available at http://www.nytimes.com/2010/02/25/business/global/25swaps.html?_r=0.

37. Rebecca M. Nelson, Paul Belkin, & Derek E. Mix, Cong. Research Serv., R41167, *Greece’s Debt Crisis: Overview, Policy Responses, and Implications* 3 (2011), available at <http://www.fas.org/sgp/crs/row/R41167.pdf>.

38. U.S. Bureau of Public Debt: *Who We Are*, Department of Treasury, http://www.publicdebt.treas.gov/whoweare/who_we_are.htm (last visited Mar. 2012) (In the U.S. the public debt accounts for \$15.5 trillion at March 20, 2012, which is 58.9% of the Gross Domestic Product).

39. *Supra* note 29 at 60.

40. *Id.* at 66.

41. *World Economic Outlook, September 2011: Slowing Growth, Rising Risks*, INT’L MONETARY FUND, 76 (2012), available at <http://www.imf.org/external/pubs/ft/weo/2011/02/pdf/text.pdf> (last visited March 2012).

42. Michele Sinner & Dina Kyriakidou, *Greece Denies May Quit Euro*, REUTERS (May 6, 2011, 9:53 PM), <http://www.reuters.com/article/2011/05/07/us-greece-eurozone-exit-idUSTRE74546320110507>; See also Q&A: *Greece’s Financial Crisis Explained*, CNN (Mar. 26, 2010, 11:01 AM), <http://www.cnn.com/2010/BUSINESS/02/10/greek.debt.qanda/index.html>.

43. *Aggregate National Accounts*, OECD iLIBRARY (Apr. 13, 2010), http://www.oecd-ilibrary.org/economics/data/aggregate-national-accounts/gross-domestic-product_data-00001-en

TABLE 1

EU Country	Government-debt Ratio
Austria	71.6%
Belgium	98.5%
France	85.5%
Germany	81.8%
Italy	119.6%
Portugal	110%
Spain	66%
Romania	33.3%
Hungary	82.6%
Greece	142.8%
North America	
United States	102%
Canada	83.5%

IMF 2010/2011.⁴⁴

The budget deficit is based on a yearly projection and is calculated on the difference between government spending on goods and services and the total current revenue based on taxes and transfer of payments.⁴⁵ In other words, the imbalance is caused when the government spends more money than it is capable of collecting or simply that it does not have and thus, has to borrow.⁴⁶ The fiscal deficit also includes the interest calculated on the debt.⁴⁷ In 2010, Greece has a budget deficit of -10.5% (it was -15.4% in 2009) of its economic output (OECD Table 2).⁴⁸

To put these numbers in context, the government deficit of the 27 member-states increased from 2.3% of the GDP in 2008 to 6.8% in 2009.⁴⁹ In 2009, Ireland's deficit was at -14.4% (the worst in the EU);

44. *Report for Selected Countries and Subjects*, INT'L. MONETARY FUND, <http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx> (last visited Mar. 2012) (click on "By Countries;" Click on "Select Countries.") (However, the Eurostat numbers are not identical).

45. Ari Aisen & David Hauner, *Budget Deficits and Interest Rates: A Fresh Perspective*, (IMF Working Paper No. WP/08/42, 2008), available at <http://www.imf.org/external/pubs/cat/longres.aspx?sk=21667.0>.

46. *Id.*

47. Michael Burda & Charles Wyplosz, *Macroeconomics: A European Text* 56 (1995).

48. *Euro Area and EU27 Government deficit at 6.0% and 6.4% of GDP Respectively*, EUROSTAT NEWS RELEASE: EUROINDICATORS (Apr. 26 2011), http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-26042011-AP/EN/2-26042011-AP-EN.PDF; See also *supra* note 43.

49. *Supra* note 29 at 60.

the U.K. -11.4% and Spain -11.1%.⁵⁰ No EU member-states had a surplus in 2009.⁵¹

From an economic perspective, as anticipated, Greece was unable to repay its debt due to such factors as the impossibility of depreciating the Euro, high repayment interests, political instability, and uncontrolled public spending.⁵² This instability caused Greece's bonds to plunge, sending the 10-year yield to 25%; high spread⁵³ and downgrades are signs of a possible default.⁵⁴ This occurs because investors demand higher interests when the issuer – in this case a sovereign – is not able to repay its debt.⁵⁵ The higher interests compensate for the risk that the investor must bear to hold the sovereign notes.⁵⁶ Similarly, they drive up the borrowing costs of the sovereign, triggering a default.⁵⁷ Greece's financial condition benefited from the immediate response of the European institutions, unlike the Argentina default in 2001.⁵⁸

History proves that sovereign crises are quite common.⁵⁹ This time, in order to avoid the spreading of the crisis to GIIPS, the EU and IMF agreed to lend a first package of Euro 110 billion (\$158 billion) in May 2010.⁶⁰

On May 9, 2010, the Euro area member states (“Eurozone”) created the European Financial Stability Facility (“EFSF”).⁶¹ The fund

50. *Id.* (“Deficit ratios were greater than the target reference value of -3 % of GDP in 21 of the Member States in 2009, up from 11 Member States in 2008, while Hungary and Greece had a government deficit exceeding the -3 % threshold for the whole of the reporting period 2006 to 2009. The largest government deficits (as a percentage of GDP) in 2009 were recorded by Greece (-15.4 %), Ireland (-14.4 %), the United Kingdom (-11.4 %), Spain (-11.1 %), Latvia (-10.2 %), Portugal (-9.3 %), Lithuania (-9.2 %) and Romania (-8.6 %).”)

51. *Id.*

52. Nikos Tsafos, *Ten Surprising Facts About Greek Economic History*, GREEK DEFAULT WATCH (Oct. 6, 2012), <http://www.greekdefaultwatch.com/2012/10/ten-surprising-facts-about-greek.html>.

53. High-yield spreads are commonly used to determine the credit risk. A high-yield spread means that the bond instrument cannot be repaid and the issuer is close to default.

54. Bianca De Paoli, Glenn Hoggarth & Victoria Saporta, *Costs of Sovereign Default*, Bank of England: Quarterly Bulletin Q3 July 2006, at 297, available at <http://www.bankofengland.co.uk/publications/documents/quarterlybulletin/qb0603.pdf>.

55. *Id.*

56. *Id.*

57. Peter G. Dunne, *Transparency Proposal for the European Sovereign Bond Markets*, 15 J. Fin. Reg. and Comp. 186 (2007) (subscription required for access).

58. Drew Benson, *What Greece Can Learn From Argentina's Default*, BUSINESSWEEK (Mar. 12, 2012), <http://www.businessweek.com/articles/2012-03-15/what-greece-can-learn-from-argentinas-default>.

59. Andritzky, *supra* note 9 at 15.

60. *Greece*, N.Y. TIMES, Mar. 15, 2012, available at <http://topics.nytimes.com/top/news/international/countriesandterritories/greece/index.html>.

61. Council of the European Union, Reg. 9606/2010, available at <http://register.consilium.europa.eu/pdf/en/10/st09/st09606.en10.pdf> (last visited March 2012); See also *About EFSF*, EUROPEAN FINANCIAL STABILITY FUND, <http://www.efsf.europa.eu/about/index.htm> (last visited March 2012).

has a mandate to safeguard the financial stability of the Eurozone area by providing financial assistance, in the form of a loan, only to its members.⁶² However, the EFSF works in conjunction with the European Stability Mechanism (ESM)⁶³ with a volume ceiling of Euro 500 billion (funded in part by the IMF).⁶⁴ To date, Euro 102 billion has already been loaned to Greece, Ireland, and Portugal.⁶⁵

On March 14, 2012, the EU formally approved a second bailout package to finance Greece with Euro 130 billion (\$169 billion) until 2014, with the authorization to release the first tranche of Euro 39.4 billion by the European Financial Stability Facility (EFSF).⁶⁶

In addition to this measure, and in order to calm and reassure the market, on March 20, 2012 the EU *Consilium*, formed by the finance ministers of the EU member states, agreed to set up a firewall of more than Euro 800 billion. Such fund has the goal of creating a cushion and control the financial stability of the Eurozone.⁶⁷ At this point, the ESM and the EFSF have a combined lending capacity superior to the IMF.⁶⁸ The Eurozone countries also agreed to contribute an additional Euro 150 billion to the IMF.⁶⁹

The sovereign crisis⁷⁰ and the announced risk of inability of other Southern European countries to repay their debts, would have simply put the EU monetary system and the Euro area under pressure with the possibility of spreading negative waves to the global economy.⁷¹

62. Council of the European Union, *supra* note 61; *About EFSF*, *supra* note 61.

63. Council of the European Union, *supra* note 61.

64. *European Stabilisation Mechanism Adopted*, COUNCIL OF THE EUROPEAN UNION (Dec. 5, 2010), <http://www.consilium.europa.eu/homepage/showfocus?lang=en&focusID=66189>.

65. *Id.*

66. *Financial Assistance to Greece*, EUROPEAN COMM'N, http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/index_en.htm (last visited Apr. 2012); *see also* Jan Strupczewski, *New Greek Bailout May Total 120 Billion Euros – Sources*, REUTERS (Jun. 9, 2011), <http://www.reuters.com/article/2011/06/09/eurozone-greece-bailout-idUSLDE75819V20110609>; *See also* Jan Strupczewski, *Euro Zone Formally Approves 2nd Greek Bailout: Statement*, REUTERS (Mar. 14, 2012), <http://www.reuters.com/article/2012/03/14/us-eurozone-greece-idUSBRE82D0LK20120314>. (The release of the tranches will be based on observance of quantitative performance criteria and a positive evaluation of progress made with respect to policy criteria in Council Decision 2011/734/EU of 12 July 2011 (as amended in November 2011 and on 13 March 2012) and the Memorandum of Understanding setting the economic policy conditionality, which was signed on 14 March).

