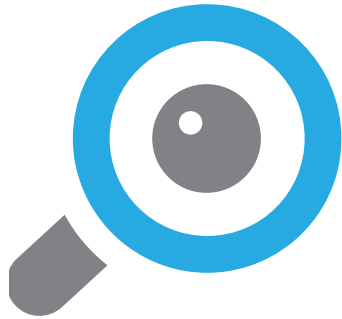


Illegitimacy, Illegality,  
Odiousness and Unsustainability  
**of the August 2015 MoU  
and Loan Agreement**

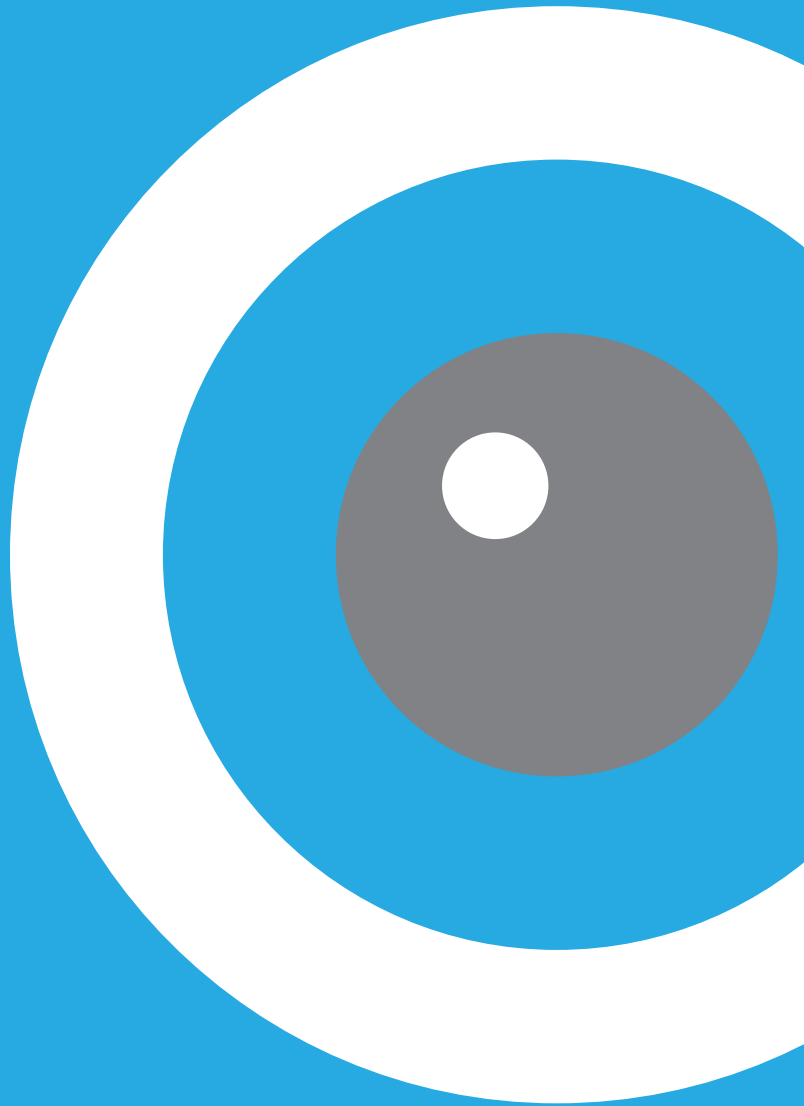


TRUTH  
COMMITTEE  
ON PUBLIC  
DEBT





TRUTH  
COMMITTEE  
ON PUBLIC  
DEBT



# Introduction

In its June 2015 preliminary report, the Truth Committee of Public Debt (Debt Truth Committee) demonstrated that the largest part of Greece's post-2009 debt was in fact private debt converted into sovereign debt. The same countries and institutions that converted private into public debt later entered into a series of loan agreements and Memoranda of Understanding (MoU) from 2010 onwards, the bulk of which was used to repay the aforementioned debt and the ensuing interest, while at the same time imposing upon the Greek population conditions of extreme austerity. The Debt Truth Committee found that the debt is odious, illegal and illegitimate and wholly unsustainable. Such characterisations were consistent with pertinent definitions adopted by specialized UN bodies. Moreover, in line with other international human rights bodies, the Debt Truth Committee held that the conditions imposed upon Greece violated not only its Constitution but also its international treaty and customary obligations.

In August 2015, the Tsipras (SYRIZA/ANEL) government agreed to a new MoU and a Financial Assistance Facility Agreement [loan agreement]. The terms of the August 2015 MoU [Third MoU] and loan agreement entered into by the Tsipras government brings into question two particular aspects of odious debt doctrine, namely: a) the proper place of economic self-determination (as expressed by popular vote) in debt restructuring and; b) the actual outcomes of these agreements on the Greek people, the fiscal and financial impositions on the State and the sustainability of the debt overall. These aspects of the agreements will determine the odious, illegal or illegitimate nature of the aforementioned outcomes.

