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 ................................................................. 431

II. THE HISTORY OF THE EUROZONE ................................. 435

III. THE DEBT CRISIS ............................................................ 438

A. The Stability and Growth Pact ................................. 438

B. The Advantages of Eurozone Membership Cause Imprudent Fiscal Behavior .......................... 440

C. The Contagion Effect ................................................. 442

IV. SOLUTIONS TO THE EU DEBT CRISIS ......................... 443

A. Why an Expulsion Provision is Necessary ................. 443

B. The Removal Process .............................................. 448

V. CONCLUSION ................................................................. 463

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. 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. Icarus, giddy with excitement from the sensation of flying, ignored his father’s instructions and flew towards the sun. Eventually, after Icarus’s wings began to melt and he was no longer able to fly, he fell into the sea and drowned.

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. 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. Now, as the wings of economic prosperity and stability are melting away, it must find some way to keep from drowning.

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. The dream of a common currency began when

2. Id.
3. Id.
4. Id.
5. CLASSICAL MYTHOLOGY IN ENGLISH LITERATURE: A CRITICAL ANTHOLOGY 41–42 (Geoffrey Miles ed., 1999).
7. See id.
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. 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. Greece finds itself facing default yet again, and its numerous bailouts have proven unsuccessful. 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. Despite the bailout, Greece still finds itself unable to meet its upcoming debt obligations. Faced with political backlash at home, some European leaders are now starting to ask whether Greece should be removed from the Eurozone. 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. Therefore, an amendment to the Treaty on European Union (TEU) is necessary before any country can be expelled from the monetary

798623.html.

13. Chapple & Neild, supra note 11 (discussing the possibility of Greece defaulting on its debt).
union.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{19} The Union now represents the third-largest people group in the world, with an assortment of differing languages, cultures, political views, and religions.\textsuperscript{20} This diversity brings additional challenges, especially in the area of fiscal planning.\textsuperscript{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.\textsuperscript{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.\textsuperscript{23} But just as Icarus’s hubris eventually caused his death, so will the hubris of the European

\begin{flushleft}
\begin{itemize}
\item \textsuperscript{16} Eaker, supra note 10; see Athanassiou, supra note 15, at 32–33.
\item \textsuperscript{17} Eaker, supra note 10.
\item \textsuperscript{18} See id. (‘‘The 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.”).
\item \textsuperscript{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 . . . .”).
\item \textsuperscript{21} See Herman Van Rompuy, Towards a Genuine Economic and Monetary Union: Report by President of the European Council, EUCO 120/12 2 (2012).
\item \textsuperscript{22} Schuknecht, Moutot, Rother & Stark, supra note 6, at 9–10.
\item \textsuperscript{23} See id. at 10.
\end{itemize}
\end{flushleft}
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. 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. In his speech, Stresemann asked, “[w]here are the European currency and the European stamp that we need?” Winston Churchill expressed a similar sentiment in 1946, proclaiming, “[w]e must build a kind of United States of Europe.”

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. 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. In 1957,

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

Efforts to renew the move to a monetary union started in March 1979 at the insistence of France and Germany. 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. 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.


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. Bouter, Giancarlo Corsetti & Paolo A. Pesenti, Financial Markets and European Monetary Cooperation 19 (1998).

36. James, supra note 30.


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. The Heads of State and Government at the Maastricht European Council signed the Treaty on the European Union (TEU) on February 7, 1992.

The first stage of implementing the economic and monetary union began on July 1, 1990. Its goal was to assess the progress of full economic and monetary convergence. Stage two began in 1994 and required members to make significant progress towards economic and policy convergence. Rules on public financing were adopted and monitored by the Commission. 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. Finally, the national central banks became independent.

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

---

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.
42. PASCAL FONTAINE, EUROPE IN 12 LESSONS 45 (2010), available at http://bookshop.europa.eu/en/europe-in-12-lessons-pbNA3110652/?pgid=y8dlS7GUWmdSR0EiMEUUsWb0000B6gRe3Kb;sid=BpI1aNnfInU1ZiXPHKr7v6pFJOHscesI?CatalogCategoryID=luYKABst3lwAAAE5xJFy4e5L (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. The ECB was created and entrusted with introducing a single monetary policy. The euro was introduced in 1999 and went into circulation in 2002.

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. 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. Greece was the first to experience severe financial trouble, and now the debt contagion is spreading across the increasingly fragile European marketplace.

A. The Stability and Growth Pact

The TEU was a remarkable example of intergovernmental cooperation; it did not however, address all issues concerning a common currency to the satisfaction of all its members. 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.*
54. *FONTAINE, supra* note 42, at 12.
currency, the deutschmark. The Germans were also weary of casting their monetary lot with countries that had traditionally weak economies and that lacked a “stability culture.” 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. The TEU did not adequately deal with these issues due to disagreement about the proper method of effectively regulating and maintaining the common currency. In response to these concerns, the founders of the EU adopted the SGP in 1997. 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. 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.