67. James Kanter, *Officials Reach Agreement on Euro Zone Bailout Fund*, N.Y. Times, Mar. 30, 2012, at B6, *available at* http://www.nytimes.com/2012/03/31/business/global/europe-agrees-to-1-trillion-bailout-fund-for-euro.html?_r=1&hp#; *see also* *Eurozone Deal to Boost Firewall*, Eur. Union Consilium (Mar. 30, 2012), <http://www.consilium.europa.eu/homepage/highlights/eurozone-deal-to-boost-firewall?lang=en>.

68. *Id.*

69. *Id.*

70. Motivated by the fact that investors were facing the risk of collecting between 30 or 40% of their investment.

71. *European Debt Crisis*, N.Y. Times, Oct. 17, 2012, *available at* http://topics.nytimes.com/top/reference/timestopics/subjects/e/european_sovereign_debt_crisis/index.html.

This is so because other banks, mainly within the Eurozone, hold sovereign bonds of GIIPS and act as lenders, thus investors would risk losing the interest and principal invested.⁷²

On October 26, 2011, the Greece sovereign crisis became unsustainable.⁷³ When Italy and Spain- two big EU members which would have multiplied the magnitude of the sovereign crisis and spread it to the US, affecting its recovery-⁷⁴ showed signs of instability, the European Council and Commission, along with the governments of Germany and France, agreed on various new measures. These measures included reducing Greece's public debt to 120% of its GDP by 2020.⁷⁵ The restricting process established the swap of the matured bonds and a reduction to 53.5% of the original value, with a participation of 95.7% of all the eligible securities, and the first tranche of bonds swap of Euro 20.3 billion to occur on April 11, 2012.⁷⁶ In addition, Eurozone member states must contribute up to Euro 30 billion (\$39 billion) to the private sector involvement package.⁷⁷

Recently, in order to reduce the lack of transparency, the possibility of arbitrage, and abuse of exploitation of the financial system with negative price spirals, the European Council adopted a new regulation on short-selling and certain aspects of credit default swaps (CDS).⁷⁸ The regulation introduces common EU transparency requirements and harmonizes the powers that EU and state member regulators (the European Security Markets Authority) may use when the European financial stability is at risk.⁷⁹

The new regulation introduces a regime of notification to regulators of only significant net short positions in EU sovereign bonds. CDS positions are included, relating to sovereign debt issuers.⁸⁰ Disclosure

72. Andritzky, *supra* note 9 at 1, 43.

73. Edward P. Lazear, Editorial, *The Euro Crisis: Doubting the 'Domino' Effect*, THE WALL STREET JOURNAL, Oct. 31, 2011, available at <http://online.wsj.com/article/SB10001424052970203554104577003924075089102.html>.

74. *Id.*

75. *Way out of the Debt Crisis*, EUROPEAN COUNCIL (Oct. 27, 2011), <http://www.european-council.europa.eu/home-page/highlights/way-out-of-the-debt-crisis?lang=en>.

76. Marcus Bensasson, *Greece to Swap Euro 20.3 Billion of Foreign Law Bonds on April 11*, Bloomberg (April 5, 2012), <http://www.bloomberg.com/news/2012-04-05/greece-to-swap-20-3-billion-euros-of-foreign-law-bonds-april-11.html>.

77. *Ways out of the Debt Crisis*, *supra* note 76.

78. Press Release, Council of European Union, Regulation Adopted on Short Selling and Credit Default Swaps (Feb. 21, 2012) (on file with author), available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/128081.pdf. See also Memorandum from European Comm'n, Regulation on Short Selling and Credit Default Swaps- Frequently Asked Questions (Oct. 19, 2011) (on file with author), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/713>, (providing explanatory information regarding the adopted regulation).

79. Memorandum from European Comm'n, *supra* note 78 at 5.

80. *Id.* at 4.

will help to control the market and prevent abusive behavior. The regulation states that the disclosure must be provided only to regulators and not to the market in order to prevent negative market consequences in terms of liquidity.⁸¹ Disclosure of derivatives is included.⁸²

B. *EU Legal Monetary and Economic Framework.*

All of the financial measures that have been introduced to contain and solve the sovereign crisis must be seen in the context of a broader legal cooperation among member states of an international legal initiative: the Treaty of Lisbon (“ToL”) or Treaty of the Functioning of the European Union (“TFEU”).⁸³

The first rule that triggered the EU intervention in the Euro and Greek crises is Article 3a of the Treaty of Lisbon, establishing the duty of the EU institutions and member-states to support the other member-states through sincere cooperation and solidarity.⁸⁴

Additionally, in order to maintain solid financial stability, the 1993 Maastricht Treaty set up the Euro and introduced the so called “*Euro convergence criteria*” (also known as the Maastricht criteria).⁸⁵ Article 140 of the TFEU (old article 121(1) of Treaty of the Economic Community, EC Treaty) establishes that, in order to have access to the European Union and the Eurozone and to continue to be a part of it, member-states, or new applicants, must comply with the following requirements:

- (1) Member states must not have an inflation rate of 1.5% higher than the average of the three best performing member states;
- (2) The ratio between the government deficit and the GDP must not exceed 3% at the end of the preceding fiscal year (exceptions can be granted in certain circumstances); *and* the ratio between the

81. *Id.*

82. *Id.*

83. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF>; Consolidated Version of the treaty on the Functioning of the European Union, May 9, 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:FULL:EN:PDF>.

84. Article 3a of the Treaty of Lisbon states:

Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Treaty of Lisbon *supra* note 84, at 14.

85. *Introducing the Euro: Convergence Criteria*, EUROPA.I.U., http://europa.eu/legislation_summaries/other/125014_en.htm (last updated July 07, 2006).

- government debt and the GDP must not exceed 60% at the end of the preceding fiscal year;
- (3) The new European countries willing to join the EU must have introduced an exchange rate mechanism that must have been in force for the two years preceding of the accession (with no depreciation); and
 - (4) The nominal long-interest rate must not be 2% higher than the average of the lowest inflation in the three best member states.⁸⁶

In addition to these provisions, in June 1997, the EU Council adopted the *Stability and Growth Pact* which established various policy guidelines.⁸⁷ Among them, member-states had to abide by the medium-term budgetary objective of positions close to balance or in surplus. Also, they have to take corrective budgetary action necessary to fulfill the objectives of the convergence programs and correct any excessive deficit. In addition, they will have to correct excessive deficit as quickly as possible.⁸⁸

As seen, the ToL is the main hierarchical legal source for the EU institutions. In particular, Articles 119 through 144 of the TFEU regulate the European Economic and Monetary Policy.⁸⁹ Within the context of the monetary and economic policy, and under the TFEU, the European institutions adopted a series of numerous directives and regulations that regulated the economic and monetary field.⁹⁰

The EU envisaged an introduction of the Euro as currency in three stages.⁹¹ The first two have been completed.⁹² The third stage of the monetary union establishes that the process of adopting a single currency is irreversible involving all the 27 member-states.⁹³ The European Central Bank (ECB) and the European System of Central Banks started their functioning within a common monetary policy.⁹⁴

However, because of a lack of close coordination and supervision, the European central banks were not able to prevent the spreading of the crisis.⁹⁵ On November 24, 2010, the European Parliament and

86. *Id.*

87. Resolution of the European Council on the Stability and Growth and Employment, June 17, 1997, 1997 O.J. (C 236) 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1997:236:FULL:EN:PDF>.

88. *Id.* at 2.

89. TFEU *supra* note 83, at 96-111.

90. See 10.3 *European Union Legislation in Force*, EUR-LEX, <http://eur-lex.europa.eu/en/legis/latest/chap1030.htm> (last visited March 2012).

91. *One Currency For One Europe: The Road to the Euro*, EUROPEAN COMM'N, 1, 7 (2007), available at http://ec.europa.eu/economy_finance/publications/publication6730_en.pdf.

92. Protocol On the Transition to the Third Stage of Economic and Monetary Union, July 29, 1992, 1992 O.J. (C 191), available at <http://eur-lex.europa.eu/en/treaties/dat/11992M/html/11992M.html#0087000011>.

93. *Id.*

94. *One Currency For One Europe*, *supra* note 91, at 11.

95. *European Debt Crisis* *supra* note 71.

Council passed Regulation (EU) 1093/2010, establishing European Banking Authority (EBA).⁹⁶ The European System of Financial Supervision (ESFS) now has four ramifications: (1) the European Systemic Risk Board (Reg. 1092/2010);⁹⁷ (2) the EBA; (3) the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (Reg. 1094/2010);⁹⁸ and (4) the European Supervisory Authority (European Securities and Markets Authority) (Reg. 1095/2010).⁹⁹

On February 2, 2012, the 17 EU member-states participating in the Eurozone signed a new treaty establishing the European Stability Mechanism (ESM).¹⁰⁰ The new treaty was generated by an EU Council decision, 2011/199/EU, that amended Article 136 of the TFEU with reference to a new stability mechanism for member-states.¹⁰¹ This

96. In its preamble, the Regulation states:

- (1) The financial crisis in 2007 and 2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally based supervisory models have lagged behind financial globalisation and the integrated and interconnected reality of European financial markets, in which many financial institutions operate across borders. The crisis exposed shortcomings in the areas of cooperation, coordination, consistent application of Union law and trust between national supervisors.

Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 Establishing a European Supervisory Authority (European Banking Authority), Amending Decision No 716/2009/EC and Repealing Commission Decision 2009/78/EC, 2010 O.J. (L 331) 12 [hereinafter Regulation 1093/2010], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0012:0047:EN:pdf>.

Moreover, (33) reads, "The crisis has proven that the current system of cooperation between national authorities whose powers are limited to individual Member States is insufficient as regards financial institutions that operate across borders." *Id.* at 16.

97. Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union Macro-Prudential Oversight of the Financial System and Establishing a European Systemic Risk Board, 2010 O.J. (L 331) 1 [hereinafter Regulation 1092/2010], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0001:0011:EN:PDF>.

98. Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 Establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Amending Decision No 716/2009/EC and Repealing Commission Decision 2009/79/EC, 2010 O.J. (L 331) 48 [hereinafter Regulation 1094/2010], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0048:0083:EN:pdf>.

99. Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 Establishing a European Supervisory Authority (European Securities and Markets Authority), Amending Decision No 716/2009/EC and Repealing Commission Decision 2009/77/EC, 2010 O.J. (L 331) 84 [hereinafter Regulation 1095/2010], available at http://www.esma.europa.eu/system/files/Reg_716_2010_ESMA.pdf.

100. Treaty Establishing the European Stability Mechanism, Feb. 2, 2012, <http://www.european-council.europa.eu/media/582311/05-tesm2.en12.pdf>.

101. The new article 136 of the TFEU states: "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality". European Council Decision of 25 March 2011 Amending Article 136 of the Treaty of Functioning of the European Union With Regard to a Stability Mechanism for Member States Whose Currency is the Euro, Mar. 25, 2011,

new, permanent crisis management mechanism is an intergovernmental body and has the duty to safeguard the financial stability of the 17 member-states. The ESM replaces all of the temporary solutions existing so far, like the Greek loan facility, the EFSM, and the EFSF by July 1, 2013 or until all other claims have been satisfied.¹⁰² The ESM is comprised of a Board of Governors, Board of Directors, and a Managing Director (Article 4).¹⁰³ The Board of Governors is formed by the Finance Ministers of the signatories.¹⁰⁴ The Board must make decisions with unanimity.¹⁰⁵ A decision will involve: (1) the granting of financial assistance to a member, even in the form of precautionary financial assistance; (2) the terms of the assistance; (3) the amount of the financial support; and (4) a change in the instrument providing financial support (Articles 14-18).¹⁰⁶

The EBA, whose seat is in London, has several tasks: (1) contribute to establishing high-quality common regulatory and supervisory standards and practices through the providing of opinions, recommendations, and draft regulations to the US institutions; (2) contribute to the consistent application of Union law and, in particular, favoring a common supervisory culture preventing arbitrage, mediating disagreements among central authorities, and insuring effective and consistent supervision of financial institutions; (3) facilitate the delegation of tasks among competent authorities; and (4) monitor and assess market developments.¹⁰⁷ Briefly, the EBA is now responsible for determining policy in the banking sector that will be binding on central banks.¹⁰⁸ It has supervisory authority on the central banks of the member-states and it has responsibility for crisis management.¹⁰⁹

The rationale is to have an institution that has a more effective supervisory and implementation strength than the other EU institutions in order to overcome the EU democratic deficit and the lack of a common fiscal policy.¹¹⁰ However, despite the existence of a basic Euro-

2011 O.J. (L 91) 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:091:0001:0002:EN:PDF>.

102. European Central Bank, *The European Stability Mechanism*, 2011 ECB MONTHLY BULLETIN 71, 74, available at http://www.ecb.int/pub/pdf/other/art2_mb201107en_pp71-84en.pdf.

103. *Id.* at 75-76.

104. *Id.* at 76.

105. *Id.*

106. *Id.*

107. *About Us*, EBA, <http://www.eba.europa.eu/Aboutus.aspx> (last visited March 2012).

108. *Id.* at <http://www.eba.europa.eu/Aboutus/Legal-texts/Directives.aspx>.

109. Matthew Elderfield, Deputy Governor of the Central Bank of Ireland and Alternate Chairman of the European Banking Authority, Address to the 4th CDU/CSU Congress in the Bundestag, Berlin: European Banking Regulation and the Eurozone Crisis (Mar. 26, 2012) available at <http://www.bis.org/review/r120327f.pdf?frames=0>.

110. Remi Colliat, *A Critical Genealogy of European Macroeconomic Governance*, 18 European L. J. 6, 6-23 (2012), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0386.2011.00583.x/pdf>; See also Brian Blackstone, Matthew Dalton, & Stephen Fidler, *Tensions Rise*

pean regulation within the monetary and economic field that lacks strong sanctions and effective implementing action, the market on the issuance of international bonds and sovereign lending remains substantially unregulated.¹¹¹ But is there a need for regulation? Not necessarily.

C. *Three in One: the Euro Crisis, the Sovereign Bond Crisis, and the Banking Crisis.*

The Euro crisis represented the first global test for the 10-year-old currency and the young political and economic infrastructure of the EU. It was amplified due to the interaction with the banking and Greek sovereign crises that triggered the intervention of the EU institutions.

The Euro financial crisis showed the weaknesses of the EU financial architecture, its monetary and financial governance, and, more importantly, its lack of a coordinated fiscal policy.¹¹² Over time, the *Stability and Growth Pact* fiscal rules and economic policy coordinating measures have not been implemented.¹¹³ Such lack of coordination, harmonization, implementation, and supervision manifested its limits during the crisis, dangerously showing the delay of the EU intervention due to lack of instruments available to the EU institutions and member-states.¹¹⁴ The old critique of a weak coordination and lack of a common fiscal policy revealed itself to be painfully true with the Greek crisis.¹¹⁵

Preliminarily, there is no consensus on the concept of default.¹¹⁶ Furthermore, a crisis can take different forms when triggered by various causes.¹¹⁷ Default can consist of debt gone into arrears or even unpaid restructured debt.¹¹⁸ Creditors can be private investors as well as public institutions.¹¹⁹

at *EU Summer: Bid to Revise Treaty Fails to Win Full Support; Central Bank Spook Investors*, THE WALL STREET JOURNAL, Dec. 9, 2011, available at http://online.wsj.com/article/SB10001424052970203501304577086030233783036.html?mod=WSJEurope_hpp_LEFTTopStories.

111. Memorandum from Brussels on Regulation on Short Selling and Credit Default Swaps—Frequently Asked Questions (Oct. 19, 2011), available at http://europa.eu/rapid/press-release_MEMO-11-713_en.htm.

112. Alessandro Turrini, *Fiscal Policy and the Cycle in the Euro Area: The Role of Government Revenue and Expenditure*, EUROPEAN ECON., May 2008 at 1, available at http://ec.europa.eu/economy_finance/publications/publication12600_en.pdf.

113. See *Infra* at note 115.

114. See *Infra* at note 115.

115. Jordi Gali & Roberto Perotti, *Fiscal Policy and Monetary Integration in Europe 1* (NBER Working Paper No. 9773, 2003), available at <http://www.nber.org/papers/w9773>.

116. See *Infra* at note 119.

117. See *Infra* at note 119.

118. See *Infra* at note 119.

119. Enrica Detragiache & Antonio Spilimbergo, *Crisis and Liquidity: Evidence and Interpretation* (IMF Working Paper No. WP/01/02, 2001), available at <http://www.imf.org/external/>

The Greek sovereign risk of default affected its GDP because major European banks and Greek pension funds were the creditors and they threatened to stop providing liquidity and credit to the Greek, GIIPS, and in turn, Eurozone economy.¹²⁰ The risk of default caused Greece to be unable to obtain additional credit from external sources. Greece's critical fiscal situation, which failed to comply with the *Stability and Growth Pact* EU guidelines, revealed its inability to adopt corrective actions.¹²¹ Not only did the Greek crisis reveal inaccuracies in public finance management and budget projections, but overall, it showed how an irresponsible appetite for profits from the private financial works married perfectly with government's desire to acquire capital, while avoiding public scrutiny and international supervision.¹²²

If we look at Europe from 1824 to 2004, there are 46 episodes of defaults; 32 in Eastern Europe and 14 in Western Europe.¹²³ Greece alone defaulted in 1826, 1894, and 1932. Emerging economies have similar records that have been widely recorded and analyzed.¹²⁴ As a result, a sovereign bond crisis appears to be a cyclical phenomenon for emerging economies. The issue then is not to avoid its occurrence, but handling the after-crisis with a strong and efficient restructuring process.¹²⁵

The three crises are separate but connected because the bonds were held by Greek investors, in pension funds, or banks within the Eurozone countries, such as Germany, Italy, and France,¹²⁶ are linked to an economy where the European institutions and the other mem-

pubs/ft/wp/2001/wp0102.pdf.; Carmen M. Reinhart, Kenneth S. Rogoff, & Miguel A. Savastano, *Debt Intolerance* (NBER Working Paper No. 9908, 2003), available at http://www.nber.org/papers/w9908.pdf?new_window=1.; De Paoli, *supra* note 54 at 300, Glenn Hoggart, & Victoria Saporta, *Costs of Sovereign Default*, 46 Quarterly Bulletin Bank of England 3 July 2006, at 300, 297-307, available at http://www.bankofengland.co.uk/publications/Documents/fsr/fs_paper01.pdf.

