FLYING TOO CLOSE TO THE SUN: HOW AN EMU EXPULSION PROVISION WILL PREVENT THE EUROPEAN SOVEREIGN DEBT CRISIS FROM BECOMING A MODERN DAY GREEK TRAGEDY

*Melissa Gutierrez**

I. INTRODUCTION

There is a Greek myth that tells the tale of Icarus and his father, who flew out of their prison in Crete on wings made of feathers and wax.[1] The story goes that before taking off, Icarus's

* Melissa Gutierrez received her J.D. in May 2013 from the University of Houston Law Center. She received a B.B.A. in Finance and in Marketing from Texas A&M University in 2010. This Comment received the Houston Journal of International Law's

father warned him not to fly too close to either the sun or the sea, but to keep on a straight path.[2] Icarus, giddy with excitement from the sensation of flying, ignored his father's instructions and flew towards the sun.[3] Eventually, after Icarus's wings began to melt and he was no longer able to fly, he fell into the sea and drowned.[4]

Icarus's tale is meant to serve as an example of what becomes of those who succumb to hubris, the fault of pride and overconfidence.[5] And though the myth is ancient, its warnings are still relevant today. Modern Europe, giddy with the influx of economic advantages attained after the creation of its monetary union, could not control its fiscal policy, and flew too close to the proverbial sun.[6] Now, as the wings of economic prosperity and stability are melting away, it must find some way to keep from drowning.[7]

Europe finds itself struggling to maintain its large economy while many of its founding members, namely Greece, Spain, Portugal, and Ireland, are bogged down with massive amounts of debt.[8] The dream of a common currency began when

---

35th Anniversary Award for an Outstanding Comment on a Topic in International Law. The author would like to thank her family, especially her parents Oscar and Sue Gutierrez, for their constant love and support, without which no amount of success would ever be possible. This Comment is dedicated to my grandfather, Dr. Oscar Gutierrez. *Abuelo, no hay palabras que pueden describir el impacto que tuviste en mi vida. Te quiero y te extraño.*

1. Martha Thompson, *Icarus*, ENCYCLOPEDIA MYTHICA, http://www.pantheon.org/articles/i/icarus.html (last updated Jan. 27, 1999).

2. *Id.*

3. *Id.*

4. *Id.*

5. CLASSICAL MYTHOLOGY IN ENGLISH LITERATURE: A CRITICAL ANTHOLOGY 41–42 (Geoffrey Miles ed., 1999).

6. *See* Ludger Schuknecht, Philippe Moutot, Philipp Rother & Jürgen Stark, *The Stability and Growth Pact: Crisis and Reform* 10 (Eur. Cent. Bank, Occasional Paper No. 129, 2011) ("The first nine years of the euro . . . can, in retrospect, probably be best characterised as 'wasted good times' during which the foundations were laid for the present crisis in EMU.").

7. *See id.*

8. Suana Meckeler & David Böcking, *Sniffles in Spain: Euro-Zone Contagion Has Madrid Deeply Worried*, SPIEGEL ONLINE (Nov. 18, 2011), http://www.spiegel.de/international/europe/sniffles-in-spain-euro-zone-contagion-has-madrid-deeply-worried-a-

European leaders attempted to reconstruct the pieces of their war-torn continent and ensure, through economic unity, that such a catastrophe could never happen again.[9] Although this plan has successfully prevented any further military conflicts, it has created economic conflict: all countries in the Eurozone share a common currency and therefore are all economically tied to one another. The collapse of one could pose a disaster for all the others.[10] Greece finds itself facing default yet again, and its numerous bailouts have proven unsuccessful.[11] Other EU Member States, notably Germany and France, have been forced to pour billions of euro into failing Greece, causing their own credit ratings to fall.[12] Despite the bailout, Greece still finds itself unable to meet its upcoming debt obligations.[13] Faced with political backlash at home, some European leaders are now starting to ask whether Greece should be removed from the Eurozone.[14] Currently, the EU framework does not provide for a means of expelling a country from the Eurozone without a concurrent exit from the entire Union.[15] Therefore, an amendment to the Treaty on European Union (TEU) is necessary before any country can be expelled from the monetary

---

798623.html.

9. KAREN DAVIES, UNDERSTANDING EUROPEAN UNION LAW 7 (4th ed. 2011).

10. Larry Eaker, *The Debt Crisis and the Legality of Leaving the Eurozone*, JURIST (Sept. 22, 2011), http://jurist.org/forum/2011/09/larry-eaker-eurozone-exit.php.

11. Irene Chapple & Barry Neild, *Is a Greek Default Inevitable?*, CNN (Oct. 18, 2011), http://edition.cnn.com/2011/BUSINESS/06/21/euro.greece/index.html.

12. Julia Kollewe & Graeme Wearden, *Eurozone Crisis Live: S&P Cuts French Credit Rating on Night of Downgrades*, THE GUARDIAN (Jan. 13, 2012), http://www.guardian.co.uk/business/2012/jan/13/eurozone-crisis-live-markets-italian-bond-sale; Graem Wearden, *Eurozone Crisis Live: Greece 'Off Track'; Germany's Credit Rating Outlook Cut to Negative—as it Happened*, THE GUARDIAN (July 24, 2012), http://www.guardian.co.uk/business/2012/jul/24/eurozone-crisis-germany-moodys-spain-auction.

13. Chapple & Neild, *supra* note 11 (discussing the possibility of Greece defaulting on its debt).

14. Eaker, *supra* note 10; Maud van Gaal, *Dutch Say Better to Remove Greece From Euro Than Extend Loans, Poll Shows*, BLOOMBERG (Aug. 14, 2011, 12:59 PM), http://www.bloomberg.com/news/2011-08-14/netherlands-majority-prefer-removing-greece-from-the-euro-zone-poll-shows.html.

15. Eaker, *supra* note 10; *see* Phoebus Athanassiou, *Withdrawal and Expulsion from the EU and EMU* 27–29, 32 (Eur. Cent. Bank, Legal Working Paper No. 10, 2009) (discussing the implications for withdrawal because of the lack of an exit clause).

union.[16]

This comment argues that an expulsion provision is necessary because of the nature of the national governments, which habitually overspend and accumulate large debt bills.[17] An expulsion provision may be the only way to prevent the debt contagion from spreading across Europe and potentially damaging the viability of the European Monetary Union (EMU) project.[18] Additionally, the provision is still necessary even if the amendment process is too long to solve the Greek crisis. The European Union is continually expanding its borders to include developing economies, and is no longer a conglomeration of similarly built, strong, Western-European nations.[19] The Union now represents the third-largest people group in the world, with an assortment of differing languages, cultures, political views, and religions.[20] This diversity brings additional challenges, especially in the area of fiscal planning.[21] A one-size-fits-all approach to monetary policy is becoming harder to attain, and as a result, there is a higher incidence of violation of the debt thresholds set forth in the treaties.[22] Therefore, it is necessary to include an expulsion provision in the TEU. The failure to do so originally is attributable to the hubris of Europe, which believed that it could create a monetary union that would be all encompassing and infallible.[23] But just as Icarus's hubris eventually caused his death, so will the hubris of the European

16. Eaker, *supra* note 10; *see* Athanassiou, *supra* note 15, at 32–33.

17. Eaker, *supra* note 10.

18. *See id.* ("[T]he amount of Eurozone member state support required to even begin to resolve this sovereign debt debacle is truly staggering and may well exceed the trillion euro mark.").

19. *See The History of the European Union*, EUROPA.EU, http://europa.eu/about-eu/eu-history/index_en.htm (last visited Oct. 24, 2012).

20. *See EMU: A Historical Documentation*, EUROPA.EU, http://ec.europa.eu/economy_finance/emu_history/history/part_a_2_d.htm ("The euro area now not only forms a currency zone for 16 sovereign states in Europe with more than 370 million inhabitants, but also constitutes a "reference area" for many parts in the world . . . .").

21. *See* Herman Van Rompuy, *Towards a Genuine Economic and Monetary Union: Report by President of the European Council*, EUCO 120/12 2 (2012).

22. Schuknecht, Moutot, Rother & Stark, *supra* note 6, at 9–10.

23. *See id.* at 10.

Union cause the collapse of the EMU if an expulsion provision is not instituted.

This Comment describes the legal procedures associated with creating and enacting an expulsion provision and the potential difficulties that may arise in doing so. Part II details the history of the Eurozone. Part III discusses the beginnings of the debt crisis. Part IV discusses the motivations for enacting an expulsion provision, legal procedures involved in amending the founding treaties, and other considerations relevant to EMU expulsion. Part V concludes this Comment.

II. THE HISTORY OF THE EUROZONE

The Euro currency was first established in 1999 and began circulating in 2002.[24] The history of the European economic and monetary union, however, goes back much further. The idea of a common European currency began with a speech before the League of Nations in 1929, given by German politician Gustav Stresemann.[25] In his speech, Stresemann asked, "[w]here are the European currency and the European stamp that we need?"[26] Winston Churchill expressed a similar sentiment in 1946, proclaiming, "[w]e must build a kind of United States of Europe."[27]

During the 1930s, Europe pursued protectionist trade policies that were effective in the short-run but lead to long-term inflation, unemployment, and slow growth.[28] To ameliorate this problem, Europe spent a majority of the twentieth century attempting to design a free economic system that would create a favorable international monetary environment.[29] In 1957,

24. *EMU: A Historical Documentation*, *supra* note 20.

