Greece:
In the spotlight… yet again!

With major reforms on the to-do list, Alexandra Kastrinou takes a timely look at the deficiencies of the current insolvency system

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For over five years, Greece has been subject to severe austerity measures in its quest to service its sovereign debt. Greece has had to resort to both European and international institutions (the Troika[1]) for financial support.

In return, a series of commitments were imposed with the goal of eliminating fiscal imbalances, achieving fiscal surpluses and market flexibility.

Following the early bailout agreement in 2010,[2] structural reforms were introduced in order to improve liquidity and growth prospects. The reforms ranged from implementing an unprecedented privatisation plan to slashing expenditure for social benefits, health, education and welfare provisions and, moreover, introducing profound changes to labour law. In addition, reforms were to be introduced to tackle longstanding problems of corruption and tax evasion. Furthermore, the Insolvency Code saw a series of amendments.[3] In 2012, Greece has enhanced its corporate rescue process by abolishing the outdated conciliation procedure and introducing new rehabilitation proceedings.[4]

As part of the bailout agreement with the troika, Greece has also had to put in place a large scale privatisation scheme,[5] which is the largest declared divestment programme in the world. The aim is to attract significant international capital flows that will contribute to restarting the Greek economy and fuel economic growth.[6]

In particular, by means of "emergency legislation" (L.3986/2011) introduced in 2011, provision has been made for the establishment of an Asset-Development Fund (ADF) for the use of the State's private property. The ADF was set up with the primary function of raising approximately €50 billion, through the disposal of State assets of strategic importance.[7]

The privatisation process has been taking place under the watchful eye of Greece's EU creditors. It is perhaps of no surprise that two observers have been appointed to the ADF's Board of Directors (one from the Eurozone and one from the European Commission) or that, though the Board has the absolute authority in privatisation decisions, it is required to act upon the advice of a Council of Experts, three members of which are appointed by the Troika.[8] It has been argued that the independence of the ADF and its operations has been compromised for the benefit of Greece's European creditors.[9] The current Greek Minister of Finance, Professor Yanis Varoufakis, has described the privatisation scheme as undemocratic and malignant. He also contends that "*European leaders have taken it upon themselves not only to decide that the Greeks will sell the family silver but, astonishingly, to effect the sale themselves.*"[10]

Greece's ill-drafted fund-raising exercise[11] has blatantly failed to attract a healthy inflow of investment. Coupled with the lethargic efforts of the previous Greek administration to take active steps to fight corruption and to introduce structural reforms to a rather broad and ineffective public sector, Greece has been diving further into recession. The continuous recession has in turn resulted in a humanitarian crisis. Poverty levels have dramatically risen, unemployment rates have increased rapidly (particularly youth unemployment)[12] and wages have dropped drastically.[13]

The despair of the people of Greece and their opposition to the austerity programme was arguably reflected in the outcome of the recent 2015 elections. Greece's newly elected coalition Government stated that it has made it its main mission to combat the destructive effects of the longstanding austerity. It has

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announced a number of regulatory reforms, which are to be introduced in Parliament in March seeking not only to provide relief for those with lower incomes (or no income at all!), but to also improve productivity by reshaping both the public and private sector and rendering the economy viable and competitive again.

However, the implementation of the promising social and economic policies, as proposed by the new Government, require the support of the Troika. That in turn presupposes Greece's staying with the Eurozone. During recent Eurogroup meetings, the new Government has asserted that a Grexit is not yet on the cards and that the country's future is very closely linked to both the Eurozone and the EU. Although the negotiations between the Greek Government and the 'institutions' regarding the review and completion of the previous bailout programme are still ongoing, Greece has recently been allowed some breathing space by means of a four month extension of the current Master Financial Assistance Facility Agreement. However, this might be of little comfort, as only approval of the conclusion of the review of the extended arrangement by the institutions in turn will allow for any disbursement of the outstanding tranche of the current EFSF programme.[14]

To conclude, the question that still remains is how a virtually bankrupt state will be able to restructure its failed economy. The answer arguably depends on the European approach to the Greek crisis. The dilemma placed before the EU is whether the hardships of Greece form part of a wider European problem that needs to be collectively addressed and that will require institutional reforms at a European level. Alternatively, if a possible withdrawal of Greece from the Eurozone does not pose a serious threat for the very existence of the Union, whether the time has come to punish the prodigal child. One would hope that at the end of this Greek drama, the catastrophe will give its place to a catharsis. ■

Footnotes:

1 The International Monetary Fund, The European Central Bank and the European Commission.
2 Greece was granted financial assistance in exchange for its adherence to the terms of a Memorandum of Understanding.
3 Not so long before the crisis, in 2007, Greece introduced significant amendments to its Insolvency Code in order to update and promote its corporate rescue regime and make it more attractive and effective.
4 Article 234 of Law 4072/12 amending Article 99 of Law 3588/2007. See also Word Bank Report '*Doing Business*' 2015, at p.104.
5 Bazinas, G., & Sakkas, Y., Greek Privatisations: A Euro Phoenix Tale, Eurofenix, Autumn 2011.
6 See http://www.hradf.com/en/the-fund
7 The Fund is a "*societe anonyme*",which is governed by private law. Its board of directors is comprised of five members and is appointed by the General Assembly for a three year term.
8 Articles 3-4 Law 3986/2011.
9 See note 5 above.
10 Varoufakis, Y., '*Privatisation Without Representation: European democracy's last gasp*', 2011, available at http://yanisvaroufakis.eu/2011/05/24/privatisation-without-representation-european-democracys-last-gasp/
11 In 2013 the IMF acknowledged the programme was wrong. See L., Elliot, P., Inman & H., Smith 'IMF admits: we failed to realise the damage austerity would do to Greece', the Guardian, 5 June, 2013.
12 It was reported in late October 2014 that unemployment reached 27% and youth unemployment in particular, reached 50%.
13 Greeks show a 30-50% reduction of their wages.
14 See Eurogroup statement on Greece, 20-02-2015, available at http://www.consilium.europa.eu/en/press/press-releases/2015/02/150220-eurogroup-statement-greece/

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