120. See *Infra* at note 124.

121. David S. Hoelscher & Marc Quintyn, *Managing Systemic Banking Crises*, IMF Occasional Paper, Aug. 28, 2003, available at <http://www.imf.org/external/pubs/cat/longres.aspx?sk=16484.0>.

122. Videotape: Frontline, *Money, Power, and Wall Street* (PBS.ORG video broadcast Apr. 24, 2012 and May 1, 2012), available at <http://www.pbs.org/wgbh/pages/frontline/money-power-wall-street/> (insight of the financial input).

123. *Sovereign Defaults and Rating Transition Data, 2010 Update*, STANDARD & POOR (Feb. 23, 2011), <http://www.standardandpoors.com/ratings/articles/en/us/?articleType=HTML&assetID=1245302231824>.

124. Reinhart, *supra* note 119; Andrea Zazzarelli et al., *Sovereign Default and Recovery Rates, 1983-2006*, Moody's Special Comment, 1, 9-10 (2007), available at http://ksuweb.kennesaw.edu/~dtang/CRM/Moodys_SovereignDefault.pdf.

125. *Id.*

126. Landon Thomas Jr., *Large Private Sector Investors Agree to a Swap of Greek Debt*, N.Y. TIMES, March 5, 2012, available at <http://www.nytimes.com/2012/03/06/business/global/bankers-group-agrees-to-greek-debt-swap.html>; Bouras *infra* note 132.

ber states have little say. This is due to the European democratic deficit and fiscal lack of coordination.¹²⁷

The domino effect threatened by the Greek fiscal and sovereign crises revealed the risk of the entire European banking sector defaulting, as well as the emerging economies linked to it.¹²⁸

From a political perspective, the EU institutions did not allow a political postponement of the default moment, wished for by the Greek political leaders, because the “default-point,” at least from an economic perspective, was already reached within the cluster of all southern European countries, namely GIIPS.¹²⁹ Like Citibank or J.P. Morgan during the global financial crisis that originated with the real estate bust in the U.S., EU institutions considered Spain and Italy “too big to fail” as the entire European economic system was at risk of being swept away due to their debts.¹³⁰ As a matter of fact, European (in particular in German, Italian and French) banks holding Greek bonds restricted the flow of liquidity and this caused the European economic system to lose vitality and momentum.¹³¹

The “default-point” is the margin where a sovereign considers honoring the sovereign debt no longer convenient when compared to the advantages of a restructuring process.¹³²

From an economic perspective, a default represents an unwelcomed event for investors. Even if analysts struggle to determine the cost of default, investors always search for markets offering high returns because, with the purchase of sovereign bonds, they are betting on the capabilities of young economies to satisfy their productive and efficient allocation of resources.

From a legal perspective, a sovereign is the supreme authority of a country to determine and assume legislative action, fiscal budgeting, and economic policymaking.¹³³ A sovereign is immune from bankruptcy proceedings, and creditors lack contractual enforcement tools due to political constraints because of the “sovereign immunity doctrine.”¹³⁴ Even though this principle has been progressively narrowed due to the fact that the issuance of bond is not a sovereign function

127. Colliat, *supra* note 111 at 1.

128. Stelios Bouras, *Update: Greek Debt Swap Inches Forward; Deadline For Holdouts Extended*, THE WALL STREET JOURNAL, April 5, 2012, available at <http://online.wsj.com/article/BF-CO-20120405-705016.html>.

129. Sturzenegger, *infra* note 138, at 6.

130. Gary H. Stern & Ron J. Feldman, *Too Big to Fail, The Hazard of Bank Bailout* (2004); Eric Dash, *If It's Too Big to Fail, Is It Too Bog to Exist?*, N.Y. TIMES, June 20, 2009, available at http://www.nytimes.com/2009/06/21/weekinreview/21dash.html?_r=1&partner=rss&emc=rss.

131. *Id.*

132. Borenzstein, *supra* note 6 at 4.

133. *Id.* at 15. See also Sturzenegger, *supra* note 129 at 55.

134. Namely a state cannot be sued in another jurisdiction.

but a commercial one, its original nature still persists.¹³⁵ Within International law, the absolute immunity doctrine recently regained momentum.¹³⁶

Additionally, under international law, a sovereign is protected from external influence due to the existence of the “non-intervention” principle in national affairs.¹³⁷ Other principles that a sovereign may invoke are “the act of state doctrine,” that has been limited in *Allied Bank International v. Banco Creditor Agricola de Cartago*¹³⁸ and *International Comity*, as courtesy and reciprocity among sovereignties.¹³⁹

This protection, along with the certainty that a sovereign will not go bankrupt,¹⁴⁰ usually triggers issues of moral hazard as creditors may have an indirect assurance that some supranational or intergovernmental entity will ultimately come to rescue.¹⁴¹ On the contrary, a corporation lacks the status of a sovereign and cannot insure investors with the same degree of certainty that it will remain alive and in business so that other peer entities will come to its rescue and it will be back in the same international financial market after a short period of time.¹⁴²

However, the Euro crisis shows the limit of the sovereignty concept under international law. With the unregulated issuance of sovereign bonds, states, along with their private financial partners that provided the financial tools, have the power to create systemic risks and other member-states cannot control such economic/political freedom. The welfare of the civil society, transnationalism, globalization, democratization, and the rule of law, worked as fundamental forces to limit the complete political independency, in terms of indifference to the exis-

135. Foreign Sovereign Immunity Act (FSIA), 28 USC § 97 (1976); *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992).

136. *Germany v. Italy with Greece intervening*, International Court of Justice (2012) available at <http://www.icj-cij.org/docket/files/143/16883.pdf> (last visited April 2012).

137. Article 2 of the United Nation Charter, available at <http://www.un.org/en/documents/charter/chapter1.shtml> (last visited March 2012).

138. *Allied Bank International v. Banco Creditor Agricola de Cartago*, 566, F.Supp. 1440 (S.D. N.Y. 1983).

139. *Hilton v. Guyot*, 159 U.S. 113 (1895); *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418 (2nd Cir. 2005).

140. Namely it will not disappear as a legal, social and economic entity on the global map.

141. Timothy Lane & Steven Phillips, Moral Hazard: *Does IMF Financing Encourage Imprudence by Borrowers and Lenders?*, ECONOMIC ISSUES No. 28 (2002), available at <http://www.imf.org/external/pubs/ft/issues/issues28/>; Torbjörn Becker, Anthony Richards & Yungyong Thaicharoen, *Bond Restructuring and Moral Hazard: Are Collective Action Clauses Costly?* (IMF WORKING PAPER WP/01/92, 2001), available at <http://www.imf.org/external/pubs/cat/longres.aspx?sk=15178>.

142. Default is the inability of a sovereign to pay back its obligations taken with the issuance of bonds. Debt obligations take the form of a contract (and often the law where the bonds are issued). A contractual bond is composed of at least three basic features: covenants, remedies and amendments. According to the applicable law, the regulation of each bond can change.

tence of other sovereigns, within bigger political and economic macro regional aggregates.¹⁴³

The intervention of the EU institutions in controlling the financial shock created by GIIPS proves that member-states are losing their normative *fulcra* and only bigger and more influential political aggregations are capable of solving transnational issues. Member-states are slowly becoming aware that the economic and legal welfare of their citizens and limited jurisdiction may pass through the great good of the European community.

D. *The Opportunities of the Sovereign Bond Market.*

History of default has an impact on lowering credit ratings, but not in the long term.¹⁴⁴ After restructuring, emerging economies are able to regain access to international credit quite quickly¹⁴⁵

The overall effect of default is short lived and emerging markets in default are able to reissue new bonds after two years, and, in certain cases, after three and a half months.¹⁴⁶ Provided that there is a serious effort to follow the restructuring plan as specified by the restructuring institutions,¹⁴⁷ emerging markets represent an unlimited and renewable source of profits.¹⁴⁸ As far as bonds issued by private financial institutions, governments do not have an obligation to list them in their financial documentation.¹⁴⁹ Taxpayers of a particular jurisdiction are unaware of the debts of their government and will continue to pay taxes for the repayment of these kinds of debts with their taxes, until the legal system imposes some transparency or political accountability.¹⁵⁰

Plainly stated, investors do not punish governments with a prior default history.¹⁵¹ This shows the close and unique link existing between

143. Benedict Kingsbury, *Sovereignty and Inequality*, 9 EUROPEAN JOURNAL OF INTERNATIONAL LAW 599, 600 (1998). See also Paul Schiff Berman, *The Globalization of Jurisdiction*, 151 U. PA. L. REV. 311 (2002).

144. Reinhart, *supra* note 119.

145. During the 1980's the average time was 4 years.

146. R. Gaston Gelos, Ratna Sahay & Guido Sandleris, *Sovereign Borrowing by Developing Countries: What Determines Market Access?* (IMF Working Paper No. WP/04/221, 2004), available at <http://www.imf.org/external/np/res/seminars/2003/lic/pdf/gg.pdf>; Borenzstein, *supra* note 6.

