

## 2015年5月26日，美国翰宇国际律师事务所法兰克福办公室举办了一个关于美国商会德国政策委员会金融服务与商法的联合委员会会议。会议的主题是“我们需要担心希腊退出欧盟吗？”

美国翰宇国际律师事务所合伙人兼德国金融服务实务组组长 Jens Rinze，就此话题发表了演讲。他谈到了希腊终止欧盟成员国身份是否具有合法的可能性、希腊退出欧盟对本国现有的贸易合同、交易对手间的贷款及希腊共和国发售的政府债券有何影响。

首先，Jens谈到了希腊债务危机尚未解决。目前希腊还未满足第二个援助计划的条件，然而这是进行其他支出的前提。其次，第二个援助计划将于2015年6月30日到期。即使未偿还款项可以按照计划发放，它们也不足以支付希腊全部的未偿债务。考虑到这点，除了假定的第三个援助计划，以下两种主要的解决方式也受到公众的热议：（1）进一步债务重组；（2）希腊退出欧盟。

Jens解释道，进一步债务重组所面临的一个主要问题是：重组是否会违反《欧洲联盟运作条约》第123条的规定。条约禁止国家通过欧洲中央银行或国家中央银行融资。值得注意的是欧洲法院辅佐法官Cruz Villalon于2015年1月14日阐述了他对直接货币交易程序的见解（虽然它和希腊债务危机无关，但它对于欧洲范围内的国家财政有普遍且更广泛的寓意）：“*更重要的是，欧洲中央银行在一份书面意见中表示，在以集体行动条约为条件的重组背景之下，它会始终坚持自己的主张。*”据此，希腊债务重组将很难合法地进行。

众所周知的是，只有当现在的希腊未偿债务不可以用欧元支付，只能用新的希腊货币（“新货币”）偿还时，希腊退出欧盟才会是一个有效的解决方法。

Jens进一步解释道，希腊退出欧盟在2011、2012年第一次希腊债务危机时已经被讨论过了。但是那时相关市场参与者关注的焦点在于：如果《希腊议会法案》规定要引入一种新货币且单方重定债务和资本控制的货币单位，希腊的单方面退出将会有何后果。对这种情形的主流观点是：《希腊议会法案》规定的重定货币单位只会影响希腊法律所约束的合同和其他文书，但不会直接改变其他法律所约束的合同和文书。

在欧盟立法而非希腊国内法下重定希腊债务的货币单位并不是2011、2012年市场参与者关注的焦点。如果政客们在与希腊谈判的时候得出希腊退出欧盟会使得两者的利益最大化这样的结论，他们可能会认为不应该让希腊单方面退出欧盟，而应该从欧盟层面通过扩大解释《欧洲联盟运作条约》（《条约》本身就规定了希腊的加入）来使希腊实现有组织的退出，并提议《条约》允许希腊自愿撤回加入，此种撤回将在欧盟委员会达成决定和条例时生效。条例需表明（1）希腊终止了欧盟成员国的身份；（2）希腊可以引入新的平行货币；（3）在从欧元转换为新货币的一段时间后，将希腊债务人的未偿债务根据当时市场汇率进行重新定值。

该等条例属于欧盟法律的一部分，除了在规则等级中具有优越性外，它相对于欧盟成员国的国内法律也具有优先效力。如果以条例的方式规定希腊退出欧盟，它将适用于欧盟的每一个成员国。

如果希腊退出欧盟和从欧元记债到新货币记债的货币单位重定在欧盟立法下生效，那么在受到欧盟成员国法律约束（如受到德国法、法国法、意大利法、西班牙法或英国法约束）的贸易合同、贷款、债券、衍生性金融产品和服务和其他金融工具中的货币支付即可从欧元转变为新货币。因为欧盟立法约束所有成员国，并会被成员国的所有法院认可和适用。

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On 26 May 2015 the Frankfurt office of Squire Patton Boggs hosted a combined Committee Meeting of AmCham Germany's Policy Committees Financial Services and Corporate & Business Law. The topic of the combined meeting was "Do We Need to Fear a Grexit?".

