

The Greek PSI

The CACs and related litigation

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The Greek Bondholder Act

The “Greek Bondholder Act” (Law 4050/21012) stipulated the rules according to which

- a) an invitation of the Republic could be launched to bondholders of Greek Government Bonds (“GGBs”) to be determined in the Invitation (the “Designated Securities”) for exchange (swap) against new securities and
- b) modifications of terms governing GGBs and bonds guaranteed by the Republic, including the exchange of such bonds for new ones, may be effected.

The Collective Action Clauses (CACs)



- The Greek Bondholder Act provided for a procedure trying in essence to “retrofit” a collective action clause, in order to inhibit the free rider / holdout problem from appearing in the sovereign debt restructuring attempt.
- Collective action clauses (the “CACs”) could have been activated if a quorum of at least $\frac{1}{2}$ of the aggregate outstanding principal of all Eligible Titles specified in the invitation were achieved (the “Participating Principal”) and a supermajority of at least $(\frac{2}{3})$ of the Participating Principal had voted in favor of the modification.

The Invitation Memorandum and the CACs



- A Ministerial Council Decision launched the process for the modification of the terms governing GGBs and bonds guaranteed by the Republic and for the exchange (swap) of the Designated Securities against new securities according to the provisions of the Greek Bondholder Act.
- The decision of the Ministerial Council constituted an act of government, associated with the exercise of political power and not an enforceable act of the administration.

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The content of the CACs provisions

- The Greek Bondholder Act did not impose by law new terms on the bondholders nor was an exchange of bonds mandatory. The relevant provisions only provided for the possibility to amend the bond loans' terms by means of a qualified majority and a certain quorum.
- The contemplated modification was of a voluntary nature, since the decision needed for the modification and/or the exchange to be realized depended solely on the will of the bondholders.
- The provisions of the Greek Bondholder Act provided ex nunc the possibility of a modification of the bonds' terms by means of a bondholders' qualified majority and not unanimously, as was the case till then.

The PSI results – The CACs activation



- Holders of approximately €172 billion principal amount of bonds issued or guaranteed by the Hellenic Republic have tendered their bonds for exchange or consented to proposed amendments in response to the invitations and consent solicitations announced by the Republic on 24 February 2012.
- Of the approximately €177 billion of bonds issued by the Republic and governed by Greek Law, the Republic has received tenders for exchange and consents from holders of approximately €152 billion face amount of bonds, representing 85.8% of the outstanding face amount of these bonds.
- Holders of 5.3% of the outstanding face amount of these bonds participated in the consent solicitation and opposed the proposed amendments.

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Litigation

- According to information published by the press, approximately 7.000 bondholders sought recourse to the Council of the State (the Highest Administrative Court of Greece) through relevant petition against the “Haircut” and the CACs.
- In total, more than 70 petitions for annulment have been filed. Each petition includes a group of many bondholders. The petitions of annulment are raised against the Acts of the Ministerial Council, the Governor of the Bank of Greece and the Minister of Finance, by means of which (acts) PSI was implemented.
- The Chamber of Commerce and Industry of Athens, insurance funds, medicinal companies and suppliers of medicinal products and thousands of bondholders are among those who sought recourse to the Council of the State (the Highest Administrative Court of Greece).

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Potential legal remedies

- Legal remedies provided under Greek law against the implementation of the Greek Bondholders Act and the CACs
 1. Petition against the decision of the Council of Ministers on the enactment of the PSI process for its annulment before the Supreme Administrative Court
 2. Claim for the restitution of potential damages caused directly by the announcement of the Public Debt Management Agency , which constituted an invitatio ad offerendum

3. Against the Decision of the Council of Ministers regarding the approval of the decision of the holders of Designated Securities

Does this approval constitute

- an administrative act or
- a legally binding statement (acceptance of the bondholders` proposal according to the announcement), governed by private law?
- Lawsuit for the issuance of a judgment declaring the decision as null and void on the grounds of breach of law
- Petition for injunctive measures before the competent civil courts
- Lawsuit for the restitution of potential damages caused directly by the decision before court

Validity of CACs

- Validity of the CACs rules from a Greek Constitutional law perspective as well as from the perspective of the European Convention of Human Rights (protection of property, article I of the First Additional Protocol): Are the CACs in violation of hierarchically supreme rules of law, such as the Greek Constitution or the European Convention on Human Rights?
- CACs provisions as restructuring measures interfering with bondholders' rights
- Our view: The restriction of the absolute freedom to contract in the meaning of the adoption of qualified majority decision making rules is not contrary to the principles of constitutional law or human rights. Especially when CACs are recruited to update old-fashioned loaning schemes and delimit possible speculative actions, even legitimate, the interests served by the latter owe to retreat before the general and public interest.
- *Dimitris Tsibanoulis*