147. Generally, the IMF, the World Bank, and the Club de Paris. See *The Five Key Principles*, CLUB DE PARIS, <http://www.clubdeparis.org/sections/composition/principes/cinq-grands-principes> (last visited March 2012).

148. If and when, due the lack of complete financial data on sovereignties, sovereign default risk, sovereign restructuring, and recovery values are rightly assessed. Andritzky, *supra* note 9 at 5.

149. *Id.*

150. See *infra*.

151. Peter H. Lindert & Peter J. Morton, *How Sovereign Debt Has Worked*, DEVELOPING COUNTRY DEBT AND THE WORLD 225-36 (Jeffrey D. Sachs ed., 1989).

creditors and debtors in this field. It is a “betting game” with some possibility of default. Economists also showed that emerging markets with well managed economies and banks with good balance sheets have suffered no crises.¹⁵²

Is the market of sovereign bond ultimately profitable for investors and useful for emerging market sovereigns? Even if emerging markets suffered from “sudden stops” and “capital flight” risks, from a historical perspective, they learned how to interact with foreign investors and the international market in a more profitable and reassuring way.¹⁵³ Today’s emerging economies are able to return quickly on the international market because they learned the way to manage imbalances and control shocks with the use of the following recipe: (1) enhanced monetary reserves; (2) high growth prospect; and (3) improved macro stability.¹⁵⁴ There is a current pull of capital from developed economies into the emerging economies when there are signs of rebalancing and augmented reserve stocks.¹⁵⁵

This new pull of capital reveals the emerging market appreciation of investors with no memory or interest in “betting” with a calculated risk. Ultimately, after the 1970s, international investors are still attracted by government bonds because, despite significant and partial defaults, they are able to obtain significant returns over domestic investments, provided that a restructuring plan is readily introduced and implemented.¹⁵⁶

152. Even though they suffer from slow growth, high interest rates, and currency depreciation, like Hong Kong, Singapore, and Argentina. Rudi Dornbush, *A Primer on Emerging Market Crises 7* (NBER Working Paper No. 8326, 2001), available at <http://cdi.mecon.gov.ar/biblio/docelec/nber/w8326.pdf>.

153. Alan M. Taylor, Professor of Economics, University of California, Davis, *Global Finance After the Crisis*, John Flemming Memorial Lecture at Bank of England (Oct. 12, 2010), in *QUARTERLY BULLETIN Q4* (2010) at 373.

154. *Id.*

155. *Id.* at 375; See also *World Economic Outlook, April 2011*, INT’L MONETARY FUND, <http://www.imf.org/external/pubs/ft/weo/2011/01/pdf/text.pdf> (last visited April 2012). For the perspective from the investment bank, see Frontline, *supra* note 119 (insight of the financial input).

156. Lindert, *supra* note 151 at 234.

TABLE 2

Country	1501 – 1800		1801 – 1900		Total defaults
	Number of Defaults	Years of default	Number of defaults	Years of default	
Spain	6	1557, 1575, 1596, 1607, 1627, 1647	7	1820, 1831, 1834, 1851, 1867, 1872, 1882	13
France	8	1558, 1624, 1648, 1661, 1701, 1715, 1770, 1788	n.a.	8	
Portugal	1	1560	5	1837, 1841, 1845, 1852, 1890	6
Germany (Westfalia, Hesse, Sleswig-Holstein)	1	1683	5	1807, 1812, 1813, 1814, 1851	6
Austria	n.a.	n.a.	5	1802, 1805, 1811, 1816, 1868	5
Greece	n.a.	n.a.	4	1826, 1843, 1860, 1893	4
Bulgaria	n.a.	n.a.	2	1886, 1891	2
Holland	n.a.	n.a.	1	1814	1
Russia	n.a.	n.a.	1	1839	1
Total	16		30		46

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157. Eduardo Borensztein and Ugo Panizza, *The Costs of Sovereign Default*, IMF Working Paper (Oct. 2008), <http://www.imf.org/external/pubs/ft/wp/2008/wp08238.pdf>.

TABLE 3

Default or Restructuring Clusters – 1824 – 2004							
Country	1824–1834	1867–1882	1890–1900	1911–1921	1931–1940	1976–1989	1998–2004
Austria		1868		1914			
Bulgaria				1915	1932		
Greece	1824		1893				
Germany					1932		
Hungary					1931		
Italy					1940		
Moldova							2002
Poland					1936	1981	
Portugal	1834		1892				
Romania				1915	1933	1981	
Russia				1917			1998
Serbia/ Yugoslavia			1895		1933	1983	
Spain	1831	1867, 1882					
Turkey		1876		1915	1940	1978	
Ukraine							2000

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TABLE 4¹⁵⁹

CORRUPTION PRICELIST 2011				
		Type of Service	From	Up to
PUBLIC SECTOR	PUBLIC HOSPITALS	Procedure/Surgery	€100	€30.000
		Speeding up of case	€30	€20.000
	TAX OFFICES	Arrangement for financial records audit	€100	€20.000
		Issuing of documents	€15	€1.000
	LICENSE CONSTRUCTION BODIES	Issuing of a construction licence	€200	€8.000
		Settlement of illegal building	€200	€5.000
PRIVATE SECTOR	HEALTH SERVICES (HOSPITALS, CLINICS)	Procedure/Surgery	€150	€7.000
		Medical tests	€30	€500
	VEHICLES	VTCC inspection	€20	€100
		Driver's License	€40	€500

158. *Id.*159. *Sovereign Defaults and Rating Transition Data, 2010 Update*, Standard & Poor (Feb. 23, 2011), <http://www.standardandpoors.com/ratings/articles/en/us/?assetID=1245302231824>.

III. PART II

A. *Obstacles and Opportunities. Political, Legal, and Cultural Issues: Tax Evasion, Corruption and Excessive Public Spending.*

The aim of this paper is to generate awareness about the existence of multiple crises interacting with each other that have a cyclical and inevitable recurrence. At least within Southern Europe, economic crises do not come in isolation but interact at various levels with other crises.¹⁶⁰ The solution must be the result of a coordinated multilevel effort.

Despite the fact that economic solutions are able to resolve economic crises quickly, in the long run, political and cultural factors create severe impairment and are able to put the same system that recovered back at risk, as it will be showed shortly. The interactions of the cultural, political and legal aspects with the economic and financial crises determine the vitality of a particular jurisdiction and its international competitive edge.

In other words, is there a cultural recipe capable of affecting the economic or legal aspects of a crisis or recovery? Even though the Eurozone reached a size that required the introduction and implementation of clear policies and managing rules, the majority of member-states are still culturally focused within their geographical boundaries.¹⁶¹

The objective of this second part is to show that European citizens still lack a deep sense of belonging to a bigger European community, EU member-states did not surrender fundamental powers to the European institutions, and the diversity and richness of European society is still an obstacle to harmonization and integration.

In Part I of this paper, the Greek crisis was analyzed from an economic perspective. However, the Greek and Euro crises were not a simple problem of economic mismanagement, but a political mismanagement due to a cultural factor intertwined within it.¹⁶² The political features or pathologies existing in the leaderships of certain European member-states have had certain detrimental effects.¹⁶³ Member-states

160. See *infra* note 158.

161. *Too Late for the Euro?*, COLUMBIA MAGAZINE 16 (Winter 2011-12).

162. See Takis S. Pappas, *The Causes of the Greek Crisis are in Greek Politics*, OPENDEMOCRACY (Nov. 29, 2010), <http://www.opendemocracy.net/openconomy/takis-s-pappas/causes-of-greek-crisis-are-in-greek-politics> (Explaining the history and development of the Greek democracy after the dictatorship period, and the rise of the populism, patronage politics, and a culture of ethnocentrism hostile to the Europeanization).

163. Costantinos Koliopoulos, *The Shape of the ESDP and the Transatlantic Link: Consequences for International Order*, in INTERNATIONAL ORDER IN A GLOBALIZED WORLD 121, 126 (Yannis Stivactis ed., 2007).

in Europe are different, thus, it is not only necessary to continue to devise rules from EU institutions, but single states must develop specific rules to adjust to the need of the enlarged legal and economic environment. The legislation of the single member-states is not an excuse to have them going adrift. Each member-state must be aware that, as a member of a bigger community, it is capable of contributing to the success, and failure, of the entire community as well as of other European citizens.

Among the many issues, EU member-states still have great power to negatively affect other states but bear small liabilities before EU institutions.¹⁶⁴ EJC economic sanctions have little impact, and European citizens have not been given a sense of responsibility about the political and cultural choices of their leaders.¹⁶⁵ Ultimately, political leaders, as well as political parties, are able to create and adopt policies without sharing any liability, not even the liability to act as an ordinary prudent person in protecting the interests of his or her citizens.

Greece entered into Europe with a culture rooted in populism and clientelism.¹⁶⁶ Italy never abandoned the dominant business cultures of nepotism, cronyism, and favoritism.¹⁶⁷ Spain deals with similar issues.¹⁶⁸

In Greece, the “political” causes of the crisis are due to the manipulation of the state and its resources, corruption, tax evasion, uncontrolled public spending, and the backing of the state by a strong patronage politics.¹⁶⁹

164. Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Material* 31 (2011).