25. *Towards a Single Currency: A Brief History of EMU*, EUROPA.EU, http://europa.eu/legislation_summaries/economic_and_monetary_affairs/introducing_euro_practical_aspects/l25007_en.htm (last updated July 19, 2011).

26. *Id.*

27. Winston Churchill, Prime Minister, United Kingdom, Address to the University of Zurich (Sept. 19, 1946), *available at* http://aei.pitt.edu/14362/1/S2-1.pdf.

28. Douglas A. Irwin, *Avoiding the 1930s-Style Protectionism: Lessons for Today*, 6 INSIGHTS: MELBOURNE BUS. & ECONS. 8, 8–11 (2009).

29. Ivo Maes, *Macroeconomic and Monetary Policy-Making at the European Commission, From the Rome Treaties to the Hague Summit* 1 (Nat'l Bank of Belg.,

European nations signed the Treaty of Rome, which established the European Economic Community.[30] This treaty represented an effort to unite Europe and eliminate the barriers between countries, making future wars between them impossible.[31] The objectives of the Treaty were to create a common market and to increase the convergence of European economic policies.[32] To accomplish this, members were required to abolish restrictions on transfers of capital and labor[33] and coordinate their foreign exchange policies.[34] Members also agreed to act as one in matters concerning the interest of the common market.[35] The Treaty of Rome represented an important step forward in European politics and laid the foundation for what would become the European Union.[36]

Efforts to renew the move to a monetary union started in March 1979 at the insistence of France and Germany.[37] Further progress was made in June 1988 when the Hanover European Council's commission proposed the introduction of an economic and monetary union in three stages.[38] They also advanced the

---

Working Paper No. 58, 2004). The first major step towards international cooperation was the Bretton Woods Agreement. *Id.* at 12. Although the system eventually failed when the United States abandoned the gold standard, it represented a substantial improvement in post-war international relations and a step closer to a European monetary union. *Id.* at 12–13.

30. Wil James, *Treaty of Rome*, CIVITAS (Nov. 2005), http://www.civitas.org.uk/eufacts/FSTREAT/TR1.htm. The original signors of the Treaty of Rome were France, Belgium, Luxembourg, West Germany, The Netherlands, and Italy. Treaty Establishing the European Economic Community, pmbl., Mar. 25, 1957, 298 U.N.T.S. 3 [hereinafter Treaty of Rome].

31. Treaty of Rome, *supra* note 30.

32. *Id.* art. 2. This inherently required member countries to abolish trade restrictions imposed on their neighbors. *Id.* art. 3.

33. *Id.* art. 67.

34. *Id.* art. 70.

35. *Id.* art. 116. Because the Bretton Woods System was still in place at the time the Treaty of Rome was signed, the Treaty did not include specifics regarding monetary cooperation between members. *See* WILLEM H. BUITER, GIANCARLO CORSETTI & PAOLO A. PESENTI, FINANCIAL MARKETS AND EUROPEAN MONETARY COOPERATION 19 (1998).

36. James, *supra* note 30.

37. Allan H. Meltzer, *Road to Monetary Union in Europe Proving Bumpy*, L.A. TIMES (Mar. 3, 1991), http://articles.latimes.com/1991-03-03/business/fi-502_1_exchange-rate-system.

38. DAMIAN CHALMERS, GARETH DAVIES & GIORGIO MONTI, EUROPEAN UNION LAW:

founding of the European Central Bank (ECB), which would be an independent institution responsible for the economic union's monetary policy.[39] The Heads of State and Government at the Maastricht European Council signed the Treaty on the European Union (TEU) on February 7, 1992.[40]

The first stage of implementing the economic and monetary union began on July 1, 1990.[41] Its goal was to assess the progress of full economic and monetary convergence.[42] Stage two began in 1994 and required members to make significant progress towards economic and policy convergence.[43] Rules on public financing were adopted and monitored by the Commission.[44] Stage two also established the European Monetary Institute, which was in charge of coordinating monetary policy among members and carrying out preparations for the adoption of a single currency.[45] Finally, the national central banks became independent.[46]

The third stage of introducing the monetary union was to begin only upon the durable convergence of all members.[47] In this stage, budgetary rules became binding, with penalties

---

CASES AND MATERIALS 22 (2d ed. 2010).

39. *Id.* at 22–23.

40. Treaty on the European Union, Feb. 7, 1992, 1992 O.J. (C 191) 1 [hereinafter TEU]. Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, The Netherlands, Portugal, and the United Kingdom were the original signors of the Treaty. *Id.*

41. Council Decision of 12 March 1990 on the Attainment of Progressive Convergence of Economic Policies and Performance During Stage One of Economic and Monetary Union 90/141/EEC, 1990 O.J. (L 78) 23.

42. PASCAL FONTAINE, EUROPE IN 12 LESSONS 45 (2010), *available at* http://bookshop.europa.eu/en/europe-in-12-lessons-pbNA3110652/;pgid=y8dIS7GUWMdSR0EAlMEUUsWb0000B6gRe3Kb;sid=BpI1aNnfInU1ZIlXPHKrz7v6pFFJOHscesI=?CatalogCategoryID=luYKABst3IwAAAEjxJEY4e5L (follow "Download" hyperlink). Member countries were also required to comply with prohibitions made in the Treaty, namely prohibitions on restricting the free movement of capital. *Id.*

43. FONTAINE, *supra* note 42, at 45.

44. *Id.* at 45, 47.

45. *Id.* at 45; TEU Protocol on the Statute of the European Monetary Institute art. 2.

46. FONTAINE, *supra* note 42 at 45.

47. *Id.* at 46 (explaining that convergence was measured against five objective criteria: price stability, interest rates, deficits, public debt, and exchange rate stability).

imposed for non-compliance.[48] The ECB was created and entrusted with introducing a single monetary policy.[49] The euro was introduced in 1999 and went into circulation in 2002.[50]

III. THE DEBT CRISIS

The cause of the debt crisis can be traced to the failure of Member States to abide by the Stability and Growth Pact (SGP or "the Pact"), a binding fiscal regulation that instituted monetary restrictions on all members of the Eurozone.[51] Additionally, entrance into the Eurozone skewed some Member States' incentives to maintain healthy fiscal policies and gave them access to large amounts of debt at cheaper rates.[52] Greece was the first to experience severe financial trouble, and now the debt contagion is spreading across the increasingly fragile European marketplace.[53]

A. *The Stability and Growth Pact*

The TEU was a remarkable example of intergovernmental cooperation;[54] it did not however, address all issues concerning a common currency to the satisfaction of all its members.[55] Germany, in particular, was extremely concerned that by adopting the euro, it would have to sacrifice its very strong

---

48. *Id.*

49. *Id.*

50. *EMU: A Historical Documentation*, *supra* note 20. Conversion rates between members' currencies and the common European currency would also be fixed in 1999. FONTAINE, *supra* note 42, at 46. Sweden, the United Kingdom, and Denmark negotiated for opt-out clauses, enabling them to not participate in the third stage of implementing the monetary union. *Id.*

51. Eaker, *supra* note 10.

52. *A Synopsis of the Greek Debt Crisis*, THE DENOUEMENT (July 5, 2011), http://knightin.typepad.com/denouement/2011/07/a-synopsis-of-the-greek-debt-crisis.html [hereinafter *Greek Debt Crisis Synopsis*].

53. *Europe's Financial Contagion*, THE WASHINGTON POST: BUSINESS (Jul. 18, 2011), http://www.washingtonpost.com/wp-srv/special/business/financial-crisis-in-europe/.

54. FONTAINE, *supra* note 42, at 12.

55. *See* Martin Heipertz & Amy Verdun, *The Dog that Would Never Bite? What We Can Learn From the Origins of the Stability and Growth Pact* 2–6 (Ctr. for Global Political Econ., Working Paper No. 04-06, 2004) (referring to the TEU's specifications for fiscal policy as "incomplete and ambivalent").

currency, the deutschmark.[56] The Germans were also weary of casting their monetary lot with countries that had traditionally weak economies and that lacked a "stability culture."[57] They feared that after foreign exchange rates were gone, the danger of currency devaluation due to fiscal irresponsibility would also be eliminated, thereby removing the incentive for a member to act in a fiscally wise manner.[58] The TEU did not adequately deal with these issues due to disagreement about the proper method of effectively regulating and maintaining the common currency.[59] In response to these concerns, the founders of the EU adopted the SGP in 1997.[60] This Pact represents one of the "pillars of the EMU" and was meant to act as an instrument for limiting members' debt by regulating budgetary procedures and levying fines for non-compliance.[61] The SGP assuaged Germany's fear that the TEU did not adequately provide for the budgetary discipline of its members by imposing a deficit limit of three percent of GDP and debt limit at sixty percent of GDP.[62]

The Pact, from the beginning, has received its share of criticism.[63] The overarching concern is that different countries have different fiscal needs, making it difficult to formulate a one-size-fits-all approach.[64] In creating a broad fiscal policy, it

56. *Id.* at 5.

57. *Id.* Most German unease was directed towards the "Club Med" countries: Greece, Spain, Italy, and Portugal. *Id.* at 15. Germany's worries were well founded, as these are the EU members that are experiencing high debt and possible default in the current crisis. *See* William Keegan, '*Club Med' Countries Have Spoiled the Eurozone Party*, THE OBSERVER (July 16, 2011), http://www.guardian.co.uk/business/2011/jul/17/club-med-countries-spoiled-eurozone-party.

58. Heipertz & Verdun, *supra* note 55, at 3. There were other economic concerns with the lack of rules and limits in the TEU, namely the effect of an aging European population on generous welfare states, central bank independence, and coordination problems between members. *Id.* at 2–4.