# The Binding Nature of the Referendum

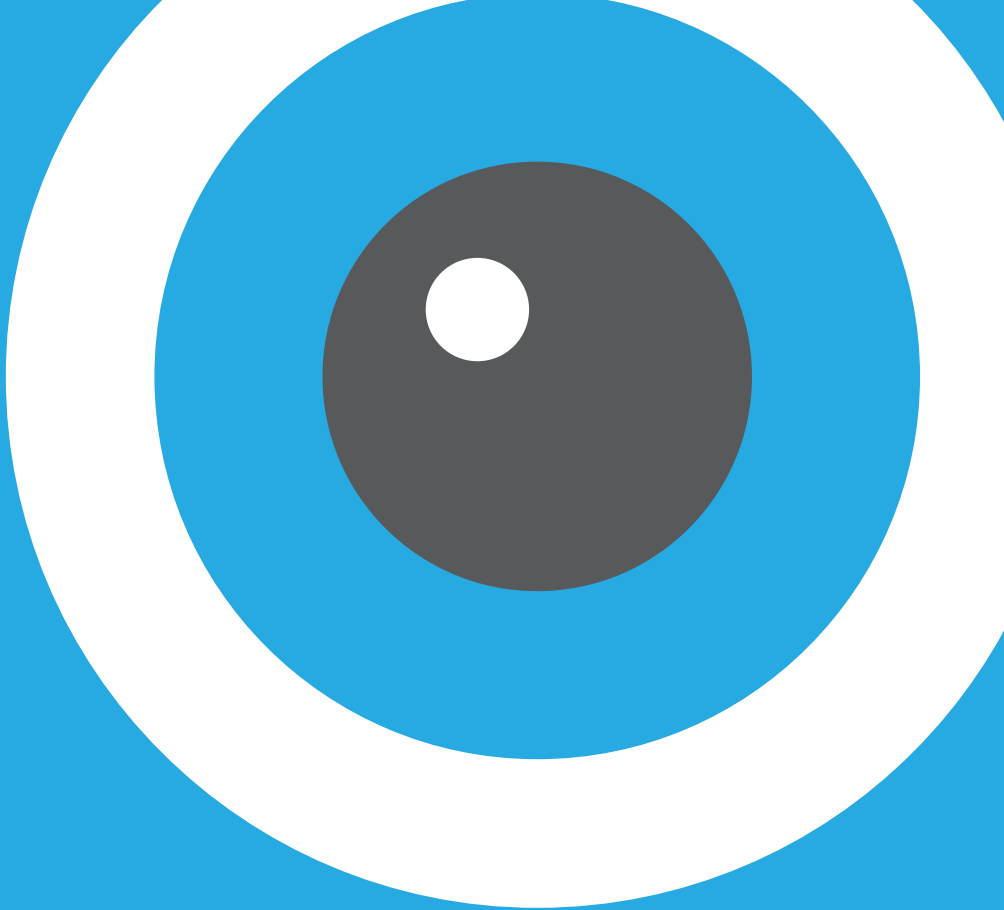
**T**he referendum of 5 July 2015 requested the Greek people to decide whether or not to accept two sets of proposals put forward by the EU Commission, the International Monetary Fund (IMF) and the European Central Bank (ECB). The proposals were set out in two distinct documents. The first was titled “Reforms for the Completion of the Current Program and Beyond”, while the second was titled “Preliminary Debt Sustainability Analysis”. The effect of both documents (would-be-agreements) was the provision of liquidity, chiefly for debt-repayment in exchange for severe fiscal and social conditionalities. It was because of these severe conditionalities and their detrimental impact on society and the country’s fiscal independence that the Prime Minister called for a referendum. The outcome of the referendum was an overwhelming NO vote (61.3%) against the content of the two documents. The Prime Minister and the ruling SYRIZA and ANEL parties had championed the NO vote, this being consistent with their pre-election manifestos. However, in the aftermath of the referendum and despite its outcome, the Prime Minister adopted the Third MoU and loan agreements, the contents of which are of equal or greater social and fiscal impact as compared to the preceding ones.

Domestic and international press has remained silent, or in any event made no serious attempt, to explain the legality of rejecting the clear outcome of the referendum. Article 44(2) of the Greek Con-

stitution stipulates the conditions under which a referendum may be held. It envisages two types of referenda; the first concerns crucial national issues whereas the second relates to adopted bills regulating important social matters, save if they concern fiscal issues. This provision is, however, silent as to whether the results of referenda possess a binding as opposed to a consultative character. The better view, which is accepted by the majority, is that both types of referenda are binding as to their outcome.

As regards the second type of referendum, concerning bills dealing with important social issues, these are deemed accepted but not yet officially adopted if they have not been published in the Official Gazette. In between these events (i.e. adoption by Parliament and the publication) lies the referendum, which allows the people to either approve or reject the bill. The Constitution stipulates that if the referendum approves the bill, then the outcome of the referendum becomes effective and the bill must be published within a month.

But even beyond this procedural legal analysis, it is accepted by the vast majority of constitutional commentators that both types of referenda are binding as to their substantive outcome. However, each type of referendum is addressed to, and accordingly constrains, only a particular state institution. Hence, referenda on crucial national issues affect the ability of the Government to take contrary action on the substantive matter decided by the referendum. Equally, a referendum concerning im-



portant social matters (by means of a bill) imposes limitations on Parliament to legislate on the matter decided. Nonetheless, although referenda are binding in the sense described, they do not prevent the Government and Parliament respectively to deal with issues that are peripheral to the substantive content of the referendum. Moreover, the executive and parliament may re-engage with the substantive issue already determined by a referendum, but this can only be justified if it is ‘in the benefit of the people’ (Article 1(3) of the Constitution) and as long as it respects the Constitution and the rule of law.