The Pact, from the beginning, has received its share of criticism. The overarching concern is that different countries have different fiscal needs, making it difficult to formulate a one-size-fits-all approach. 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.
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. As 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. 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. 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. Europe is now suffering the consequences of their ambivalence towards the Pact. Soaring debt among many of the founding members, namely Greece, has put the continent on the brink of financial meltdown.

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. 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.

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 . . . .”).

66. *Id.* at 6–7.
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.\textsuperscript{73} Despite spending more than it was earning, Greece continued to borrow not only the wage increase, but also to import more than was exported and to pay off old debt.\textsuperscript{74} Eventually, poor fiscal policy caught up with Greece when in 2009, its credit rating was downgraded from A- to BBB+.\textsuperscript{75} Despite these warnings, Greece continued to bury itself further in debt.\textsuperscript{76} In 2009, Greek debt had soared to 115\% of GDP, and it is projected to rise even higher.\textsuperscript{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.\textsuperscript{78} In return, Greek Prime Minister George Papandreou promised to make fiscal reforms and cut government spending.\textsuperscript{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.\textsuperscript{80} Despite the bailout, the Greek economy is still struggling.\textsuperscript{81} In September

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item \textit{Greek Debt Crisis Synopsis}, supra note 52.
\item Eurozone Approves Massive Greece Bail-Out, BBC NEWS (May 2, 2010), http://news.bbc.co.uk/2/hi/europe/8656649.stm. At the time, it was equivalent to $146.2 billion. Id.
\item 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.
\item Id.
\item Aaron Smith, \textit{Moody’s Downgrades Greek Banks}, CNN MONEY (Sept. 23, 2011),
\end{enumerate}
\end{footnotesize}
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


82. Smith, supra note 81.
83. Id.
84. See Eaker, supra note 10.
88. Id.
the Greek debt crisis. The downgrade of the French credit rating may prove disastrous not only to the Eurozone, but to the world economy overall. Upon hearing bleak news from Europe, American stocks dropped roughly two percent. 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. 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.” 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.


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.”).


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.\(^5\) 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.\(^6\) 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.\(^7\) 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.\(^8\) Greek debt is seemingly insurmountable, and a default is not only possible, but also

---


\(^6\) See *Five European Nations to Be Downgraded*, *supra* note 5. 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.

\(^7\) 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.

likely. When the latest bailout from the International Monetary Fund was agreed upon, the estimated total cost was €130 billion ($163 billion). Despite this, Greece’s ability to pay its debts is still uncertain. 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. Furthermore, other EU members are feeling the backlash of an unpopular bailout program, both economically and politically. Still, the social situation in Greece is continuing to deteriorate, as the Greek people generally reject the austerity measures imposed on them. If bailouts and continued austerity measures do not work to save Greece, expulsion may be the only solution left. 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


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.abs.com.au/news/article/1630045/latest-from-wire.


“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 preventative 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.


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. . . .”).


111. Enlargement, EUR. COMMISSION, http://ec.europa.eu/enlargement/policy/from-
increased diversity. The EU now has a population of roughly 500 million people, spans twenty-seven countries, and recognizes twenty-three official languages. Its membership continues to grow. Albania, Bosnia, Serbia, and Kosovo are being considered as potential candidate countries. Croatia, Iceland, Montenegro, Macedonia, and Turkey are candidate countries. The introduction of Turkey would be especially monumental, as it would be the first Muslim country to enter the Union. This increased heterogeneity makes a one-size-fits-all monetary policy harder to achieve. Smaller countries have different economic needs than those of larger, more developed countries. 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. 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


112. See id.


114. Enlargement, supra note 111.

115. Id.

116. Id.


throws of bankruptcy. Such a provision would bolster the enforcement arm of the EMU, which has been weak and ineffectual from the beginning.\textsuperscript{121}

The lack of an EMU expulsion clause is ill-advised and short-sighted. 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.\textsuperscript{122} This economic diversity poses unique challenges to a monetary union.\textsuperscript{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.\textsuperscript{124}

\textbf{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.\textsuperscript{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.\textsuperscript{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

\begin{footnotes}
\textsuperscript{121} Schuknecht, Moutot, Rother & Stark, \textit{supra} note 6, at 8–9; \textit{supra} notes 63–70 and accompanying text.
\textsuperscript{122} See \textit{supra} note 118.
\textsuperscript{124} Athanassiou, \textit{supra} note 15, at 35–36.
\textsuperscript{125} Id. at 32–33.
\textsuperscript{126} Chalmers, Davies & Monti, \textit{supra} note 38, at 48; \textit{The Unanimity Problem}, The Economist (June 26, 2008), http://www.economist.com/node/11622487.
\end{footnotes}
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

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.
of the TEU. 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. 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. 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. 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. 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.

Article 48 provides a second amendment process, called the simplified revision procedure. 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. 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. This means that the amendment cannot grant the Union more power than has been allocated to it in the TFEU. 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. 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. 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. This does not include the months of preparation, negotiation, and drafting that took place before an agreement was reached.

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.

was reached. 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; 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. 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. Implicitly, this means that Greece must agree to its own expulsion from the EMU. This is not as preposterous as it was once thought. Popular opinion in Greece is strongly against the austerity measures imposed by EU leaders. 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. 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.