59. *Id.* at 4–5 (referring to the TEU as an "incomplete contract as far as rules on EMU are concerned.").

60. *Id.* at 1.

61. Marco Buti, Sylvester Eijffinger & Daniele Franco, *Revisiting the Stability and Growth Pact: Grand Design or Internal Adjustment?* 1 (Ctr. for Econ. Policy Research, Working Paper No. 3692, 2003); *see also* Heipertz & Verdun, *supra* note 55, at 1.

62. Eaker, *supra* note 10; Heipertz & Verdun, *supra* note 55, at 1.

63. Buti, Eijffinger & Franco, *supra* note 61.

64. *Id.* (recognizing a need for exceptions to the balanced budget approach); *see also*

was necessary to recognize the differences in each member's social preferences, which vary across Europe, and respect each member's national sovereignty.[65] A member country inherently experiences times of growth and recession, and a rigid debt ceiling reduces that country's flexibility in tailoring a solution via public expenditures.[66] As a result of this inflexibility, many members of the EU, Germany among them, have either been unable or have refused to abide by the debt limits specified in the Pact.[67] Furthermore, these countries have not been reprimanded for their failure to stay within the debt limit, undermining the foundation upon which the Pact was built.[68] Europe is now suffering the consequences of their ambivalence towards the Pact.[69] Soaring debt among many of the founding members, namely Greece, has put the continent on the brink of financial meltdown.[70]

B. The Advantages of Eurozone Membership Cause Imprudent Fiscal Behavior

Greece seemed to benefit greatly from joining the Eurozone because it was able to obtain credit at lower interest rates.[71] This benefit, however, may have been the beginning of its downfall: some say that the access to cheaper credit spurred national borrowing, increasing its total debt.[72]

The increase in government spending is also attributable to more socialistic politics, as Greek leaders attempted to raise the standard of living of the lower class by raising wages and

---

Hal S. Scott, *When the Euro Falls Apart*, 1:2 INTERNATIONAL FINANCE 207, 210 (1998) [hereinafter Scott, *Euro Falls Apart*] ("One basic problem with EMU is that the participating countries will have one monetary policy set by the new [ECB], but will pursue individual fiscal policies . . . .").

65. Buti, Eijffinger & Franco, *supra* note 61, at 6.

66. *Id.* at 6–7.

67. Eaker, *supra* note 10.

68. *Id.* ("The European Court of Justice (ECJ) ruled against the EU Council for its refusal to pursue the pact's enforcement against . . . [Germany and France] when they exceeded the agreed upon limits on deficits.").

69. *Id.*

70. *Id.*

71. *Greek Debt Crisis Synopsis*, *supra* note 52.

72. *Id.*

pensions, regardless of the country's level of production.[73] Despite spending more than it was earning, Greece continued to borrow to fund not only the wage increase, but also to import more than was exported and to pay off old debt.[74] Eventually, poor fiscal policy caught up with Greece when in 2009, its credit rating was downgraded from A- to BBB+.[75] Despite these warnings, Greece continued to bury itself further in debt.[76] In 2009, Greek debt had soared to 115% of GDP, and it is projected to rise even higher.[77] As fears of a contagion spreading to other debt-laden countries grew, the Eurozone members and the International Monetary Fund (IMF) combined to provide a €110 billion bailout to the Greeks.[78] In return, Greek Prime Minister George Papandreou promised to make fiscal reforms and cut government spending.[79] Though Greece had no other option but to reduce national spending, it continued to see resistance from unions and an increased number of strikes.[80] Despite the bailout, the Greek economy is still struggling.[81] In September

73. Qiu Huafei & Huang Ye, *The Dilemma of Rational Choice: A Case on EMU and Sovereign Debt Crisis* 7 (Shanghai Inst. for Eur. Studies, Working Paper No. 2011-3, 2011).

74. *Id.*

75. *Greek Debt Crisis Synopsis*, *supra* note 52. Fitch, a credit ratings agency, downgraded Greece because of its growing debt to GDP ratio. *Id.* Standard & Poor's soon followed suit. Walter Brandimarte & Harry Papachristou, *Update 2: S&P Cuts Greece Ratings, Warns of Further Downgrade*, REUTERS (Dec. 16, 2009), http://www.reuters.com/article/2009/12/16/greece-ratings-sandp-idUSN1646403820091216.

76. *Greek Debt Crisis Synopsis*, *supra* note 52.

77. *Greek Debt Sustainable but Plenty of Risks—IMF*, REUTERS (May 10, 2010), http://www.reuters.com/article/2010/05/11/imf-greece-idUSN1012068320100511. It was revealed in 2010 that Goldman Sachs had collaborated with the Greek government to conceal debt from the notice of the EU, in hopes of skirting around Stability and Growth Pact debt limits. *See* Louise Story, Landon Thomas, Jr. & Nelson D. Schwartz, *Wall St. Helped to Mask Debt Fueling Europe's Crisis*, N.Y. TIMES, Feb. 13, 2010, at A1, *available at* http://www.nytimes.com/2010/02/14/business/global/14debt.html?pagewanted=1&hp.

78. *Eurozone Approves Massive Greece Bail-Out*, BBC NEWS (May 2, 2010), http://news.bbc.co.uk/2/hi/8656649.stm. At the time, it was equivalent to $146.2 billion. *Id.*

79. *Id.* Specifically, the Greeks planned to cut bonus payments for public sector workers, cap annual holiday bonuses, ban increases in public sector salaries, and increase the value added tax, along with other taxes. *Id.*

80. *Id.*

81. Aaron Smith, *Moody's Downgrades Greek Banks*, CNN MONEY (Sept. 23, 2011),

2011, Moody's downgraded the credit rating of eight Greek banks.[82] According to Moody's, unemployment was at sixteen percent, and the agency expects the Greek economy to decline even further.[83]

C. The Contagion Effect

Greece's overspending and fiscal irresponsibility not only affects itself, but the EU as a whole.[84] As part of their bailout, the Greeks received write-downs of a portion of their debts, without which they would have been forced to default.[85] However, this write-down of Greek debt may compel other debt-ridden countries, such as Spain, Portugal, Ireland, and Italy, to try to procure a similar deal.[86] The prospect of an Italian-Spanish default is especially terrifying because they represent the third and fourth largest economies in the Eurozone, respectively.[87] One commentator suggests that the amount of money required to solve the European sovereign debt crisis is in the trillion-euro range.[88]

France and Germany are already seeing repercussions from

---

http://money.cnn.com/2011/09/23/news/international/greece_downgrade_banks/index.htm. Bailouts of Eurozone members are allowed under Article 143 of the Treaty on the Functioning of the European Union (TFEU). Consolidated Version of the Treaty on the Functioning of the European Union art. 143, Mar. 30, 2010, 2010 O.J. (C 83) 47, 110 [hereinafter TFEU].

82. Smith, *supra* note 81.

83. *Id.*

84. *See* Eaker, *supra* note 10.

85. Stephen Castle, *Europe Agrees on New Bailout to Help Greece Avoid Default*, N.Y. TIMES, Feb. 21, 2012, at A1, *available at* http://www.nytimes.com/2012/02/21/world/europe/agreement-close-on-a-bailout-for-greece-european-finance-ministers-say.html?pagewanted=all; *see also* Ben Rooney, *Greece: This Cannot End well*, CNN MONEY (Sep. 30, 2011), http://money.cnn.com/2011/09/30/news/international/greece_default_eurozone_crisis/index.htm?iid=EL ("Euro area leaders have said repeatedly that a default is off the table, arguing that such an outcome would have severe and unknowable consequences for the euro currency and the global financial system.").

86. Ben Rooney, *Europe: Grimmer by the Minute*, CNN MONEY (Oct. 26, 2011), http://money.cnn.com/2011/10/25/news/international/europe_crisis_talks/.

87. Eaker, *supra* note 10.

88. *Id.*

the Greek debt crisis.[89] France lost their AAA rating.[90] The downgrade of the French credit rating may prove disastrous not only to the Eurozone, but to the world economy overall.[91] Upon hearing bleak news from Europe, American stocks dropped roughly two percent.[92] British Prime Minister David Cameron received political backlash as a result of the debt crisis, including threats by parliament members to move for the nation's exit from the EU.[93] The prognosis is clear: either Europe must find a solution to its growing debt crisis and stop the contagion from spreading any further, or watch the Eurozone, a product of years of dreaming, planning, and constructing, crumble in default.

IV. SOLUTIONS TO THE EU DEBT CRISIS

A. *Why an Expulsion Provision is Necessary*

The ECB has said that "[s]haring a common currency implies sharing a common political destiny."[94] The interconnectedness of the Eurozone members, which proved to be a valuable tool for economic growth at the start of the

89. *Id.* Germany has guaranteed twenty-seven percent of the lending of the European Financial Stability Facility (EFSF) and its successor, the European Stability Mechanism, the institutions responsible for lending to beleaguered Eurozone members. *Id.* France has guaranteed twenty percent. *Id.*

90. *Standard & Poor's Takes Various Rating Actions on 16 Eurozone Sovereign Governments*, STANDARD & POOR'S (Jan. 13, 2012), http://www.standardandpoors.com/prot/ratings/articles/en/us/?articleType=HTML&assetID=1245327294763.