**It is beyond doubt, therefore, that referenda under Greek law are binding as to their substantive content. In the case at hand, because the question contained in the 5 July referendum concerned the adoption of international agreements and Greece’s fiscal sovereignty – and, by extension, the economic self-determination of the Greek people – it is best described as a referendum on crucial national matters and was proclaimed as such. As a result, the overwhelming rejection of the two proposals (would-be-agreements) constrains the power of any post-referendum Greek government from entering into agreements with a similar content. Given that the debt for which such agreements are destined has been found to be odious, illegal and illegitimate – and moreover its social impact has been well documented – it is inconceivable that any circumvention of**

**the referendum outcome can ever be “in the interests of the Greek people”.**

The referendum was intended as a clear exercise of economic self-determination, both internal and international, which constitutes a rule of customary international law and *jus cogens*. The clear expression of almost 62 per cent of the Greek electorate body demonstrated its opposition to the contents of the aforementioned documents and thus any future agreement containing their terms. The circumvention of the referendum’s outcome violates Article 44 of the Constitution and the rule of law and as a result does not bind successor governments because of its illegal nature. Moreover, because it also violates the collective right of self-determination, it constitutes a violation of Greece’s treaty and customary obligations. The principle that agreements must be honoured (*pacta sunt servanda*) finds no application in the present instance because the underlying cause of action is illegal (i.e. constitutional violation).

**In any event, one should also consider the moral dimension of an electoral outcome with a clear majority of 62 per cent. It is inconceivable that a government can lightly reject the outcome of such a popular vote and that subsequently other states and intergovernmental organizations can enter into agreements that are wholly antithetical to such a popular vote. Such agreements are no doubt illegitimate and lack any moral foundation.**

# The Post-Referendum MoU and Loan Agreement


**O**n 19 August 2015 the Greek government signed the aforementioned MoU with the EU Commission and the ESM, followed by a Financial Assistance Facility Agreement [loan agreement] a little later. The agreements envisage the disbursement of 86 billion Euros to Greece, of which more than 25 billion was earmarked for the re-capitalisation of Greek private banks.

On paper only, the MoU addresses several social issues, such as social welfare nets, justice, labour incentives, access to healthcare and others, but the actions by which these are to be implemented are vague or non-existent. It is only tax, privatisation and revenue-collecting measures that are discussed in detail. Without a concrete proposal that tackles debt sustainability while at the same time truly promoting foreign and domestic direct investment (which will lead to meaningful job creation) all the aforementioned safety nets are merely hortatory and hollow promises. Below it is shown that, in fact, several user fees are imposed on all or most social services (including healthcare), as well as new taxes on trade and commerce, all of which will inhibit inward investment, while at the same time making services more expensive. Hence, the impact on socio-economic rights will be detrimental for the middle class (at the very least), the youth and the unemployed. The same detrimental effect on fundamental human rights will continue unabated as debt repayment is the only focal point and objective in the MoU and the loan agreement.

The MoU, which is more concerned with policies

as compared to the loan agreement, gives no real substance to even its hortatory promises on social issues. None of these is envisaged as justiciable rights, but rather as contractually agreed terms between two sovereigns, namely a debtor and several creditors. This observation is significant even though it may seem that the two outcomes are identical. For example, the MoU stipulates that a user fee of 5 euros for admission to public hospitals may be re-introduced. Although such a fee may ultimately be waived for the ultra-poor, this may not be the case for those with some (meager) income but who are unable to otherwise afford the fee, thus denying them the right to healthcare. Such persons cannot





challenge the hospital fee under the MoU. Hence, **the rights that the Greek people enjoyed under the Constitution and international law are rendered non-judicial under the terms of loan agreements.**

**This state of affairs constitutes an unprecedented violation of fundamental rights.**

The MoU makes a number of other hollow promises with a view to communicating its content to the Greek people. It promises 50,000 new jobs while at the same time making investment and trade unprofitable without specifying even in the slightest where and how these jobs will be created and without elaborating on how Greece is to boost employment. There is absolutely no provision for enhancing the Greek

economy in such a way that it can create jobs. For example, there is no plan for boosting particular industries through R&D, developing the tourist industry, or for attracting employment-boosting investment. In fact, the MoU imposes measures that are not conducive to serious, long-term, investment. Hence, there is nothing in the texts promising to enhance Greece's investment or business environment or otherwise boost consumerism, which in turn would spur confidence in the internal market and lead to some job creation.

Furthermore, the Third MoU is based on the same hypotheses and postulates as the two previous MoU. Therefore, it is destined to fail, leaving the debt unsustainable. (See Annex, "The Third Memorandum is Unsustainable just like the Previous Two").