165. *Id.*

166. Sappho Xenakis and Leonidas K. Cheliotis, *The Politics of Crime and the Financial Crisis in Greece*, *OPENDEMOCRACY* (Aug. 2, 2012), available at <http://www.opendemocracy.net/sappho-xenakis-leonidas-kcheliotis/politics-of-crime-and-financial-crisis-in-greece>; Anthony Barnett and Mary Kaldor, *Can Greece Lead the Way?*, *OPENDEMOCRACY* (November 9, 2009), <http://www.opendemocracy.net/anthony-barnett-mary-kaldor/can-greece-lead-way>; Pappas, *supra* note 159.

167. Max Fisher, *If Italian Corruption Were Its Own Country, It Would Be The World's 76th Largest Economy*, *THE WASHINGTON POST* (Oct. 18, 2012), available at <http://www.washingtonpost.com/blogs/worldviews/wp/2012/10/18/if-italian-corruption-were-its-own-country-it-would-be-the-worlds-76th-largest-economy/>; Anthony Faiola, *Amid Crisis, Italy Confronts a Culture of Tax Evasion*, *THE WASHINGTON POST* (Nov. 24, 2011), available at http://www.washingtonpost.com/world/amid-crisis-italy-confronts-a-culture-of-tax-evasion/2011/11/22/gIQAc4JtN_story.html.

168. Giles Tremlett, *Spain's Savings Banks' Culture of Greed, Cronyism and Political Meddling*, *THE GUARDIAN* (June 8, 2012), available at <http://www.guardian.co.uk/world/2012/jun/08/spain-savings-banks-corruption>.

169. Pappas, *supra* note 159. (Namely the state was providing jobs and social benefits primarily to members or acquaintances of the PASOK party, that remained at the helm of Greece during the 80's, part of the 90's and the first part of 2000); See also Sappho Xenakis & Leonidas K. Cheliotis, *The Politics of Crime and the Financial Crisis in Greece*, *OPENDEMOCRACY* (Aug. 2, 2012), <http://www.opendemocracy.net/sappho-xenakis-leonidas-kcheliotis/politics-of>

The leader of the PASOK party, Papandreou, promoted the expansion of Greece through the manipulation of the state resources and with an insufficient tax basis able to fund such expansion.¹⁷⁰ In addition, political leaders used the fear of new waves of immigrants and the lack of power of European institutions as negative aspects to instill an ultra-nationalistic and xenophobic sentiment in the population.¹⁷¹ This happened in Italy as well.¹⁷² Papandreou abandoned fiscal discipline and introduced pay raises to public employees, an unprecedented increase in employment in the public sector, universal health care, pension and other social security benefits.¹⁷³

Taxation was not sufficient to cover the expenses and the recourse to foreign borrowing was necessary.¹⁷⁴ The Greek tax base remained small when compared to other European member states, and tax evasion was endemic.¹⁷⁵ In November 2011, the European Commission estimated Euro 60 billion of unpaid taxes, half of which are presently being debated before a court of justice. The average length of time to litigate a case before the trial civil court is two to four years.¹⁷⁶ One third of the Greek GDP is lost due to tax evasion,¹⁷⁷ and there are doubts that the country is able to amend itself from the crisis, clear evidence that the cultural component of the financial crisis is

crime-and-financial-crisis-in-greece; See also Anthony Barnett & Mary Kaldor, *Can Greece Lead the Way?*, OPENDEMOCRACY (Nov. 9, 2009), <http://www.opendemocracy.net/anthony-barnett-mary-kaldor/can-greece-lead-way>.

170. Xenakis, *supra* note 166; See also Takis Pappas, *The Extinctions of the Greek Dinosaurs?*, OPENDEMOCRACY (May 11, 2012), <http://www.opendemocracy.net/takis-s-pappas/extinction-of-greek-dinosaurs>; See also Pappas, *supra* note 159.

171. Xenakis, *supra* note 166; See also Pappas, *supra* note 167.; See also Pappas, *supra* note 159.

172. BARBARA FAEDDA, *EMOZIONI E PAURE. COME LA POLITICA UTILIZZA L'ALTRO, IN POLITICA ED EMOZIONI NELLA STORIA D'ITALIA DAL 1948 AD OGGI* 101 (Penelope Morris et al., eds., Viella, Roma: 2012).

173. Pappas, *supra* note 159.

174. *Id.*

175. See *infra* note 185.

176. DIMITRIS EMVALOMENOS & CHRISTOS GRAMATIDIS, *QUESTIONNAIRE ON GREECE, FUNDING, COSTS, AND PROPORTIONALITY IN CIVIL JUSTICE SYS.* (Univ. Of Oxford Mar. 6, 2009), available at <http://www.google.com/url?sa=t&rct=J&q=&esrc=s&frm=1&source=web&cd=12&ved=0CC0QFjABOAO&url=http%3A%2F%2Fwww.csls.ox.ac.uk%2Fdocuments%2FGREECE.doc&ei=-XeAT-r0OafZ0QHxz8z1Bw&usg=AFQjCNH4N5lxULd1xzcZ24kXlPjZhhaNmA&sig2=xzyikkqZwZ8WlyuscVhuLA>.

177. James Surowiecki, *Dodge Mania*, NEW YORKER (July 11, 2011), http://www.newyorker.com/talk/financial/2011/07/11/110711ta_talk_surowiecki.

profound.¹⁷⁸ Tax enforcement is causing a deep friction and fracture of the social fabric.¹⁷⁹

Political leaders in Greece, Spain, and Italy always preferred the political clientele and the certainty of remaining in charge, rather than introduce strict fiscal discipline. For some governments, there was not even a dilemma in this sense.¹⁸⁰ In Italy for example, over the last 20 years, political parties of every color reinforced a culture based on fear of immigrants, xenophobic sentiments, idolatry of hedonism, and indifference, if not reward, for poor ethical behavior.¹⁸¹ A soaring debt, the abuse of public money for personal and political interests, endemic tax evasion, widespread corruption, and indifference for the public good have been instilled in the cultural fabric of Italians as winning cultural features of a new Italian lifestyle.¹⁸² Unfortunately, they have simply replaced the values that the European Union had put on the paper but never implemented.¹⁸³

Political patronage has always been a common feature of countries like Greece, Spain, and Italy.¹⁸⁴ In Greece, political constituents looked for favors, jobs, and money from their political representatives, and for them, doing a favor was the guarantee of certain re-election.¹⁸⁵ Political patronage was evident in Italy: the Parliament has been often used to introduce *ad hoc* legislation to favor candidates,

178. Dimitri Bellas et al. IMF WORKING PAPER, WP/10/281, DETERMINANTS OF EMERGING MKTS. SOVEREIGN BOND SPREADS: FUNDAMENTAL VS FIN. STRESS (2010).

179. Jabeen Bhatti et. al., *Tax Evaders in Greece, Spain and Italy Better Beware*, USA TODAY (Jan. 31, 2012), <http://www.usatoday.com/news/world/story/2012-01-29/tax-evaders-greece-spain-italy/52822942/1>.

180. Pappas, *supra* note 159.

181. *Silvio Berlusconi News*, TIMES TOPICS, N.Y. TIMES (Feb. 12, 2011), http://topics.nytimes.com/top/reference/timestopics/people/b/silvio_berlusconi/index.html?scp=2&sq=italy%20europe%20berlusconi&st=cse#.

182. *Le Finanze Allegre della Lega*, L'ESPRESSO (Apr. 6, 2012), <http://espresso.repubblica.it/dettaglio/le-finanze-allegre-della-lega/2178070>.

183. *Id.*

184. Rachel Donadio, *Corruption Is Seen as a Drain on Italy's South*, EUROPE, N.Y. TIMES (Oct. 7, 2012), http://www.nytimes.com/2012/10/08/world/europe/in-italy-calabria-is-drained-by-corruption.html?pagewanted=all&_r=0; See Corrado Zunino, *Rise del Terremoto all'Acquila, ora racconta "Io Dissanguato dale Tangenti per il Palazzo"*, LA REPUBBLICA, (Oct. 20, 2012), http://www.repubblica.it/politica/2012/10/20/news/piscicelli_politici_aquila-44898892/?ref=HREC1-3 (To understand the deep level of corruption re-characterized as business in Italy with interviews to politicians and entrepreneurs currently in jail); See J. A. PITT-RIVERS, *THE PEOPLE OF THE SIERRA* (Chi. Press, 1961) (For an academic view); See also EDWARD MALEFAKIS, *THE POLITICAL AND SOCIO-ECONOMIC CONTOURS OF SOUTHERN EUROPEAN HISTORY, IN THE POLITICS AND DEMOCRATIC CONSOLIDATION: SOUTHERN EUROPE IN COMPARATIVE PERSPECTIVE* (R. Gunther et al. eds., Hopkins Univ. Press 1995); See also HANS DAALDER, *PARTIES, ELITES AND POLITICAL DEVELOPMENTS IN WESTERN EUROPE, IN POLITICAL PARTIES AND POLITICAL DEVELOPMENT* (J. La Palombara & M. Weiner eds., Princeton Univ. Press, 1966).