91. *See* Stephen L. Bernard & Vincent Cignarella, *France's AAA Rating is a Fragile Linchpin in Euro Zone Crisis Plan*, DJ FX TRADER (Oct. 5, 2011), http://www.dowjones.com/products/djfxtrader/articles/FrancesAAARatingIsAFragileLinchpinInEuroZoneCrisisPlan.asp ("If France is downgraded, the euro zone's bailout fund—the European Financial Stability Facility—would also lose its own top notch rating unless members injected cash, analysts say.").

92. Hibah Yousuf, *Stocks Tumble 2% on Europe Jitters*, CNN MONEY (Oct. 17, 2011), http://money.cnn.com/2011/10/17/markets/markets_newyork/index.htm?hpt=hp_t2.

93. *Largest Ever EU Rebellion Rocks British PM*, TIMES LIVE (Oct. 25, 2011), http://www.timeslive.co.za/world/2011/10/25/largest-ever-eu-rebellion-rocks-british-pm.

94. Jürgen Stark, Member of the Exec. Bd. of the Eur. Ctr. Bank, Speech Delivered to the Icelandic Chamber of Commerce: The Adoption of the Euro: Principles, Procedures, and Criteria (Feb. 13, 2008), *available at* http://www.ecb.int/press/key/date/2008/html/sp080213.en.html.

monetary union, will be the cause of its failure if a change to the founding treaties is not made. As the current economic crisis demonstrates, the mismanagement of one Member State's budget can have severe negative effects on other members, even healthy ones.[95] Because each member is obligated to give money to the failing country as part of a bailout, the member countries can expect to see their own debt numbers skyrocket and credit ratings drop as the EU situation worsens.[96] There is only one logical way to prevent the spread of debilitating debt across Europe and a possible breakup of the European Monetary Union: amend the TEU to give the EU the power to remove a debt-ridden country from the Eurozone.

This solution is necessary for two reasons. First, it may be the only solution to the Greek debt problem, and the only way to avoid a massive, multi-country default.[97] Secondly, even if an expulsion clause were not a possible solution to the current Greek debacle, it would provide an escape route in the event of a similar meltdown in the future and would act as a major deterrent against the sort of fiscal behavior that led to the crisis.

1. Expulsion May Be the Last Resort

The situation in Greece is bleak.[98] Greek debt is seemingly insurmountable, and a default is not only possible, but also

---

95. Eaker, *supra* note 10. *See also Five European Nations to Be Downgraded by S&P: Report*, CNBC (Jan. 13, 2012), http://www.cnbc.com/id/45986372/Five_European_Nations_to_Be_Downgraded_by_S_P_Report [hereinafter *Five European Nations to be Downgraded*] (describing Standard & Poor's plans to downgrade the credit ratings of France, Austria, Italy, Spain, and Portugal, and possibly Europe's bailout fund, the EFSF).

96. *See Five European Nations to Be Downgraded*, *supra* note 95. For example, Moody's put Germany's rating on a negative outlook because of concerns that it was "at risk from the increased likelihood of a Greek Exit from the euro and the need to provide more support to Spain." *Germany's AAA Credit Rating on 'Negative Outlook'*, BBC NEWS (May 22, 2012), http://www.bbc.co.uk/news/business-18963810.

97. *See The United States of Europe: The Best Solution to the Euro Crisis is an Orderly Greek Exit, Radical Reform and a Federal Europe*, THE SUNDAY TIMES (LONDON), May 20, 2012, at 20.

98. Costas Paris & Terence Roth, *Greek Default Fears Grow as Debt Talks Stumble*, WALL ST. J. (Jan. 17, 2012), http://online.wsj.com/article/SB10001424052970204555904577164640477059480.html.

likely.[99] When the latest bailout from the International Monetary Fund was agreed upon, the estimated total cost was €130 billion ($163 billion).[100] Despite this, Greece's ability to pay its debts is still uncertain.[101] Even if the country does not default, a significant portion of its debt must be written off, causing huge losses for its lenders and investors.[102] Furthermore, other EU members are feeling the backlash of an unpopular bailout program, both economically and politically.[103] Still, the social situation in Greece is continuing to deteriorate, as the Greek people generally reject the austerity measures imposed on them.[104] If bailouts and continued austerity measures do not work to save Greece, expulsion may be the only solution left.[105] It is important to view all possible scenarios in context: there is no possibility that the sovereign debt crisis can end well. European leaders are forced to choose among

---

99. *Id.*; Francisco Miñana, *Fitch Deems a Greek Default Very Likely*, SHARECAST (Jan. 19, 2012), http://www.sharecast.com/cgi-bin/sharecast/story.cgi?story_id=19819815; *see also* Chapple & Neild, *supra* note 11.

100. Lesley Wroughton & Ingrid Melander, *IMF Warns Greece Bailout Bill is Growing*, BUS. DAY (Jan. 12, 2012), http://www.stuff.co.nz/business/world/6246651/IMF-warns-Greece-bailout-bill-is-growing.

101. *Id.* Greece's debt is roughly €350 billion. Ben Rooney, *Greek Debt Talks Drag On*, CNN MONEY (Jan. 19, 2012), http://money.cnn.com/2012/01/18/markets/greek_debt_talks/index.htm. Greek's debt to GDP ratio, which the Stability and Growth Pact requires to be below sixty percent, was 142.8% in 2010, according to Eurostat. News Release, Eurostat, Provision of Deficit and Debt Data for 2010—First Notification (Apr. 26, 2011), *available at* http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-26042011-AP/EN/2-26042011-AP-EN.PDF.

102. Wroughton & Melander, *supra* note 100.

103. Germany and France are Greece's largest lenders; France has recently lost its AAA credit rating. *France Downgrade: French PM Downplays Rating Decision*, BBC NEWS EUROPE (Jan. 14, 2012), http://www.bbc.co.uk/news/world-europe-16560323. The leaders of these countries, as well as others, are also finding themselves in political hot water, as their citizens resent the billions of their euro used to save an imprudent country. *German MPs Approve New Greek Bailout*, WORLD NEWS AUSTL. (Feb. 28, 2012), http://www.sbs.com.au/news/article/1630045/latest-from-wire/.

104. Dean Praetorius, *Greece Riots 2011: Protests Turn Violent, Police and Protesters Clash in Athens*, HUFFINGTON POST, http://www.huffingtonpost.com/2011/06/28/greece-riots-athens-photos_n_886146.html#s299654&title=Athens_Greece_Riots (last updated Aug. 28, 2011, 6:12 AM). IMF officials have recognized that it is impossible for Greece to tighten its belt any further. *See* Wroughton & Melander, *supra* note 100.

105. Eaker, *supra* note 10; Maud van Gaal, *supra* note 14.

"solutions" that are imperfect and drastic. The EU will either continue to pour millions of euro into the Greek bailout program, allow Greece to default on its debt obligations, or arrange a Greek exit from the Eurozone. None of these options are consequence-free and all entail a significant depreciation in the standard of living of the Greek people.[106]

2. Expulsion Acts as a Preventative Measure

Even if amending the TEU to allow for involuntary expulsion of a member is not a realistic solution to the current Greek problem,[107] amendment should still be undertaken as a preventive measure. The EU was formed with the goal of being an irreversible, long lasting union of European countries.[108] The current challenges are only the first of many difficulties that the Union will undoubtedly encounter if it continues to exist.[109] Indeed, the EU is seeking continual expansion of both the Union and the Eurozone.[110] The Union, in growing eastward to include former Soviet territory and other developing nations, is realizing its goal of unitizing the continent and preventing armed conflict.[111] Enlargement of the Union, however, also brings

106. Abandonment of the Euro and a return to a weaker drachma has the possibility of sending Greece into a depression. Stephen Fidler, *Exit Would Be Mess For Athens*, WALL ST. J., Nov. 4, 2011, at A2, *available at* http://online.wsj.com/article/SB10001424052970203804204577015990542256190.html. A Greek default will not only have drastic consequences for the Greeks, but for Europe as a whole. *See supra* notes 78-83 and accompanying text.

107. *See* Eric Dor, *Leaving the Eurozone: A User's Guide* 3–4 (IESEG Sch. of Mgmt., Working Paper No. 2011-ECO-06, 2011), *available at* http://my.ieseg.fr/bienvenue/DownloadDoc.asp?Fich=1046781054_2011-ECO-06_Dor.pdf (arguing that amending the TEU is an "unrealistic hypothesis" because of the time it would take, the negativity that would be directed against those wanted to leave, and the flight of capital from countries leaving the Eurozone).

108. Athanassiou, *supra* note 15, at 11–12; *see also* TFEU, *supra* note 81 (declaring that the signors were "[d]etermined to lay the foundations of an ever closer union among the peoples of Europe. . . .").

109. Herman Van Rompuy, President, European Council, Speech at Warsaw University: The Great Challenges for the European Union (Jan. 17, 2011), *available at* http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/118874.pdf.

110. *See Conditions for Membership*, EUR. COMMISSION, http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm (last updated Apr. 22, 2013).

111. *Enlargement*, EUR. COMMISSION, http://ec.europa.eu/enlargement/policy/from-

increased diversity.[112] The EU now has a population of roughly 500 million people, spans twenty-seven countries, and recognizes twenty-three official languages.[113] Its membership continues to grow.[114] Albania, Bosnia, Serbia, and Kosovo are being considered as potential candidate countries.[115] Croatia, Iceland, Montenegro, Macedonia, and Turkey are candidate countries.[116] The introduction of Turkey would be especially monumental, as it would be the first Muslim country to enter the Union.[117] This increased heterogeneity makes a one-size-fits-all monetary policy harder to achieve.[118] Smaller countries have different economic needs than those of larger, more developed countries.[119] Different countries have different cultures with different values and expectations from their government. The competing fiscal plans, which are inevitable in a system so large, are destined to cause conflict, and the EU must prepare itself for the consequences if new members are not able to control their levels of debt.[120] Additionally, the ability for the Union to expel a Member State for failing to meet fiscal planning requirements will act as a deterrent to the sort of overspending and misreporting that launched Greece into the

6-to-27-members/index_en.htm (last updated Sept. 7, 2012) [hereinafter *Enlargement*].