The MoU is also silent on the odious, illegal and illegitimate nature of the Greek debt as a whole (particularly the conversion of private into public debt), as well as on the odious, illegal and illegitimate nature of the loans disbursed to Greece since 2010, which were used almost entirely (around 92 per cent) to repay capital and interest to creditors. In fact, the 2015 MoU and loan agreement are an extension of the previous odious loan agreements (advanced by the same creditors) and hence it is not surprising that no reference is made as to the nature of the Greek debt. **Given that the debt and all of the 2010-2014 loan agreements have been found to be odious, illegal and illegitimate, any subsequent loan agreement that is predicated on these (while ignoring their illegal character) is itself also odious, illegal and illegitimate.**

# Coercion, Unlawful Coercive Measures and Direct Interference in the Domestic Affairs of Greece

In its June 2015 preliminary report the Debt Truth Committee pointed out that the majority of debt instruments entered into by Greece between 2010-2014 had encompassed a large degree of coercion. Indeed, it was demonstrated that where a State is coerced into violating its constitutional, treaty and customary obligations in order to secure credit and liquidity, especially where it is forced to forego a significant part of its legislative and socio-economic sovereignty, such a state is deemed as having consented under a high degree of coercion. It was explained in the preliminary report (see p. 59-60) that the term “coercion” under Article 52 of the Vienna Convention on the Law of Treaties (VCLT) may be construed as including also forms of economic coercion and is not necessarily be limited to armed force. The report provides ample references to several instruments whereby economic pressure is viewed as a form of aggression. Moreover, it was explained in the preliminary report that the aforementioned type of economic coercion also qualifies as unlawful intervention in the domestic affairs of a state, which, although does not invalidate consent, may nonetheless offer a legal basis for denouncing a treaty under Article 56(1) VCLT.

Principle 4 of the 2015 UN General Assembly resolution outlining several customary principles on sovereign debt restructuring, which is discussed below, requires that all actors involved refrain from exercising any undue influence in the process. It is clear that **no part of the negotiations was concluded in good faith and that undue influence was exercised from the outset against the Greek government and the Greek economy as a whole. Undue influence was also exercised against the Greek people in the run up to the January 2015 elections and up until the referendum.<sup>1</sup> It should be stated that the rejection by the Greek government and its creditors of the overwhelming referendum result constitutes undue influence in the people’s constitutional prerogative to choose their financial future and is itself illegitimate and contrary to the rule of law (principle 7).**

Since February 2015, following the ascent to power of SYRIZA, the forms of coercion and intervention

were mostly direct and threats were not limited to the government but also to the Greek people. This manifested itself in numerous ways and we shall limit our reference here to only a few.

**On 27 June 2015**, the Greek Prime Minister, Alexis Tsipras, announces a referendum concerning the creditors’ ‘unbearable’ austerity demands. In a speech on national television after a late night cabinet meeting on Friday, Alexis Tsipras said that the Greek people would vote on 5 July whether to accept conditions imposed by Greece’s three main creditors, the European Union, the European Central Bank and the International Monetary Fund, known collectively as the Troika. On 29 June 2015 Benoît Cœuré, Member of the Executive Board of ECB, told the French financial daily *Les Echos* that “an exit from the eurozone, so far a theoretical issue, can unfortunately not be excluded any more», adding that this was the consequence of Athens’s decision to end the talks. Benoît Cœuré said that if Greeks vote «Yes» in the referendum for the aid package, he had «no doubt» eurozone authorities will find ways to meet commitments towards Greece. Alternatively, he pointed out, if the «No» vote wins, «it would be very difficult to resume political dialogue», he said.<sup>2</sup> During this time the ECB refused any liquidity assistance to Greece for an entire week.

**On 3 July 2015**, ECB Vice President Vitor Constancio said he could not say whether the ECB would provide emergency liquidity assistance (ELA) to Greek banks if Greeks voted ‘No’ in 2 days. Asked if the ECB would grant the assistance that Greek banks need to stay afloat, Constancio said: «I cannot in advance answer that question.” «It will be a decision by the (ECB) Governing Council. We will have to wait and see how the Governing Council as a whole will analyse the situation», he said at a press conference following a speech at a financial conference.<sup>3</sup>

**On 11 July**, a few days after the overwhelming No vote, a document issued by the German Ministry of Finance mentioned: “These proposals cannot build the basis for a completely new, three-year [bailout] programme, as requested by Greece.” This referred to the new fiscal austerity proposals suggested by the Greek Prime Minister. It called for Greece to be expelled from the Eurozone for a minimum of five years and de-

mandated that the Greek government transfer €50bn of state assets to an external agency for sell-off.<sup>4</sup>

The stance of the ECB and the financial coercion it directed to Greece and its people was not only direct but wholly unveiled and extremely hostile. During this time EU officials and government officials, such as Wolfgang Schauble, made the point that Greece will be led to a humanitarian disaster with tanks being rolled on the streets should the electorate choose to vote “No” in the referendum, thus intimating that Greece was destined to a complete breakdown.<sup>5</sup> **The decision of the ECB to limit the provision of additional liquidity to the Greek banking system, which effectively brought about the imposition of capital controls, contravened its mandate and core responsibilities.** Given that the ECB had deemed Greek banks solvent in the stress tests conducted in 2014, it was under an obligation to provide Emergency Liquidity Assistance (ELA) in order to stem the bank-run as long as these banks could post collateral in line with its regulations. At the time when the ECB capped the ELA, it is estimated that Greek banks could have accessed up to an additional 28 billion euros in emergency funding.<sup>6</sup> The ECB clearly breached its obligations under the EU treaties. To begin with, the disruption imposed upon the payments system of Greece is in clear violation of its obligation to ensure the smooth operation of said system as prescribed in Article 127 of the EU Treaty. Secondly, the ECB has the mandate to “support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union”. One of those economic policies is the “imperative to break the vicious circle between banks and sovereigns”.<sup>7</sup> **By forcing the closure of the banks and pushing the country close to a de facto and illegal exit from the Euro, the ECB created a situation in which the Greek state and its banks became even more intertwined.**

**On 13 July 2015** Alexis Tsipras accepts the creditors’ austerity deal and agrees on the terms of a third MoU. On 19 August 2015 Alexis Tsipras signs the Third MoU. On 14 September 2015 in an interview to Reuters, Vitor Constancio replied to the question: “What doubts were raised about the euro?”