185. Julia Amalia Hayer, *Corruption Continues Virtually Unchecked in Greece*, DER SPIEGEL (Oct. 16, 2012), <http://www.spiegel.de/international/europe/corruption-continues-virtually-unchecked-in-greece-a-861327.html>.

corporations, associations, political parties, or political leaders.¹⁸⁶ Italian politics produces 700,000 people that make their living off of the patronage system.¹⁸⁷ In Spain, cronyism and nepotism are widespread at national and local levels.¹⁸⁸ Fifteen million Italians reported no taxable income in 2011, but three million of them own at least three homes.¹⁸⁹ Italian taxpayers reporting incomes of less than \$26,000 owned 188,000 Ferraris and Lamborghinis, more than 500 private airplanes, and about 42,000 yachts.¹⁹⁰ In Italy, public money has been widely used for personal purposes, from paying the education of political leaders' children, to satisfying their sexual entertainment.¹⁹¹ Italians viewed this new trend as an ideal model because, in their view, the creation of a debt today is not their problem but simply one to be solved by future generations.¹⁹²

Excessive public spending has been recently documented by the 2008 Audit European Parliament Report even within the European Union with the fraudulent practice of hiring family members.¹⁹³

Corruption is not only more documented and well rooted in all Southern and Eastern European countries, but it is also a costly phenomenon.¹⁹⁴

In Greece, Transparency International created a *menu* with the prices of corruptible services:¹⁹⁵

186. Donatella Della Porta & Alberto Vannucci, *CORRUPT EXCHANGES, ACTORS, RESOURCES, AND MECHANISM OF POLITICAL CORRUPTION* (N.Y., Aldine De Gruyter 1999).

187. Sergio Rizzo & Gian Antonio Stella, *LA CASTA: COSÌ I POLITICI ITALIANI SONO DIVENTATI INTOCCABILI* (Milano, Italy: Rizzoli 2007); Miriam A. Golden, *Electoral Connections: The Effects of the Personal Vote on Political Patronage, Bureaucracy, and Legislation in Postwar Italy*, 33 *BRIT. J. OF POL. SCI.* 2, 189-212 (2003).

188. Maelbeek Valley, *Communication, Corruption, Nepotism and Politics* (June 25, 2011), <http://josepsolano.wordpress.com/2011/06/25/communication-corruption-nepotism-and-politics/>.

189. Sergio Rizzo & Gian Antonio Stella, *LA CASTA: COSÌ I POLITICI ITALIANI SONO DIVENTATI INTOCCABILI*. (Milano, Italy: Rizzoli 2007).

190. Valentina Conte, *Quindici Milioni Dichiarano Zero Scatteranno i Controlli Sui Conti*, *LA REPUBBLICA* (Dec. 11, 2011), http://www.repubblica.it/economia/2011/12/19/news/fisco_caccia_evasori-26847517/.

191. Adriano Botta, *Papi Girls, La Rabbia di Terry*, *L'ESPRESSO* (Aug. 3, 2010), <http://espresso.repubblica.it/dettaglio/papi-girls-la-rabbia-di-terry/2131831/>; See also Rachel Donadio, *Bossi Quits as Head of the Italian Northern League*, *EUROPE, N.Y. TIMES* (Apr. 5, 2012), http://www.nytimes.com/2012/04/06/world/europe/bossi-quits-as-head-of-italys-northern-league.html?_r=1&scp=1&sq=italy%20europe%20berlusconi&st=cse.

192. BANK OF INT'L SETTLEMENTS, *BIS PAPER NO.65, THREAT OF FISCAL DOMINANCE?* (May 1, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2078895.

193. INTERNAL AUDIT REPORT NO. 06/02 TO THE EP INST., *AUDIT OF THE PARLIAMENTARY ASSISTANCE ALLOWANCE* (Jan. 9, 2009), available at [http://www.europarl.europa.eu/RegData/publications/2006/0002/EP-PE_ADT\(2006\)0002_EN.pdf](http://www.europarl.europa.eu/RegData/publications/2006/0002/EP-PE_ADT(2006)0002_EN.pdf); See also Justin Stares, *British MEPs Forced to Stop Employing Family Members because of Fraud*, *MAIL.ONLINE* (May 21, 2008), <http://www.dailymail.co.uk/news/article-1020987/British-MEPs-forced-stop-employing-family-members-fraud.html>.

194. See *infra* note 206.

195. Transparency International, *Greece: The Cost of a Bribe* (Apr. 3, 2012), http://www.transparency.org/news/feature/greece_the_cost_of_a_bribe.

TABLE 5

CORRUPTION PRICELIST 2011				
		Type of Service	From	Up to
PUBLIC SECTOR	PUBLIC HOSPITALS	Procedure/Surgery	€100	€30.000
		Speeding up of case	€30	€20.000
	TAX OFFICES	Arrangement for financial records audit	€100	€20.000
		Issuing of documents	€15	€1.000
	LICENSE CONSTRUCTION BODIES	Issuing of a construction licence	€200	€8.000
		Settlement of illegal building	€200	€5.000
PRIVATE SECTOR	HEALTH SERVICES (HOSPITALS, CLINICS)	Procedure/Surgery	€150	€7.000
		Medical tests	€30	€500
	VEHICLES	VTCC inspection	€20	€100
		Driver's License	€40	€500

Source: Transparency International (2012)

In the ranking of 183 countries prepared by Transparency International on the basis of the Corruption Perception Index (CPI), where 1 is the worst, 10 is the best:

Greece has been ranked 80th with a CPI of 3.4 out of 10 (sharing the place with Colombia, El Salvador, Morocco, Peru, and Thailand);

Italy holds 69th place with a CPI of 3.9/10 (sharing the place with Ghana, Macedonia, and Samoa);

Portugal is at 32nd place with CPI of 6.1/10;

Spain ranks 31st with a CPI of 6.2/10 (between Cyprus and Botswana).¹⁹⁶

In 2009, the cost of corruption in Italy was Euro 25,000 per person.¹⁹⁷ The Italian Parliament started the political discussion of an anti-corruption bill in 2010.¹⁹⁸ It is currently blocked in the Senate.¹⁹⁹ The Department of Interior prepared a report of the state of the internal corruption that shows that the level of corruption within the ad-

196. Transparency Int'l, GLOBAL CORRUPTION REPORT 2009, CORRUPTION AND THE PRIVATE SECTOR (Dieter Zinnbauer et al., eds., Cambridge Univ. Press 2009), available at http://www.transparency.org/whatwedo/pub/global_corruption_report_2009.

197. Giuseppe d'Avanzo, *La Corruzione Costa 25mila Euro a Testa Ma in Italia Non è Un Reato Grave*, LA REPUBBLICA (Nov. 18, 2009), <http://www.repubblica.it/2009/11/sezioni/politica/giustizia-17/corruzione-costi/corruzione-costi.html>.

198. See *infra* note 210.

199. Liana Miella, *Il Muro Invalicabile del PdL contro la Legge Anticorruzione*, LA REPUBBLICA (Mar. 7, 2012), http://www.repubblica.it/politica/2012/03/07/news/il_muro_invalicabile_del_pdl_contro_la_legge_anticorruzione-31152035/.

ministrative and executive power is not only the norm but also favored.²⁰⁰ Corruption is out of control in Spain as well.²⁰¹

The results of exaggerated spending have become pieces of modern architectural art (“ruins of super-modernity generated by the enthusiastic liberalism”²⁰²) via an artistic observatory created and located in Italy. Working as a cultural center rather than a watchdog, the observatory counts approximately 400 public buildings (“cathedrals in the desert”) started and unfinished with documented collusions between the state, political parties, and criminal organizations.²⁰³

B. *Legal Considerations*

The cultural aspect of an economic crisis has a profound impact. It is certainly true that an understanding of the legal and cultural aspects of a society facilitates the resolution of a particular economic crisis.²⁰⁴ However, a shift in the cultural or legal fabric of a community takes time, and the law itself is not a sufficient correcting tool because the law adapts to the change of the society at a slower pace. An economic crisis cannot be simply solved with economic tools. There is the need of a coordinating effort with the awareness of the different healing time of each issue.

There are at least two levels of interactions of legal issues: supranational and domestic.

The supranational legal issue: the European Union is still politically weak. Rather than being a supranational or intergovernmental entity, the EU should transform itself into a federation of European states. The new EU Regulation on short-selling is the first step in reducing the overreaching power of member-state sovereignties. More importantly, the EU institutions should be able to implement the provisions of the ToL and instill a sense of responsibility and belonging in the citizens of Europe. Member-states must transparently communicate their investment plans and their spending policy to the EU institutions in order to obtain, not only their prior approval, but also to share responsibility. Finally, there should be discussion to think about the

200. MINISTERO DELLA GIUSTIZIA: PERCORSI CHIARI E PRECISI, UN TUO DIRITTO, RAPPORTO GRECO VALUTAZIONE ITALIA-2009, GRECO EVAL I/II R.E.P. (2008) 2E PRIMA E SI CONDA SERIE DI VALUTAZIONE CONGIUNTA RAPPORTO DI VALUTAZIONE SULL'ITALIA ADOTTATO DAL GRECO ALLA SUA 43° RIUNIONE PLENARIA (June 29-July 3, 2009), (July 2, 2009), <http://www.giustizia.it/giustizia/>

201. Charlemagne, *Why Spain is so Corrupt?*, *Economist* (Mar. 27, 2009), http://www.economist.com/blogs/charlemagne/2009/03/why_is_spain_so_corrupt.

202. Translation by the author of a portion of the presentation of the “Incompiuto Siciliano” website, available at <http://www.incompiutosiciliano.org/incompiuto-siciliano>.

203. Incompiuto Siciliano, *Osservatorio Partecipato sul Fenomeno delle Opere Incompiute*, <http://www.incompiutosiciliano.org/opere/elenco> (last visited Apr. 2012).