112. *See id.*

113. *Languages*, EUR. COMMISSION, http://ec.europa.eu/languages/languages-of-europe/eu-languages_en.htm (last updated Jan. 16, 2013).

114. *Enlargement*, *supra* note 111.

115. *Id.*

116. *Id.*

117. Mark Rice-Oxley, *Bitter Debate Over Turkey's EU Bid*, THE CHRISTIAN SCI. MONITOR (Oct. 3, 2005), http://www.csmonitor.com/2005/1003/p06s01-woeu.html.

118. *See* Richard Morris, H. Ongena & Ludger Schuknecht, *The Reform and Implementation of the Stability and Growth Pact* 8–10 (Eur. Cent. Bank, Occasional Paper Series No. 47, 2006); Scott, *Euro Falls Apart*, *supra* note 64, at 210.

119. *See, e.g.*, Scott, *Euro Falls Apart*, *supra* note 64, at 210 (explaining that low-deficit countries may object to bearing the cost of inflation created by high-deficit countries)*; see also* Dieter Schmidtchen, Alexander Neunzig & Hans-Jörg Schmidt-Trenz, *Enlargement of the European Union and the Approximation of Law: Lessons From an Economic Theory of Optimal Legal Areas*, *in* THE ECONOMICS OF HARMONIZING EUROPEAN LAW 224 (Alain Marciano & Jean-Michel Josselin, eds., 2002) (discussing the optimal size for an economic and monetary union).

120. MASSIMO GIULIODORI & ROEL BEETSMA, ON THE RELATIONSHIP BETWEEN FISCAL PLANS IN THE EUROPEAN UNION: AN EMPIRICAL ANALYSIS BASED ON REAL-TIME DATA 2–4 (Dec. 6, 2006*)*, *available at* http://dare.uva.nl/document/228446.

throws of bankruptcy. Such a provision would bolster the enforcement arm of the EMU, which has been weak and ineffectual from the beginning.[121]

The lack of an EMU expulsion clause is ill-advised and short-sided. It is absolutely necessary for the EU to amend the TEU to include the power of expulsion. Not only does it possibly represent the only way to end the Greek debt crisis, but it also provides an escape route from the monetary union falling victim to the vicious circle of sovereign debt. With increased EU membership comes increased diversity, both culturally and economically.[122] This economic diversity poses unique challenges to a monetary union.[123] Not only would an expulsion provision provide the necessary protections in case a Member State follows the Greek model of fiscal policy and finds itself headed towards default, but such a provision would act as a deterrent to bad fiscal behavior in the future.[124]

B. The Removal Process

Adding an expulsion provision in the TEU is a difficult process that requires not only the drafting and ratification of a new treaty but also creates novel challenges and considerations that have not been faced in the past.[125] The treaty amendment process does not always go smoothly: the ratification unanimity requirement often serves as a roadblock to new EU legislation and years pass before any treaty change becomes effective.[126] Additionally, as the creation of an international monetary union was groundbreaking, the expulsion of a Member State is an unprecedented action that presents difficult problems that must

---

121. Schuknecht, Moutot, Rother & Stark, *supra* note 6, at 8–9; *supra* notes 63–70 and accompanying text.

122. *See supra* note 118.

123. Geoffrey R. D. Underhill, *The Political Economy of (Eventual) Banking Union*, VOX (Oct. 16, 2012), http://www.voxeu.org/article/political-economy-eventual-banking-union.

124. Athanassiou, *supra* note 15, at 35–36.

125. *Id.* at 32–33.

126. CHALMERS, DAVIES & MONTI, *supra* note 38, at 48; *The Unanimity Problem*, THE ECONOMIST (June 26, 2008), http://www.economist.com/node/11622487.

be solved.[127]

1. Why the TEU Must be Amended

The problem with inserting an expulsion clause into the TEU is that it is politically controversial and, even if supported by European leaders, will take many years before it is effective.[128] As it currently stands, European law does not allow a Member State to leave the Eurozone without concurrently exiting the EU, and even this must be voluntarily done; a Member State cannot be forced out of the union against its will.[129] Furthermore, this controversial right of voluntary withdrawal has only recently been recognized, with the ratification of the Treaty of Lisbon in 2009.[130] Since leaving the EU is a drastic step that could severely damage the Greek economy, it is unlikely that it will voluntarily remove itself from the union.[131] Therefore, a provision allowing the removal of a defaulting country, even unwillingly, is necessary to save the monetary union from collapse.[132] A new treaty is necessary to accomplish this task because EU treaties can essentially only be amended by the ratification of a new treaty.[133]

The long process for amending treaties is specified in Article

---

127. Athanassiou, *supra* note 15, at 4.

128. *See* Athanassiou, *supra* note 15, at 33.

129. Consolidated Version of the Treaty on European Union art. 50, Mar. 30, 2010, 2010 O.J. (C 83) 13, 43 [hereinafter Consolidated TEU]; *see also* Athanassiou, *supra* note 15, at 4, 28 (arguing that a withdrawal from the Eurozone without a concurrent withdrawal from the EU is "legally inconceivable").

130. Treaty of Lisbon Amendments to the Treaty on European Union and to the Treaty Establishing the European Community art. 1, Dec. 17, 2007, 2007 O.J. (C 306) 1, 40 [hereinafter Treaty of Lisbon]. The founding treaties' lack of an exit clause has been interpreted in two ways: either the drafters contemplated that members retained the right as sovereign states to unilaterally withdraw or that by not specifying a method of withdrawal, they were making a lasting commitment to the success of the Union and signifying that the unification process was intended to be permanent. Athanassiou, *supra* note 15, at 27–28.

131. Such a move could also negatively impact the rest of Europe more severely than removing Greece from *only* the Eurozone. Chapple & Neild, *supra* note 11.

132. *See* Athanassiou, *supra* note 15, at 32 (arguing that it cannot be inferred from the current TEU that member states have the power to expel another member or that a country can withdraw from the EMU but not the EU).

133. Consolidated TEU, *supra* note 129, art. 48.

48 of the TEU.[134] The government of a Member State, the European Parliament, or the Commission can submit a proposal to the Council, which the Council then gives to the European Council.[135] After the national parliaments of the Member States are notified and the European Council consults the European Parliament and the Commission, the European Council decides, via a simple majority, whether or not to examine the proposed amendment.[136] Meanwhile, the President of the European Council gathers a convention of representatives of national parliaments, heads of state or government of the Member States, the European Parliament, the Commission, and in this case, the European Central Bank.[137] The Council examines the proposed amendments and gathers a conference of representatives of Member States, which will determine, by common accord, if the Treaties will be amended.[138] Finally, in what is one of the most contentious steps in the amendment process, all Member States must ratify the amendments in accordance with their respective constitutional requirements.[139]

Article 48 provides a second amendment process, called the simplified revision procedure.[140] It allows the European Council, by unanimous vote, to amend a portion of a treaty dealing in the monetary area, subject to the approval of the Member States in accordance with their constitutional requirements.[141] The trouble with using this provision is that the amendment must be to a provision of Part Three of the TFE, which deals with monetary issues, and the amendment cannot increase the

---

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* The ECB is only involved if the amendment touches the monetary sector. *Id.*

138. *Id.*

139. *Id.* Most member states ratify treaties by a vote of parliament, but some use other methods. CHALMERS, DAVIES & MONTI, *supra* note 38, at 48. Ireland, for example, holds a public referendum, and the Irish voters must endorse the amendment before it can be ratified. *Id.* This has proven difficult in the past, most recently with the passage of the Treaty of Lisbon. *Id.* at 48–49.

140. TEU, *supra* note 40, art. 48.

141. *Id.*

competences conferred on the Union.[142] This means that the amendment cannot grant the Union more power than has been allocated to it in the TFEU.[143] Because the power of involuntary expulsion from the EMU is not a competence currently enjoyed by the EU, this amendment process is not available.