“It raised doubts for the markets that countries like Greece could cope with the challenges of monetary union. There was never any doubt among the majority of member countries. We maintain that the euro is irreversible. Legally, no country can be expelled. The actual prospect of that happening was never for real.”<sup>8</sup>

It is also telling that 2 months after the referendum, in the crucial discussion before the UN General Assembly on September 10, 2015 concerning a resolution on principles sovereign debt restructuring, which is discussed below, Greece abstained from voting. Such a political stance is inconceivable given that the substance of the resolution was of the utmost national importance for an indebted country such as Greece (and the terms of the resolution were favorable). Despite the EU common position on this matter,<sup>9</sup> there is a clear conflict of interest between Greece and other EU states, given that Greece is a debtor and its other partners are creditors. The EU common position effectively demanded that member states vote against the resolution, or that at the very least cast a stance of abstention. Hence, **Greece’s position on this matter can only be the result of pressure from its creditors as its abstention is wholly against national interests.**

Direct statements against the NO vote and the calamities that would befall the Greek people were moreover made by powerful officials of the EU, in clear defiance of democracy and democratic principles. Illustrative examples are those of statements made by the President of the EU Parliament, Martin Schultz. No doubt, the coercion described in this section was aided by a large part of the Greek press, which went as far as to distort predictions on the outcome of the referendum. Several polls predicted that the YES vote prevailed. Such a result could not have possibly been retrieved from the available data at the time.

All of the above were designed and meant to instill fear in the Greek people and hence to sway their vote in favor of the YES option and, additionally, to coerce the Greek government into accepting the terms of its creditors.

# Indicative Outcomes deriving from the Acceptance of the Third MoU

**T**he Third MoU is in line with the 2 preceding ones. It continues to violate fundamental human rights, while at the same time crippling the Greek economy and providing no incentives or platform for growth, investment and enhancement of trade. Its aim is to collect even more taxes and raise revenues in order to continue repaying Greece's "debt" without any reference to debt reduction with a view to serious debt sustainability. The MoU calls for greater privatization which is contrary to economic self-determination and without a serious plan risks dissipating and under-selling profitable businesses and creating more joblessness.

**Greece has effectively lost its sovereignty in the same manner as the previous agreements. Any bill that comes through parliament must receive the approval of the creditors before being adopted. Such restrictions on legislative sovereignty can only culminate in an absence of democracy and the imposition of subservience and colonialism. It is instructive that upon reaching agreement with its creditors, the Greek government adopted a series of laws which the creditors had long demanded.** One illustrative example is the adoption of a new Code of Civil Procedure. This new Code had been rejected by 93 per cent of the lawyers and had been resisted by previous Parliaments. Astonishingly, the new Code envisages that where an entity is insolvent or otherwise unable or unwilling to satisfy its creditors, private banks will always carry the status of preferential creditors, above and beyond the State as well as beyond and above employees! This outcome is alien to Greek constitutional, administrative and civil law and is no doubt the result of intense pressure by Greece's creditors.

# Social implications of the Third Memorandum

The Third MoU that accompanies the August 2015 loan agreement, just like the previous ones of 2010 and 2012, transfers the weight of structural adjustment to the Greek society. As a result, the Third MoU will increase poverty, class polarization and social exclusion. A characteristic example of this is that although creditor demands envisage broadening the tax base, tackling tax avoidance etc, at the same time they seek to abolish a 26% withholding tax on cross border transactions. This was set to come into operation on 1 September 2015 with the aim of halting a very common source of tax avoidance, under the guise that this would enhance the free movement of capital.

In addition, the economic terms of the Third MoU and the August 2015 loan agreement will further

undermine the sovereign rights of Greece.

It is beyond doubt that the new austerity measures, among many other consequences:

- Reduce pensions in line with the measures implemented through the anti-pension reforms of 2010 and 2012 under the promise to save around 0.25% of GDP in 2015 and 1% of GDP by 2016. The package, inter alia, creates strong disincentives for early retirement by increasing respective penalties; raises health-related contributions of pensioners to 6%; integrates all supplementary pensions funds which henceforth will be financed exclusively by personal contributions by 1 January 2015; freezes monthly guaranteed contribution pension limits in nominal terms until 2021; establishes a closer link between contributions and benefits; phases out the solidarity grant (EKAS) for all pensioners by end-December 2019, starting with the top 20% of beneficiaries in March 2016.

- Increase taxation on farmers. The squeeze on farmers' income is effectuated through the gradual abolition of excise tax refund on diesel oil in two equal steps in October 2015 and October 2016 as well as through the increase of direct taxation and, finally, by means of increasing social security contributions.

- Phase out progressively, by 31 December 2016, VAT discounts currently available to businesses on the Aegean islands. The first round of abolition will be announced by a joint ministerial decision by 1.10.2015. The aim of the exemption was to decrease consumer prices in distant and out of reach islands and hence to achieve regional coherence.