204. See discussion *infra* p. 30.

possibility to consider European, as well national, political leaders accountable for their operations within domestic and European court systems.

In addition, the lack of implementing European rules adopted by the EU institutions, (e.g., Commission, Council and Parliament), should trigger not only economic sanctions but the risk of being excluded from the Union. If there is no sense of belonging in the citizens (the base), an economic union has a limited duration.

At the member-states' level, there is still *little awareness* that the GIIPS crisis had an impact on other European jurisdictions, as well citizens' welfare.²⁰⁵ European citizens are unaware that bad policy decisions adopted in a remote corner of Europe have economic and financial consequences on the entire Union.²⁰⁶ And if used the wrong way, such awareness can exacerbate divisions, inequalities, and ultra-nationalistic approaches.

This is a symptom of lack of social cohesion and identification with a bigger and wider European cultural dimension.²⁰⁷ Member states still refuse to give their and other European citizens a sense of equality and commonality.²⁰⁸ There still is a fundamental lack of socio-economic security and aspirations for Europe, as well as bonds and bridges and moral values as cultural foundations.²⁰⁹

In this regard, at the supranational level, what is the role of the law? When issuing international bonds, European member-states or European emerging markets have been more sensitive to unwritten international sanctions like the risks of losing global credibility, standing within the internal EU market, financial reputation, and global economic/political rank.²¹⁰ However, there is more. Within the supranational legal environment, countries and EU member-states have created rules favoring the rapid restructuring process of countries in default.²¹¹ Certainly these are signs of the weakening of the Westpha-

205. See discussion *supra* Part I.

206. See *supra* note 97 and accompanying text.

207. See *supra* note 97 and accompanying text.

208. See *supra* note 149 and accompanying text.

209. THE AMSTERDAM PROCESS, EXPLORING THE CULTURAL CHALLENGES TO SOCIAL DEMOCRACY, ANTI-IMMIGRATION POPULISM, IDENTITY, AND COMMUNITY IN THE AGE OF INSECURITY 5 (Michael McTernan, ed., 2011).

210. Economists accounted for the following costs associated international sovereign default: reputational costs; international trade exclusion cost; cost to domestic economy through the financial system; political cost. Michael Dooley, *supra* note 10 at 362, 361-377; See also Borensztein, *supra* note 6 at 3.

211. See generally Dimitri Papadimitriou, *The Achille's Heal of the Eurozone*, LA TIMES (Nov. 2, 2011), available at <http://articles.latimes.com/2011/nov/02/opinion/la-oe-papadimitriou-eurozone-20111102>.

lian concept of state. Private entities cannot count on such a safety net.²¹²

The domestic legal issue: The international borrowing of government works even without a strict framework of rules because countries, and emerging markets in particular, want to remain able to borrow in the future. The key issue is to have a restructuring procedure that is rapid and efficient. In this respect, the creation of a set of rules guaranteeing a rapid solution of the economic crisis could be a real advantage. But government officials are not responsible for moral hazard behaviors.²¹³ They may be nominally liable before the international market, but internally do not currently suffer of any legal, cultural or economic consequence. Is there the possibility at least to apply the business judgment rule to political decisions that affect the lives of hundreds of thousands of taxpayers? These and similar issues need to be explored thoroughly.

Ultimately, an international set of rules for quick restructuring works as an anti-competition tool for keeping non-efficient countries, borrowing at the expense of foreign investors and generating unwanted risks for foreign banks (and for regional economic aggregates like the EU), afloat in the international market. The restructuring process works as an oligopoly cartel: as long as the cultural, legal and political crises are not solved, there will always be economic cyclical crises. The introduction of new values and new cultural trends take time: decades if not generations. And the concept of sovereignty must be redefined. A common market calls for appropriate legal instruments, and these tools are still in the process of being built.

IV. CONCLUSION

Is the concept of sovereignty the new phoenix? According to mythology, the golden bird has a lifecycle of 500 years. At the end of its life, it builds a nest with twigs on top of a palm tree surrounded by odoriferous elements like myrrh, cinnamon, and spikenard. It burns, dies, and rebirths.²¹⁴ A new golden bird (and a new state) emerges with the same characteristics.²¹⁵ The Westphalian concept of sovereignty will celebrate 500 years in 2148 A.D.²¹⁶

212. Borensztein, *supra* note 6, at 3; Dooley, *supra* note 10, at 369; DePaoli, *infra* note 241 and accompanying text, at 297.

213. Jeff Frankels, *Could Eurobonds Help Solve the Euro Crisis?*, JEFF FRANKELS WE BLOGS (June 19, 2012), http://content.ksg.harvard.edu/blog/jeff_frankels_weblog/2012/06/19/might-eurobonds-be-the-answer-to-the-euro-crisis/.

214. HERODOTUS, *THE HISTORIES* 123 (Robin Waterfield trans., Oxford Univ. Press 1998).

215. *Id.*

216. *Id.*

A borrowing sovereign is able to honor its bonds when it has at least (1) a strong economy, (2) a stable currency and fiscal policy, (3) a manageable debt, (4) low level of tax evasion, (5) a stable political leadership, and (6) a positive demographic.²¹⁷ If points (1), (2), and (3) can be economically managed, points (4), (5), and (6) have a profound legal and cultural components that require different solving skills.²¹⁸

According to some sociologists, crisis prevention is not possible.²¹⁹ During times of crisis, politicians claim that the state has the competence and ability to manage economic problems accurately.²²⁰ This is so because the population expects that the state or government will solve problems because of the traditional Hobbes' principle *pro protection oboedientia*.²²¹ The state protects its citizens provided that they pay taxes.²²² Problems arise when the state ceases to protect and the citizens feel less obligated to obey.²²³ A shift and possible decay in cultural values could be the end result.²²⁴ Some have suggested that economists are not able to predict an economic crisis.²²⁵

A coordinated solution must tackle these economic, political, legal, and cultural crises, generating multilevel awareness, methodological solutions and plans. An economic crisis can be resolved quickly, but the other crises heal at a different speed.²²⁶ Any solution or plan must consider this healing time/speed difference. An economic or legal solution takes less time to apply and produce effects than a political or a cultural one. For example: a legal solution, like a guilty plea or a judicial order, takes a short time to be decided and implemented; a cultural or political change takes more than one generation, such as the American revolution. A cultural solution may, once introduced, take more than one generation to show some benefit. Therefore, an efficient economic and legal restructuring may favor the comeback of investors in the short term, but the cultural and political crises are capable of disrupting its resolution in the long run and producing a new economic default.

217. Joseph E. Stiglitz, *THE PRICE OF INEQUALITY: HOW TODAY'S DIVIDED SOCIETY ENDANGERS OUR FUTURE*, 73, 138, 168, 240, (2012).

218. *Id.*

219. David R. Wenger, *Der ohnmächtige Staat: Zwischen Selbstbehauptungsstrategien und Steuerungssillusionen Bemerkungen anlässlich der Finanzkrise [The Impotent State: Between Self-Assertion Strategies and Illusions of Control]*, ANCHILIA IURIS (2009) ; See generally Dooley, *supra* note 10.

220. Wenger, *supra* note 230 at 2, 11.

221. See *supra* note 7 and accompanying text.

222. See *supra* note 7 and accompanying text.

223. See *supra* note 7 and accompanying text.

224. See *supra* note 7 and accompanying text.

225. See *supra* note 7 and accompanying text.

226. See discussion *infra* p. 32.

The lack of a harmonized EU fiscal policy showed the unbalanced nature of the EU system. The decision to borrow on the foreign market pertained not only to Greek authorities but the deficit influenced the EU institutions, European institutions, and all EU citizens. Political instability, corruption, tax evasion and budget deficits influenced GIIPS's creditworthiness and determined the failure of its repayment capabilities.

As anticipated at the outset, history showed that the government capability to repay its obligations is influenced by several factors, not only economic but political, legal, and socio-cultural in general.²²⁷ However, adding these factors when calculating a country's credit-risk is complex.

Indeed, due to the EU democratic deficit, the Greek economy reflects the isolation of the European institutions and their inability to influence the Greek economic political leadership and policy determinations.²²⁸ As a matter of fact, EU institutions had to take a cost/benefit solution in considering whether it was *still* economically convenient to isolate Greece, or put it in quarantine as the debate developed,²²⁹ and cut it out it from the bond market.²³⁰

However, the attempt to solve the cultural issues within GIIPS has never been raised and this is a missed opportunity. European banks should be aware of the cultural and political obstacles when lending to member-states, unless they now feel empowered and reinsured by the restructuring process.

227. Steven A. Block & Paul A. Valeer, *The Price of Democracy: Sovereign Risk Ratings, Bond Spread, and Political Business Cycles in Developing Countries*, 23 J INT'L MONEY & FIN. 917, (2004) (discussing the influence of election cycles on market-participants).

228. Times Topics, *European Union*, NY TIMES, Oct. 23, 2012, http://topics.nytimes.com/top/reference/timestopics/organizations/e/european_union/index.html.

229. J. Robert Smith, *The Issue Come November 2012*, THE AMERICAN THINKER (Nov. 4, 2011), http://www.americanthinker.com/2011/11/the_issue_come_november_2012.html; See also Papadimitriou *supra* note 222.

230. As happened in the past with other defaulting countries like Russia, Ecuador, and Argentina. Paoli, *supra* note 55.