Jens Rinze, partner at Squire Patton Boggs and head of the Financial Services Practice Group in Germany, presented on whether it is legally possible for Greece to cease being a member of the Eurozone and which consequences such "Grexit" would have for existing trade contracts and loans with counterparties in Greece and the government bonds issued by the Hellenic Republic.

The starting point of the discussion was that the crisis of the Greek debt is not resolved and the conditions precedent for any further disbursements under the second rescue package have not yet been met by Greece. Further, the availability of the second rescue package expires on 30 June 2015. Even if the outstanding drawings could be made under the second rescue package, they would not be sufficient to pay all outstanding debt of Greece. Taking this into account, in principle two solutions are being discussed in the public sphere in addition to a hypothetical third rescue package: (i) another debt restructuring, and (ii) an exit of Greece from the Euro.

Jens explained that in relation to a further debt restructuring a major legal issue will be whether such debt restructuring would infringe Article 123 of the Treaty on the Functioning of the European Union (TFEU) which prohibits a state financing through the European Central Bank (ECB) and the National Central Banks (NCBs). In that respect it needs to be noted that Advocate General Cruz Villalon stated in his opinion of 14 January 2015 in relation to the OMT proceedings (which are not related to the crisis of Greece but which have wider implications on state financing in the Euro-Area in general): "*Moreover, the ECB has stated in its written observations that, in the context of a restructuring subject to CAC [Collective Action Clauses] it will always vote against a full or partial waiver of its claims.*" Accordingly, a restructuring of the Greek debt would be very difficult from the legal perspective.

In respect to Greece exiting the Euro, it is understood that such exit could only be a real solution if the currently outstanding Greek debt was no longer payable in Euro, but could be serviced and repaid in a new Greek currency ("New Currency").

Jens explained that an exit of Greece from the Eurozone had already been discussed in 2011/2012 during the first Greek debt crisis. At that time, however, the main focus of the relevant market participants was on what consequences a unilateral exit of Greece would have in case of a Greek Act of Parliament providing for an introduction of a new currency combined with a unilateral redenomination of debt and capital controls. The analysis for such scenario in principle was that a Greek Act of Parliament providing for a redenomination could only interfere with Greek law-governed contracts and instruments, but would in principle not directly change contracts and instruments governed by laws other than Greek law.

A redenomination of Greek debt through European Union legislation rather than domestic Greek legislation was not in the focus of market participants in 2011/2012. If the political players in the discussions with Greece should come to the conclusion that it would be in the best interest of Greece and the Euro-System that Greece leaves the Euro-System, then they might conclude that it should not be Greece which unilaterally exits from the Euro, but that a structured exit of Greece from the Euro should be done on European Union level by giving a wide interpretation to those rules of the TFEU which originally provided for the accession of Greece and proposing that TFEU allows a reversion of the accession of Greece by way of "*actus contrarius*" through the Council of the European Union adopting a decision and a Council Regulation which states (i) that Greece ceases to be a member of the Euro, (ii) Greece is allowed to introduce a new own parallel currency and (iii) all outstanding debt of Greek debtors is redenominated after a certain time from Euro into the New Currency at the then prevailing market rate.

Such a Council Regulation would be European Union law and would as such have priority over the domestic laws of the Member States of the European Union and in addition to such superiority in the hierarchy of rules it would be, if done in the form of a Regulation, directly applicable in all Member States of the EU.

If an exit of Greece from the Eurozone and a redenomination of Euro denominated debt into New Currency denominated debt would be effected by EU legislation, then the currency to be paid under trade contracts, loans, bonds, derivatives, and other instruments governed by a law of another Member State of the EU (for example governed by German, French, Italian, Spanish or English law) could be changed from Euro into New Currency because such EU legislation would be binding in all Member States of the EU and would need to be recognized and applied by all courts of the Member States.

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