- Ease attachment and seizure processes in favor of tax authorities and banks. This is to be achieved through the elimination of the existing 25% ceiling for the

## Composition of the fiscal adjustment over the program period

% OF GDP	2015	2016	2017	2018
Pension reforms	0.4%	1.3%	1.7%	1.9%
VAT	0.4%	1.1%	1.1%	1.1%
Income taxes	0.3%	0.8%	0.9%	0.8%
Other measures - expenditure	0.1%	0.5%	0.5%	0.5%
Other measures - revenue	0.1%	0.1%	0.1%	0.1%
<b>Total adjustment</b>	<b>1.4%</b>	<b>3.6%</b>	<b>4.2%</b>	<b>4.3%</b>

SOURCE: ASSESSMENT OF THE SOCIAL IMPACT OF THE NEW STABILITY SUPPORT PROGRAMME FOR GREECE, COMMISSION STAFF WORKING DOCUMENT, BRUSSELS 19.8.2015, SWD(2015) 162 FINAL.

attachment/seizure of wages and pensions and by lowering all thresholds of 1.500 euros. This measure will trigger a new wave of seizures on wages, pensions and deposits.

- Increase the advance corporate income tax not only for large enterprises, but even for the self-employed up to 75% for incomes generated in 2015 and 100% for 2016 incomes, thus further reducing available income.

- Impose a new round of market liberalization under the instructions of the OECD's so-called toolkit. The only beneficiaries from the opening of the (now) restricted professions of notaries, actuaries and bailiffs will be banks, law firms and big businesses. There will be negative impact on working class rights, including the revision of the framework of collective bargaining and wage setting, industrial action and collective dismissals. The additional flexibility of labor relations (as the experience of the previous years has shown) will result to even lower

wages and increase in unemployment, precariousness, undeclared work and non-taxable profits.

Furthermore, quasi-automatic correction mechanisms that will impose new spending cuts in cases of failure to achieve stated fiscal goals, will undoubtedly bring about a new wave of austerity measures. These measures albeit being unknown to date, have the pre-approval of the Greek Parliament. This was adopted by Parliament through a monster-size law that was demanded by Greece's creditors and ultimately accepted by the government. One may easily predict that under such favorable conditions, creditors need not worry about the failure of their fiscal targets. As a result, it is more likely than not that they will announce a new round of spending cuts on the ground that such measures have already been approved by Parliament.

In conclusion, the period of draconian austerity measures introduced in 2010, and which is depicted in the following statistics, continues...

## Labour Market and Social Inclusion Indicators for Greece

	2010	2011	2012	2013	2014	EE28
Unemployment rate (% labour force, age group 15-74)	12.7	17.9	24.5	27.5	26.5	<b>10.2</b>
Longterm Unemployment rate (% of labour force)	5.7	8.8	14.5	18.5	19.5	<b>5.1</b>
Youth Unemployment rate (% labour force aged 15-24)	33	44.7	55.3	58.3	52.4	<b>22.2</b>
NEET: Young people not in employment, education or training (% of total population aged 15-24)	14.8	17.4	20.2	20.4	19.1	<b>12.4</b>
Real Compensation per employee	-3.4	-3	-2	-5	1.1	<b>0.5</b>
Nominal unit labour costs growth (annual % change)	0.3	-0.2	-3.3	-7	-1.6	<b>1.6</b>
Real unit labor costs (annual % change)	-0.5	-1	-3.3	-5	1.1	<b>0.1</b>
At-risk-of-poverty or social exclusion (% of total population)	27.7	31	34.6	35.7	36	<b>24.5</b>
In-work at-risk-of-poverty rate (% of persons employed 18-64)	13.9	11.9	15.1	13	13.2	<b>8.9</b>

SOURCE: IBID

# Conclusion

In the recent UN General Assembly Resolution on sovereign debt restructuring,<sup>10</sup> several principles were laid down. These are important for a number of reasons. Despite the fact that UN General Assembly resolutions are not binding per se, they evince, where there is sufficient support, the official position of states on a particular matter. Where support is overwhelming, sustained and over a significant time (or where the practice supported in the resolution satisfies these criteria) the principle(s) in the resolution may in time reflect customary international law. In the case at hand, the resolution received 136 votes in favour, only 6 against and 41 abstentions. The Assembly made it clear that the principles enunciated in the resolution were guided by customary international law and, in any event, the overwhelming support of these principles by 136 states demonstrates a clear customary consensus. It should be pointed out that the principles are rather conservative and not at all in favour of sovereign borrowers. Their emphasis is on debt repayment and honouring of loan agreements. The first principle, which is central to this discussion, states that:

“A Sovereign State has the right, in the exercise of its discretion, to design its macroeconomic policy, including restructuring its sovereign debt, which should not be frustrated or impeded by any abusive measures”.