The treaty amendment process is an example of intergovernmentalism, a theory of power sharing between a Member State and a union whereby Member States retain control over decision-making in a certain area.[144] This control comes at a price, as sometimes extremely necessary amendments can be held up or even completely blocked because one Member State will not ratify it.[145] The amendment process, therefore, is a slow one. For example, the last three treaties to be ratified by the Member States, the Treaty of Lisbon, the Treaty of Nice, and the Treaty of Amsterdam, took approximately two years each to be ratified after they were signed.[146] This does not include the months of preparation, negotiation, and drafting that took place before an agreement

---

142. *Id.*

143. The TFEU grants to the Union three different types of competences: (1) exclusive; (2) shared; and (3) the right to support, coordinate, or supplement the Member States. TFEU, *supra* note 81, arts. 2–6. When the Union has an exclusive competence in a particular area, only it, and not the Member States, can act. DAVIES, *supra* note 9, at 29. A shared competence is one that grants the Member States the right to act if the Union has not acted or ceased exercising its right to act. *Id.* There are certain areas where the Union has the power to support, coordinate, or supplement the actions of the Member States. *Id.*

144. DAVIES, *supra* note 9, at 28. The opposite power-sharing theory, supranationalism, occurs when Member States cede some of their sovereignty to the Union, concentrating the power to make decisions at higher level. *Id.* The EU is an example of both supranationalism and intergovernmentalism: while the Member States gave up their power to the Union in specific instances and are subject to the law of the EU, they retained sovereignty in other matters, such as the treaty amendment process. *Id.* In this regard, a Member State cannot be forced to comply with the others against its will. *Id.*

145. For example, Ireland held a referendum vote to ratify the Treaty of Lisbon. CHALMERS, DAVIES & MONTI, *supra* note 38, at 48–49. Irish voters rejected the Treaty in the first vote. *Id.* It was not until the second referendum, held almost sixteen months later, that Ireland voted for the Treaty. *Id.*

146. *EU Treaties*, EUROPA.EU, http://europa.eu/eu-law/treaties/index_en.htm (last visited Oct. 24, 2012).

was reached.[147] When this is considered, the amendment process is much longer.[148] For this reason, the insertion of an expulsion clause into the TEU can only be a last resort for Greece. Such an amendment would undoubtedly be very controversial and take much planning and politicking;[149] meanwhile, Greece has debt obligations that continue to become due and the rest of Europe continues to fall further into debt in an effort to prevent default.[150] It is safe to assume then that the clause's ratification process will be significantly longer than that of previous treaties.

A major obstacle to the passage of an expulsion provision is that *all* Member States must ratify any amendment to the TEU.[151] Implicitly, this means that Greece must agree to its own expulsion from the EMU. This is not as preposterous as it was once thought.[152] Popular opinion in Greece is strongly against the austerity measures imposed by EU leaders.[153] Furthermore, as the delayed ratification of the Treaty of Lisbon demonstrates, the people of Europe believe that their countries are losing their sovereign rights to an "undemocratic and unaccountable" EU.[154] The failure of many countries to abide by the limits imposed by the Stability and Growth Pact has caused a feeling of disenchantment with the powers that run the EU among some Member States and is another indicator that a Greek agreement to exit the Eurozone is not as far-fetched as was once believed.[155]

---

147. *See* Dor, *supra* note 107, at 3–4 (commenting on the difficulty of negotiating an amendment to the founding treaties).

148. *See id.*

149. *Id.*

150. Chapple & Neild, *supra* note 11.

151. TEU, *supra* note 40, art. 48.

152. Simone Foxman, *Citi's Buiter: There's a 50% Chance of a Greek Exit From the Eurozone and Here's How It Would Happen*, BUS. INSIDER (Feb. 7, 2012, 7:15 AM), http://www.businessinsider.com/citis-buiter-greek-exit-grexit-2012-2. It should also be noted that if it were planning to exit the Eurozone, it would be in the best interest of Greece to keep the public in the dark, so as to avoid bank runs and capital flight. *See* Fidler, *supra* note 106.

153. Praetorius, *supra* note 104; Chapple & Neild, *supra* note 11.

154. Athanassiou, *supra* note 15, at 6–7.

155. *Id.*

One commentator has argued that an exit from the EMU would free Greece from the euro exchange rate, thus increasing tourism[156] and allowing it to be a more competitive exporter.[157] A new currency would also allow the Greeks to determine for themselves what amount of their debt will be repaid.[158] Additionally, popular opinion in Greece is decidedly against the austerity measures mandated by the EU; the people are beginning to riot again in Athens.[159] A new currency allows Greece to regain control of its monetary and fiscal policy, and may be more favored among the populace.[160] Finally, the rest of the EMU would no longer be required to fund a Greek bailout or be subjected to the inevitable economic downturn if Greece were allowed to default.[161] Faced with a lose-lose situation, it may be in the best interest of both Greece and the EU to reach a solution and feasible exit plan.

2. Challenges and Considerations

The challenges that come with expulsion do not end after the TEU is amended. The EU must decide which institution will be granted the power to remove a Member State from the EMU.

---

156. Landon Thomas, Jr., *Aftershocks for Athens and Wall Street: Whispers of Return to Drachma Grow Louder in Greek Crisis*, N.Y. TIMES, Nov. 2, 2011, at B1, *available at* http://www.nytimes.com/2011/11/02/business/global/plan-to-leave-euro-for-drachma-gains-support-in-greece.html?_r=1&pagewanted=all. A cheaper currency would make the costs of traveling in Greece comparable to its neighbors who are not members of the Eurozone. *Id.*

157. Chapple & Neild, *supra* note 11. After facing a similar debt problem in 2002, Argentina broke its peg with the U.S. dollar; consequently, due to a weaker currency, Argentina's exports increased, turning around its economy. *See* Kip Beckman, *Does Argentina's 2002 Debt Default Provide an Option for Greece?*, INSIDEEDGE (Oct. 21, 2011), http://www.conferenceboard.ca/insideedge/2011/oct2011/oct21-greece.aspx

158. Nina dos Santos, *Can Greece Leave the Eurozone?*, BUSINESS 360-CNN.COM (Nov. 4, 2011, 12:42 AM), http://business.blogs.cnn.com/2011/11/04/is-greece-angling-for-a-eurozone-exit-and-can-it-leave/.

159. Niki Kitsantonis & Rachel Donadio, *Athens Shaken by Riots After Vote for Austerity*, N.Y. TIMES, Feb. 14, 2012, at A8, *available at* http://www.nytimes.com/2012/02/14/world/europe/athens-shaken-by-riots-after-vote-for-greek-austerity-plan.html?.

160. *See* Thomas, *supra* note 156 ("The view that Greece should exit the euro is more widespread than you would think.").

161. Chapple & Neild, *supra* note 11.

Furthermore, it is not an easy process for a country to change its currency unit; in this case, an extra wrinkle is present because the country's previous currency is not being completely eliminated, as was the case when the Eurozone members converted to the euro.[162] Instead, the previous currency is remaining in circulation and a new currency must be created.[163] Additionally, problems arise in regards to introducing the new currency and eradicating the euro in the expelled country, as well as the possible redenomination of current contracts in the new money.[164] Although these challenges add an extra layer of difficulty to the expulsion process, with close cooperation between the EU and the expelled state, it is possible for a Member State to transition out of Eurozone membership.[165]

a. The Institution Responsible for Initiating Removal Procedures

If the TEU is to be amended to include a provision allowing for the expulsion of a Member State for monetary reasons, it is necessary to determine the EU institution that will be granted this power. This is important because the principle of conferral dictates that the EU institutions, which serve as the EU's government, can only perform functions that are expressly delegated to them.[166] Article 4 of the TEU specifies the division of power between the EU institutions and the Member States, and leaves all competences not specifically given to the Union to the Member States.[167]

162. *See* Scott, *Euro Falls Apart*, *supra* note 64, at 220 ("There is very little experience with how a country deals with breaking away from a monetary union where the currency of the union survives.").

163. *Id.*

164. *Id.* at 221–25.

165. *Id.* at 221.

166. DAVIES, *supra* note 9, at 27. There are seven main EU Institutions: the European Parliament (EP), the European Council (EC), the Council, the European Commission, the Court of Justice of the European Union (ECJ), the European Central Bank (ECB), and the Court of Auditors (COA). *Id.* at 31. There is no traditional division of power among the institutions; instead, each serves a combination of judicial, legislative, and executive functions. *Id.* at 32.

167. TEU, *supra* note 40, art. 4 ("[C]ompetences not conferred upon the Union in the Treaties remain with the Member states[.]").

The Council should be the institution responsible for removing a Member State from the Eurozone.[168] The Council is composed of the heads of government of Member States, its President, and the President of the Commission.[169] It controls EU membership and instigates treaty reform, among other powers.[170] Article 7 of the TEU gives the Council, upon a proposal by one-third of the Member States, the European Parliament, or the European Commission, the power to suspend the rights of an offending Member State after a "serious and persistent breach" of the values upon which the Union was founded.[171] Although this provision has not been interpreted to give the Council the authority to remove a member from the Union, it demonstrates that it is within the Council's competence to suspend a member's rights and provides a framework upon which monetary union removal can be built.[172] The Council is the institution most suited to the task of removing a Member State from the Eurozone because it already serves a similar function in making decisions about EU membership.[173]

There are two situations in which Article 7 allows the Council to suspend a Member State's rights.[174] The first begins when either one-third of the Member States, the European

---

168. The Council is a separate entity from the European Council and performs different functions. *Id.* arts. 13, 15, 16.

169. *Id.* art. 16.

170. *Id.* art. 7; CHALMERS, DAVIES & MONTI, *supra* note 38, at 76.

171. TEU, *supra* note 40, art. 7.

172. The Court of Justice held that the treaties themselves provide a suitable means of redress against a Member State's infraction, therefore enforcement can only be internal to the treaties in which no expulsion provision exists. Case C-146/89, Comm'n of the European Cmtys. v. United Kingdom of Great Britain & N. Ireland, 1991 E.C.R. I-3566. Note, however, that the Vienna Convention on the Law of Treaties recognizes the right of parties to a treaty to terminate the treaty as to a party that has materially breached. Vienna Convention on the Law of Treaties art. 60, May 23, 1969, 1155 U.N.T.S. 331. This would entail, however, the cancellation of the entire TEU as to Greece, effectively removing them from not only the EMU, but also the Union as a whole. *See id.*

173. *See* CHALMERS, DAVIES & MONTI, *supra* note 38, at 76.

174. Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts art. 1, Feb. 26, 2001, 2001 O.J. (C80) 1 [hereinafter Treaty of Nice] (amending Article 7 of the TEU).