147. See Dar, 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 Bui ter: 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.
155. Id.
One commentator has argued that an exit from the EMU would free Greece from the euro exchange rate, thus increasing tourism\textsuperscript{156} and allowing it to be a more competitive exporter.\textsuperscript{157} A new currency would also allow the Greeks to determine for themselves what amount of their debt will be repaid.\textsuperscript{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.\textsuperscript{159} A new currency allows Greece to regain control of its monetary and fiscal policy, and may be more favored among the populace.\textsuperscript{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.\textsuperscript{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.


\textsuperscript{160} \textit{See} Thomas, \textit{supra} note 156 (“The view that Greece should exit the euro is more widespread than you would think.”).

\textsuperscript{161} Chapple & Neild, \textit{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. Instead, the previous currency is remaining in circulation and a new currency must be created. 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. 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.

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. 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.

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.\textsuperscript{168} The Council is composed of the heads of government of Member States, its President, and the President of the Commission.\textsuperscript{169} It controls EU membership and instigates treaty reform, among other powers.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{173}

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

\textsuperscript{168} The Council is a separate entity from the European Council and performs different functions. \textit{Id.} arts. 13, 15, 16.

\textsuperscript{169} \textit{Id.} art. 16.

\textsuperscript{170} \textit{Id.} art. 7; \textsc{Chalmers, Davies & Monti, supra} note 38, at 76.

\textsuperscript{171} \textsc{TEU, supra} note 40, art. 7.

\textsuperscript{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 Cmtns. 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. \textit{See id.}

\textsuperscript{173} \textsc{See Chalmers, Davies & Monti, supra} note 38, at 76.

Parliament, or the European Commission submits a proposal to the Council. At this point, the Member State in question has the right to address the Council. 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. The second method is initiated by a proposal of either one-third of the Member States or by the Commission to the European Council. Upon obtaining Parliament’s consent, the European Council may determine that a Member State has breached the values set forth in Article 1a. 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. Some argue that the country will either adopt a new currency, or revive its former one (for Greece, the drachma). It is possible for the expelled country to introduce a new currency because the EMU has preserved the Member States’ national central banks. This allows each Member State to issue debt securities and set reserve requirements, which are the tools of monetary policy.

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.  

Legal complications also arise regarding existing contracts that are re-denominated in the new currency. Whether or not a court will enforce a contract re-denominated in a new currency most likely depends on its jurisdiction. While courts in the expelled country will enforce the re-denomination, foreign courts may not be so generous. Difficulties arise here because traditionally, the law of the currency issuer (lex monetae) is used to determine the effectiveness of the re-denomination. 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. Furthermore, if courts considered EU law to be lex monetae, the re-denomination would not be effective. Other considerations, such as choice of law provisions, may also be relevant.

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. The EU has never favored any country’s plans to unilaterally adopt the euro as its official currency. 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. 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. 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.

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. 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. 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.
195. Winkler, Mazzaferro, Nerlich & Thimann, supra note 194, 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. This powerful group discusses issues relating to the euro, and has the ability to preempt subsequent Council decisions. Part of the Euro Group, the ECB, has the power to form relationships with central banks of other countries and international organizations. 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.

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

Article 63 of the TFEU prohibits “all restrictions on the movement of capital between Member States and between Member States and third countries . . . .” This provision is one of the four freedoms of the EU, and its goal is “open,
integrated, competitive and efficient markets and services in Europe.\textsuperscript{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.\textsuperscript{210} "Capital movements" have been defined to include deposit accounts and financial loans and credits, among other transactions.\textsuperscript{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.\textsuperscript{212}

Though capital controls are generally seen as inefficient, restricting the movement of capital is necessary in this case.\textsuperscript{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.\textsuperscript{214} It is estimated that investors have already removed fifty billion euros from Greek banks, which is about twenty-five percent of Greek GDP.\textsuperscript{215} This stoppage of foreign investment will have the effect of devaluing the country’s new currency.\textsuperscript{216} In the event of expulsion from the EMU and possible default, the risk of capital


\textsuperscript{212} CHALMERS, DAVIES & MONTI, supra note 38, at 724.

\textsuperscript{213} Buiter & Rahbari, supra note 2044, at 14–15.

\textsuperscript{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).


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

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.


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


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. 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.

Additionally, Article 347, if interpreted broadly, may be helpful in overcoming the prohibition on capital restrictions. Article 347 allows for derogation of treaty provisions to combat “serious internal disturbances affecting the maintenance of law and order.” 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”. Given the ECJ’s jurisprudence on Article 347, however, this argument may not be successful.

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. 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. This is a much more straightforward approach and has


227. Id.

228. Id.

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

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.
235. See id.
238. Schuknecht, Moutot, Rother & Stark, supra note 6, at 8–11.
239. Id. at 8–9.
massive amounts of government debt. Unwisely left to its own devices, Greece has jeopardized the entire euro project and exposed the entire continent to an economic downturn. 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. 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. 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.
243. See id.