This is also consistent with the UN Guiding Principles on Foreign Debt and Human Rights, adopted by the UN Independent Expert on debt and human rights and endorsed by the Human Rights Council.<sup>11</sup> In the same direction, Principle 2 requires good faith by the parties with a view to achieving durable debt servicing and sustainability.<sup>12</sup> Sustainability is defined in principle 8 as follows:

“Sustainability implies that sovereign debt restructuring workouts are completed in a timely and efficient manner and lead to a stable debt situation in the debtor State, preserving at the outset creditors’ rights while promoting sustained and inclusive economic growth and sustainable development,

minimizing economic and social costs, warranting the stability of the international financial system and respecting human rights.”<sup>13</sup>

Based on the aforementioned discussion and the pertinent law applicable to the facts of the case, the following conclusions are beyond any doubt evident:

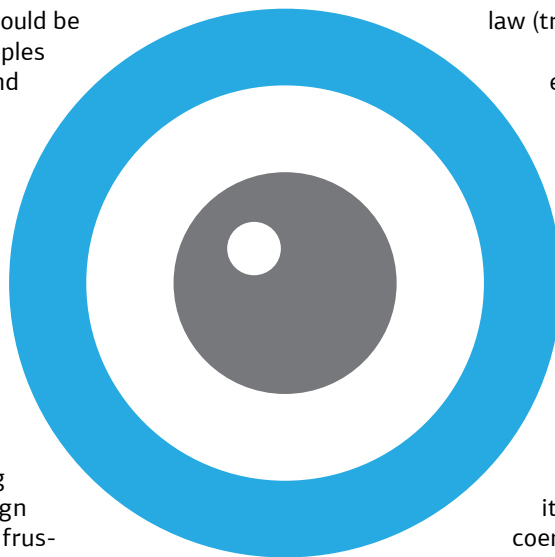
- the Third MoU and the August 2015 loan agreement are illegal, illegitimate and odious because they fail to recognize the illegal, illegitimate and odious character of Greece’s existing debt, as well as the odious, illegal and illegitimate nature of the instruments by which this debt was financed from 2010 until early 2015.

- the Third MoU and the August 2015 loan agreement violate the fundamental human rights of the Greek people (both civil and political as well as socio-economic rights) as set out in the Greek Constitution and under international law (treaty-based and customary).

- Since the ascent to power of the SYRIZA-ANEL government until its political agreement with Greece’s creditors, there was an unprecedented level of coercion and direct interference in Greece’s domestic affairs (including threats against the Greek people) with a view to scaring the Greek government and its people in order to accept the terms of the creditors. Such interference and coercion render any agreements invalid and open to unilateral denunciation by future governments. Moreover,

such actions evince an absence of moral fibre and solidarity on the part of the leaders of EU states and EU institutions and demonstrate that the wellbeing of the private banking system is the greatest imperative in EU policy.

The Truth Committee on Public Debt would like to express its deep regret that the Tsipras government took no consideration whatsoever of the Committee’s Preliminary Report dated June 2015 in its negotiations with the creditors. In fact, Prime Minister Tsipras agreed that no haircut to the debt would take place despite being fully aware of the odious, illegal and illegitimate character of the country’s debt.<sup>14</sup>



## ANNEX 1

# Impact on Labour Relations

### 1. New system of collective bargaining

In the Third Memorandum it is stipulated that the new system will be predicated on best practices of EU member states. As regards its defining characteristics, a wall is raised against the successful system brought forth by Law 1876/90. The MoU prohibits the re-introduction of the model set out by Law 1876/90 – before this was distorted by the legislative measures of the previous MoUs. Meanwhile, the Plenum of the Conseil d'Etat (CdE) with its judgment 2307/2014 annulled the Act of the Ministerial Council (AMC) 6/2012 (implementing law of the Second MoU) regarding the abrogation of the right to unilateral recourse to arbitration (a key entitlement for the functioning of collective autonomy and collective labour agreements [henceforth CLA]). This annulment made possible the re-introduction of arbitration and CLA that had been frozen for two whole years.

The response of the Samaras-Venizelos government was provided through Law 4303/2014, which although re-introducing the right to unilateral recourse, as mandated by the CdE, at the same time set out several criteria for arbitral resolution of collective labour disputes. These were exclusively focused on the interests of employers. Hence, the internal devaluation through the reduction of salaries – a key target of the Second MoU – continues to this day in violation of judgment 2307/2014 of the CdE.

A clear aim of the Third Memorandum is the continuation of the same policy of internal devaluation through the reduction of salaries. This is why the Third Memorandum rejected the re-introduction of the regime of Law 1876/1990 which had been adopted by all the parties in Parliament at the time and had the support not only of employees but also of employers.

Finally, as regards best practices in EU member states, to which the current system in Greece must look for direction, the austerity policies tend to crash CLA everywhere.

### 2. Group Dismissals

The law on group dismissals (Law 1387/1983) and hence the pertinent EU Directive apply only to almost 2% of Greek businesses, because 98% thereof employs less than 20 employees (20 employees is the limit for the application of the law). Any further restrictions against the already ultra-tight field of application of the law will annihilate any sort of control over group

dismissals in Greece and will signal the refusal effective to apply the EU Directive on group dismissals. Moreover, an evident target of the Third MoU is the abolition of executive consent over group dismissals, which will lead, in practice, on average, to the payment of 12 monthly salaries (other than the dismissal compensation), if the employer goes ahead with a group dismissal without prior executive consent. This is a feature of Greek law that is more favourable to employees than the EU Directive. Employer organisations have persistently sought to abolish this law. It should be noted that both the Treaty for the Functioning of the EU and the EU Directive concerning group dismissals expressly allow states to enact more favourable laws. In reality, this particular feature of Greek law covers an important protection gap for employees. This is because in Greece there are no agreed Social Plans in cases of group dismissals and the protection of the unemployed is non-existent.