Parliament, or the European Commission submits a proposal to the Council.[175] At this point, the Member State in question has the right to address the Council.[176] After it secures the consent of Parliament, the Council may determine that there has been a serious breach by a member of one or more of the core values of the EU.[177] The second method is initiated by a proposal of either one-third of the Member States or by the Commission to the European Council.[178] Upon obtaining Parliament's consent, the European Council may determine that a Member State has breached the values set forth in Article 1a.[179] As the removal of a Member State from the EMU is a drastic, all-encompassing action, appropriate safeguards may be necessary to ensure that this step will only be taken if absolutely necessary and economically prudent. This Article, however, provides a blueprint from which the initiation and implementation of member expulsion can be built.

b. Transitioning to a New Currency

A major obstacle causing many to doubt the viability of an expulsion provision is the problem of what currency the expelled Member State will use.[180] Some argue that the country will either adopt a new currency, or revive its former one (for Greece, the drachma).[181] It is possible for the expelled country to introduce a new currency because the EMU has preserved the Member States' national central banks.[182] This allows each Member State to issue debt securities and set reserve requirements, which are the tools of monetary policy.[183]

175. *Id.*

176. *Id.*

177. *Id.* This is determined by an agreement of four-fifths of its members. *Id.*

178. *Id.*

179. *See id.*; Treaty of Lisbon, *supra* note 130, art. 1(3), 1(9) (amending Article 7 of the TEU to refer to the values of Article 1a instead of Article 6(1)).

180. *See* Athanassiou, *supra* note 15, at 39 (explaining the difficulties that will arise when a Member State is expelled from the European Union and is forced to transition from the euro to a new form of currency).

181. *Id.* Note that Athanassiou is considering an expulsion from the entire Union, not just the Eurozone. *Id.*

182. Scott, *Euro Falls Apart*, *supra* note 64, at 216.

183. *See id.* at 216–17. Now, these debt securities are denominated in euros. *Id.*

Introducing the new currency and eradicating the euro, however, will be difficult because the euro will be worth more than the new currency, making transactors want to deal in euro and resist the new currency.[184]

Legal complications also arise regarding existing contracts that are re-denominated in the new currency.[185] Whether or not a court will enforce a contract re-denominated in a new currency most likely depends on its jurisdiction.[186] While courts in the expelled country will enforce the re-denomination, foreign courts may not be so generous.[187] Difficulties arise here because traditionally, the law of the currency issuer (*lex monetae*) is used to determine the effectiveness of the re-denomination.[188] Application in this context is not as simple, because instead of one country replacing its existing currency with another, a country is replacing another's currency, the euro, with its own.[189] Furthermore, if courts considered EU law to be *lex monetae*, the re-denomination would not be effective.[190] Other considerations, such as choice of law provisions, may also be relevant.[191]

At least one commentator believes that euroisation, the

Upon expulsion from the EMU, however, the expelled state would re-denominate government debt into the new currency. *Id*.

184. *See id.* at 218–20. The U.S. Supreme Court has taken the position that "[a]n obligation in terms of the currency of a country takes the risk of currency fluctuations and whether creditor or debtor profits by the change the law takes no account of it." Deutsche Bank Filiale Nurnberg v. Humphrey, 272 U.S. 517, 519 (1926) Thus, the argument that denominating the contract in terms of the new currency devalues the value of a contract may not be successful in American courts. *Id.*

185. *See* Scott, *Euro Falls Apart*, *supra* note 64, at 223–24 (describing the lack of foreign case law precedent establishing what currency would be used in contractual disputes after a member state exits the European Union and re-denominates its currency).

186. *See id.*

187. *Id.*

188. *Id.*

189. *See id.*

190. *Id.*

191. *Id.* at 224. For an explanation of the different methods of addressing the contract denomination issue, *see* Eaker, *supra* note 10 (detailing the process of transitioning from the euro to a new currency and issues concerning contract denomination and convertibility of debt).

"official and total substitution of a national currency by the euro, *outside* the framework of the Treaty for the formal adoption of the euro by EU Member States," is a possible alternative.[192] The EU has never favored any country's plans to unilaterally adopt the euro as its official currency.[193] This is because the Union, in the interest of sustainability, has set out criteria to be met before a Member State is allowed to join the Eurozone.[194] A country's unilateral adoption of the euro would circumvent the convergence criteria required to enter into the EMU, which in the EU's opinion undermines the convergence process.[195] Despite this, the negotiation of the consensual use of the euro is a possibility that should be given merit, as this is a special and unprecedented situation.[196] The key to any possible remedy is collective action.[197]

The Council, along with the Euro Group, is most suited to handle the expelled country's transition into a new currency. These institutions are responsible for directing foreign exchange activities and collaborating with third country's regarding exchange-rate systems.[198] The Council dominates the legal regulation of the relations between the euro and other currencies and has the power to make decisions regarding important matters of the EMU.[199] The Euro Group consists of the finance ministers of the Eurozone states, the ECB, and the

---

192. Athanassiou, *supra* note 15, at 40–42 (discussing the advantages of consensual euroisation over other alternative theories).

193. *Id.*

194. Adalbert Winkler, Francesco Mazzaferro, Carolin Nerlich & Christian Thimann, *Official Dollarisation/Euroisation: Motives, Features, and Policy Implication of Current Cases* 5 (Eur. Cent. Bank, Occasional Paper No. 11, 2004). As was noted in previous sections, a monetary union requires close cooperation among members and adherence to fiscal guidelines in order to avoid monetary problems. *See supra* notes 84–93 and accompanying text.

195. Winkler, Mazzaferro, Nerlich & Thimann, *supra* note 194, at 5.

196. *See* Sandrine Levasseur, *Why Not Euroisation?*, SCIENCES PO SPIRE 149–52 (Apr. 2004), http://spire.sciencespo.fr/hdl:/2441/3361/resources/06-89bis.pdf. For an explanation of the ECB's position on unilateral euroisation, *see* Winkler, Mazzaferro, Nerlich & Thimann, *supra* note 1944, at 5.

197. Scott, *Euro Falls Apart, supra* note 64, at 225.

198. TFEU, *supra* note 81, art. 219.

199. CHALMERS, DAVIES & MONTI, *supra* note 38, at 736.

Commission.[200] This powerful group discusses issues relating to the euro, and has the ability to preempt subsequent Council decisions.[201] Part of the Euro Group, the ECB, has the power to form relationships with central banks of other countries and international organizations.[202] The EU institutions can only act regarding matters that are specifically within their respective competences; therefore the Council and the Euro Group, which have been given the power to deal in the areas of foreign currency exchange and monetary policy, are logically the best institutions for the task of coordinating the removal of a Member State from the Eurozone.[203]

Finally, in order to prevent massive capital flight and runs on national banks, the expelled country must impose some form of capital controls.[204] This, however, is a violation of the EU's prohibition against restricting the free circulation of capital.[205] It is therefore necessary for the EU governing institutions to allow an expelled country to violate these provisions, at least temporarily.[206]

Article 63 of the TFEU prohibits "all restrictions on the movement of capital between Member States and between Member States and third countries . . . ."[207] This provision is one of the four freedoms of the EU,[208] and its goal is "open,

200. *Id.* at 720; *see also* TFEU, *supra* note 81, art. 137. The Lisbon Treaty officially recognized the Euro Group, which when first organized was only informal. *See* Treaty of Lisbon, *supra* note 1300, art. 2(100).

201. CHALMERS, DAVIES & MONTI, *supra* note 38, at 720–21. The finance ministers utilize the Euro Group as a means of exerting political pressure on the ECB. *Id.* at 721.

202. CHALMERS, DAVIES & MONTI, *supra* note 38, at 737.

203. It should be noted that there is a history of inter-institutional conflict between the Council and the ECB because they have been given overlapping competences in the area of monetary policy. CHALMERS, DAVIES & MONTI, *supra* note 38, at 737.

204. Willem Buiter & Ebrahim Rahbari, *Global Economics View: Rising Risks of Greek Euro Area Exit*, CITI 14–15 (Feb. 6, 2012), http://willembuiter.com/grexit.pdf. The possibility of capital flight applies not only to the expelled country, but also to other struggling states.

205. Buiter & Rahbari, *supra* note 204, at 14–15.

206. *Id.*

207. TFEU, *supra* note 81, art. 63.

208. The other freedoms are the free movement of people, goods, and services. *A Plain Language Guide to Eurojargon*, EUROPA.EU, http://europa.eu/abc/eurojargon/index_en.htm (last visited Nov. 25, 2012).

integrated, competitive and efficient markets and services in Europe."[209] Freedom from capital restrictions allows all EU citizens to open bank accounts abroad, buy stock in foreign companies, and generally invest where they find the best return.[210] "Capital movements" have been defined to include deposit accounts and financial loans and credits, among other transactions.[211] Any action by a Member State that prevents, limits, or deters investment from other Member States will be found to be in breach of Article 63.[212]

Though capital controls are generally seen as inefficient, restricting of the movement of capital is necessary in this case.[213] Because of the uncertainty concerning the effect creating a new currency would have on existing contracts and debt securities, investors will seek to remove all their money from Greek institutions, leaving the country with no capital.[214] It is estimated that investors have already removed fifty billion euros from Greek banks, which is about twenty-five percent of Greek GDP.[215] This stoppage of foreign investment will have the effect of devaluing the country's new currency.[216] In the event of expulsion from the EMU and possible default, the risk of capital

---

209. Press Release, Europa, Free Movement of Capital: Commission Refers Greece to Court over Investment Restrictions (Feb. 16, 2011), *available at* http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/179&format=HTML&aged=0&language=en&guiLanguage=en).