### 3. Pensions

The continuing reduction in pensions through the Third MoU (direct, indirect with increase in Health Fund contributions, through increases in direct, indirect and extraordinary taxes) violates the Greek constitution according to the Plenum of the CdE (Judgments 2287-2290/2014, which annulled the reductions in pensions imposed in 2012, pursuant to the Second MoU). The CdE held that these new cuts (others had preceded them) violate the terms of a dignified life. Hence, the new cuts that had already been applied, as well as those which will be applied in the future, are in violation of article 2(1) of the Constitution (which refers to respect and protection of the value and dignity of persons) and contravene judgments 2287-2290/2014 of the Plenum of the CdE.

With the same judgments the Plenum of the CdE annulled the “zero deficit clause” of the Insurance Funds, which sets out that the Funds will pay pensions only to the degree that their finances allow for such payments without any assistance from the state. The Plenum of the CdE found this clause to be unconstitutional (article 22(5) of the Constitution). However, the re-introduction of the annulled clause seems to now be imposed on the government through the Third Memorandum). It is instructive that the Juncker Plan submitted to the Greek government prior to the referendum foresaw the abolition by law of the Plenum of the CdE judgments 2287-2290/2014.



# The third memorandum is unsustainable just like the previous two

## 1. The political economy of the third MoU

The main scenario of the Third Memorandum of Understanding<sup>15</sup> (MoU) is summarized in the following table:

### Primary surplus targets and GDP growth path underpinning the third financial assistance programme

YEAR	PRIMARY SURPLUS TARGET	GDP GROWTH
2015	-0.25%	-2.3%
2016	+0.50%	-1.3%
2017	+1.75%	+2.7%
2018	+3.50%	+3.1%

SOURCE: JEROEN DIJSSELBLOEM<sup>16</sup>

We observe the same assumption which underlay the two previous MoU and which has been proven wrong: a strong fiscal restraint is compatible with a recovery in growth.

Eurogroup President Jeroen Dijsselbloem argues that this is possible:

“The MoU foresees to achieve the primary surplus targets with the following measures:

- Pensions’ savings of around 0.25% of GDP in 2015 and 1.0% of GDP by 2016 (see pp. 13-14 of the MoU);

- Various measures in the health care sector (pp. 15-16 of the MoU);

- Tax, revenue, and financial management reforms, including various measures against tax fraud and evasion. A minimum VAT income of EUR 2.65 billion is to be ensured. Property tax rate will be aligned with market prices from 2017 and zonal property values are to be revised. The authorities are to improve the collection of tax debt arrears, introduce independent agencies and make the Fiscal Council independent and operational. Many other tax related reform measures are included in the MoU (pp. 6-11 of the MoU).

- In addition, Greece is requested to enact structural measures by October 2015, which are expected to yield at least 0.75% of GDP coming into effect in 2017 and 0.25% of GDP coming into effect in 2018 so as to help achieving the medium-term budgetary targets”.

## 2. A blind belief in structural reforms

The second assumption is that structural reforms can by themselves boost the growth potential<sup>17</sup>. Additionally, past failures are seen to be the outcome of only incom-

plete implementation of these reforms. For instance, IMF argues: “the significant shortfalls in program implementation during the last year led to a significant increase in the financing need”. But the reforms have actually been implemented in Greece, as the IMF itself recognizes in a document assessing the previous MoU<sup>18</sup>.

The OECD finds that: “Impressive progress has been achieved in reforming labour and product markets since the beginning of the crisis, albeit from a low starting point. Since 2009-10, Greece has the highest OECD rate of responsiveness to structural reforms recommended<sup>19</sup>” In June 2013<sup>20</sup>, the IMF congratulates Greece for its pension reform, “one of the main achievements of the program”.

An IMF document<sup>21</sup> did not hesitate to affirm that: “The simulated effects of reforms are in line with developments in the Greek economy” and that: “The results are also consistent with long-term projected growth under the program ».

But in reality, Greece has been plunged into a deep recession, even though, or indeed precisely because it has strictly applied the structural reforms recommended and imposed by the Troika, at the cost of a dramatic social crisis.

Based on the current evidence, there is no reason to consider that the upcoming structural reforms could produce any other result.

## 3. “Greece’s debt has become unsustainable”

Christine Lagarde, the IMF Managing Director<sup>22</sup> has recently declared:

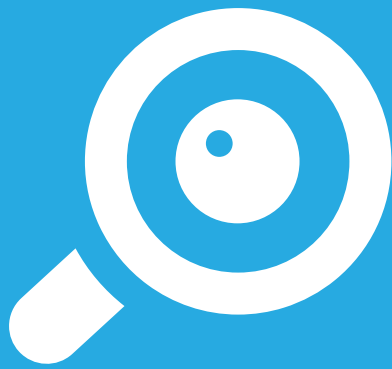
“However, I remain firmly of the view that Greece’s debt has become unsustainable and that Greece cannot restore debt sustainability solely through actions on its own.”

This statement is based on a recent IMF document<sup>23</sup>, according to which: “Greece’s public debt has become highly unsustainable [and] is expected to peak at close to 200 percent of GDP in the next two years, provided that there is an early agreement on a program. Greece’s debt can now only be made sustainable through debt relief measures that go far beyond what Europe has been willing to consider so far.”

## Conclusion

The Third MoU is based on the same wrong hypotheses and postulates as the first two previous MoU. Therefore it is destined to fail, leaving the debt unsustainable.

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