210. *The EU Single Market*, EUR. COMMISSION, http://ec.europa.eu/internal_market/capital/overview_en.htm#what (last updated Sept. 6, 2011).

211. Council Directive 88/361, annex 1, 1988 O.J. (L 178) 8, 10 (EC).

212. CHALMERS, DAVIES & MONTI, *supra* note 38, at 724.

213. Buiter & Rahbari, *supra* note 2044, at 14–15.

214. *See* Natalie Weeks & Marie Patrakis, *Greek President Told Banks Anxious as Deposits Pulled*, BLOOMBERG (May 16, 2012), http://www.bloomberg.com/news/2012-05-15/greek-president-told-banks-anxious-as-deposits-pulled.html (describing how 700 million euros have already been withdrawn as a result of the Greek debt crisis).

215. Daniel Gros, *Greece's Soft Budgets in Hard Times*, TODAY'S ZAMAN (Mar. 5, 2012), http://www.todayszaman.com/news-273323-greeces-soft-budgets-in-hard-times.html.

216. *See* Darryl Mcleod, *Capital Flight*, THE CONCISE ENCYCLOPEDIA OF ECONOMICS, LIB. OF ECON. & LIBERTY, http://www.econlib.org/library/Enc1/CapitalFlight.html (last visited Nov. 26, 2012) (explaining how "capital flight," or bank runs similar to a stoppage in foreign investment, can lead to devaluation).

flight must be contained as much as possible.[217]

There are other possible routes an expelled country could take to ensure that it both complies with EU law regarding restriction of the movement of capital and reduces capital flight. Though this specific situation is not covered by any of the express exclusions to Article 63,[218] it may be possible for a country to utilize other treaty provisions designed for emergency situations.[219]

First, the European Court of Justice (ECJ) may find the capital restrictions to be necessary to the general interest of the Union, and therefore, permit their implementation. The ECJ has held that a Member State can only impose capital restrictions for reasons specified in Article 65 or by "overriding requirements of the general interest."[220] Furthermore, the restriction must be proportional to the objective it seeks to accomplish and cannot reach beyond what is absolutely necessary.[221] Because a Member State has never been removed from the Eurozone, there is no ECJ case law indicating that capital restrictions would be considered a general interest.[222] However, the ECJ may be willing to include such measures in the general interest category, considering the severity of the situation and the drastic repercussions the free movement of capital would have on a country, in the event of EMU

---

217. Buiter & Rahbari, *supra* note 2044, at 15 ("[D]espite the clear language of Art. 63 . . . it could be argued that temporary capital controls are consistent with the Treaty.").; *see also* Gros, *supra* note 2155 ("Greece cannot regain access to financial markets until the current-account deficit is eliminated and deposit flight stops.").

218. These exclusions are contained in Article 65 of the TFEU. CHALMERS, DAVIES & MONTI, *supra* note 38, at 726.

219. Buiter & Rahbari, *supra* note 2044, at 15.

220. Case C-463/00, Comm'n of the European Cmtys. v. Kingdom of Spain, 2003 E.C.R. I-4606, I-4633; *see Eurozone Bulletin: Updating Contingency Plans*, EUROZONE BULLETIN, June 2012, at 6.

221. Comm'n of the European Cmtys. v. Kingdom of Spain, 2003 E.C.R. at I-4633.

222. National goals that have been held to be within the general interest include safeguarding the solvency and continuity of the universal postal service; safeguarding the supplies of the petroleum, telecommunications, and electricity industries; and maintaining the plurality of the media. *Provisions of the Treaty on the Functioning of the European Union (TFEU)*, EUROPA.EU, http://ec.europa.eu/internal_market/capital/framework/treaty_en.htm (last updated Sept. 15, 2011).

removal.[223] If this were to happen, there would be no treaty violation as long as the restrictions were narrowly tailored and proportional to their ultimate goal.[224]

Additionally, Article 347, if interpreted broadly, may be helpful in overcoming the prohibition on capital restrictions.[225] Article 347 allows for derogation of treaty provisions to combat "serious internal disturbances affecting the maintenance of law and order."[226] An expelled country may be able to convince the ECJ that removal from the EMU and reintroduction of a national currency qualifies as a "serious internal disturbance".[227] Given the ECJ's jurisprudence on Article 347, however, this argument may not be successful.[228]

Considering the broad prohibition on capital restrictions and the unprecedented action being considered, it is perhaps wisest, when amending the TEU to create a right to expel a Member State, to include a provision allowing the use of capital restrictions.[229] In constructing such a provision, the drafters could look to Article 66, which allows the EU to implement "safeguard measures" for six months if the free movement of capital would cause "serious difficulties" for the operation of the EMU.[230] This is a much more straightforward approach and has

223. *See* Bruno Waterfield, *EC Preparing Secret Plans for Greek Euro Exit*, TELEGRAPH (June 12, 2012), http://www.telegraph.co.uk/finance/financialcrisis/9327300/EC-preparing-secret-plans-for-Greek-euro-exit.html (explaining how Greece is making plans under Article 65 to use capital restrictions to avoid a catastrophic bank run). *Cf.* Valentina Pop & Nikolaj Nielsen, *EU States Seek Advice on Greece Exit Scenarios*, EUOBSERVER (Dec. 6, 2012), http://euobserver.com/economic/116593 (noting that case law does not lend itself to broaden the scenarios that would fit Article 65 exceptions).

224. Comm'n of the European Cmtys. v. Kingdom of Spain, 2003 E.C.R. at I-4633.

225. Buiter & Rahbari, *supra* note 2044, at 15. This would be a change from the ECJ policy of reading the Article 63 prohibition broadly and all exceptions narrowly. Hal S. Scott, *When the Euro Falls Apart—A Sequel* 13 (Jan. 31, 2012) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1998356 [hereinafter Scott, *Sequel*].

226. Scott, *Sequel*, *supra* note 2255, at 13–14.

227. *Id.*

228. *Id.*

229. *See id.* at 10–11 (arguing for a treaty amendment because of the risk of capital flight).

230. Scott, *Sequel*, *supra* note 2255, at 13–14.

the benefit of being well tailored to the expulsion scenario.[231]

Not only will the expulsion significantly affect the Member State, but will most likely also have weighty repercussions for those that remain in the EMU.[232] Both the expelled state and the Union have a strong interest in making the exit from the EMU as smooth as possible, with as few adverse effects on both parties' economies and financial systems.[233] This is true, not only in regard to the currency to be circulated, but also to the question of how to denominate the expelled country's outstanding contracts.[234] If a new currency were created, the EMU and the expelled Member State would be able to negotiate a fixed exchange rate, as well as the other modalities of withdrawal.[235] Close cooperation between the ECB and the Member State's National Bank will be absolutely necessary if a country is to be successfully removed from the EMU.[236]

V. Conclusion

The European sovereign debt crisis, if not quickly curtailed, has the potential to turn into a tragedy of epic proportions. Like a flying Icarus, Europe has become entranced with economic prosperity as a result of the creation of the Monetary Union.[237] The crisis represents a failure on the part of the EMU to effectively monitor its Member States.[238] The founding treaties do not successfully prevent and enforce fiscal controls on EU members.[239] Greece, along with other EU members, has taken advantage of the benefits of entering the EU and amassed

231. *Id.*

232. Chapple & Neild, *supra* note 11.

233. Athanassiou, *supra* note 15, at 43–44.

234. Eaker, *supra* note 10.

235. *See id.*

236. Nouriel Roubini, *Greek Euro Tragedy Nears Final Act*, THE GUARDIAN (May 18, 2012, 6:39 AM), http://www.guardian.co.uk/business/economics-blog/2012/may/18/greek-euro-tragedy-nears-final-act.

237. *See* Kathleen R. Mcnamara, *The Eurocrisi and the Uncertain Future of European Integration*, COUNCIL ON FOREIGN RELATIONS (Sept. 2010), http://www.cfr.org/eu/eurocrisis-uncertain-future-european-integration/p22933.

238. Schuknecht, Moutot, Rother & Stark, *supra* note 6, at 8–11.

239. *Id.* at 8–9.

massive amounts of government debt.[240] Unwisely left to its own devices, Greece has jeopardized the entire euro project and exposed the entire continent to an economic downturn.[241] The only way to solve the current debt crisis and prevent other countries, such as Spain, Ireland, Portugal, and Italy, from following Greece's footsteps is to enact a provision allowing for the expulsion of a Eurozone member who has failed to abide by fiscal spending limits.[242] Not only may this be the only way to escape the current crisis (as a Greek default is inevitable and national debt is growing by the day), but also it acts a deterrent against similar behavior by other Member States in the future.[243] Additionally, the diversity associated with the expansion of the Eurozone will only bring more fiscal challenges. An expulsion provision is a necessary safeguard against the dissolution of the EMU due to massive default. It is time for Europe to overcome the fatal flaw of hubris and recognize that the European Union, like any other governmental body, is capable of failure, if it steers off course and flies too close to the sun.

240. *Id.* at 8, 10–11.

241. *See* notes 71-83 and accompanying text, *supra*, for a discussion regarding the effect of Greece's spending on Europe as a whole.

242. *See generally Breaking up the Euro Area: The Merkel Memorandum*, THE ECONOMIST (Aug. 11, 2012), http://www.economist.com/node/21560252 (discussing contagion, expulsions, and Greece's inability to stick to spending limits).

243. *See id.*