



Chris Robinson

*Legal Consultant
Clarity & experience
in corporate law*

Time for a Sharp Grexit?

Business implications of Greece leaving the Euro

At last our politicians are admitting the possibility of a Greek exit, and the need to plan for it. But what are the implications for businesses trading with Greece, or with assets there? Here's one lawyer's view.

A Greek exit would take one of two forms: a unilateral decision by Greece, or a managed process agreed by the whole EU, or at least the Eurozone. An exit means breaches of the EU treaties, so we are talking about political decisions rather than legal mechanisms. Anything done without formal agreement by all EU member states would be illegal, but that doesn't mean it can't and won't happen – international law doesn't work like that. Once a Greek exit has been announced, all involved will be under enormous pressure to reach agreements to mitigate the damage, so a unilateral exit could turn into a managed process, perhaps ending with a retrospective treaty. Although a Greek default and exit would be greeted with initial hostility, governments may actually help the Greek government in order to preserve stability in the rest of the Euro zone. Businesses and individuals in other parts of Europe cannot assume that they will be protected by their own legal systems.

Cash

All Euro notes and coins circulating in Greece would (theoretically) be converted into new Drachma at an official exchange rate, making them far less valuable than other Euros. It's unlikely that the distinction would be made by the country-specific designs of the Euro coins, or the "Y" prefix of the serial number on Euro notes. Notes within Greece would probably be overprinted with a Drachma designation, and banks would close until they could start issuing the Drachma notes. Of course it will be in Greek citizens' interests to avoid the overprinting and to take their Euro notes abroad, and we can expect border controls and massive currency smuggling. Eurozone governments may want to co-operate in stemming this, as contraband Euros will undermine good German ones, so European governments could introduce bans on possessing or exchanging Euros known to have been smuggled from Greece, and could seize the currency – though not once it was circulating in their own countries.

Bank Deposits

All Euro deposits in Greek banks in Greece will be converted into devalued Drachma, assuming that the banks themselves survive. Even foreign depositors are unlikely to have any legal remedy. Local deposits in foreign banks are likely to be governed by Greek law. Deposits in foreign branches of Greek banks in Euros are probably repayable in Euros. Greek depositors will be rushing to get their deposits abroad, and ideally outside the Eurozone, or to invest them in other currencies such as dollars or sterling. It is possible that the EU, or the Eurozone, would attempt to help Greece by converting Euro deposits in European banks held by Greek citizens or residents into Drachma; that would be controversial and administratively very difficult, especially for small consumer deposits. Greek law may compel its citizens to repatriate their assets, though Greeks may not hurry to comply.

Debts and payment obligations

The whole network of business relationships would be thrown into chaos, with losses falling almost randomly on someone in the supply chain. Euro-designated debts in Greece covered by Greek law would be redenominated into Drachma and could be settled in devalued Drachma. It is likely that Greek citizens or residents would be protected by Greek law against being sued for Euro debts, so even if your contract is governed by English law, you are likely to have difficulty enforcing a Euro judgment in Greece. If the debtor has assets outside Greece, you may be on stronger ground.

All international contracts should include a choice of law and jurisdiction. If you supplied a customer in Greece for a price in Euros under an English law contract, how will you fare? UK jurisdiction is specified, and the court will allow the claim to be served outside the UK – though you might be in difficulty if the customer was a consumer. English courts can give judgments in foreign currency, but will they award Euros or Drachma?

Lex monetae says that where a contract refers to a currency, there is an implied choice of that country's law to decide what constitutes the currency and payment. It is unlikely that this would apply if Greece seceded and the Euro continued, but it could apply if the Euro broke up, or more likely if the whole Eurozone passed legislation saying which debts were redenominated. That could itself be controversial, as non-Eurozone member states (such as the UK) might block EU legislation that prejudiced UK creditors; the European Court would probably contort itself to protect the Eurozone.

Otherwise, payment obligations will be governed by the chosen law of the contract. English law is likely to say that a Euro obligation must be paid in Euros. The English court's judgment could then be enforced against the debtor's assets in the rest of Europe (other than Greece) or (with more difficulty) in many other places

You may need to take care not to acquiesce in the conversion of your debt into Drachma, for instance by accepting the Drachma payment and then attempting to claim the rest of the Euro amount. The actual terms of your contract may be important – if it defines "Euro" as the currency of Greece, you may be in trouble. Any place specified for payment may also be important. If making contracts now, be specific about these things.

Other contractual obligations

Failure to pay in the contractual currency on time will often be an event of default, which may entitle the other party to bring the contract to an end and claim damages – though notice may be needed if time is not “of the essence.”

The imposition of exchange controls could make some contracts legally impossible to perform, in which case they could be frustrated – in which case neither party has a claim against the other, and any loss lies where it falls. Grexit could also trigger “*material adverse change*” or “*force majeure*” clauses in some contracts. Otherwise, the contract is likely to continue (in the absence of an insolvency) with the consequences being decided by the courts. If you are about to ship goods, uncertain as to whether you will be paid in Euros or Drachma, you have a difficult decision to make: don’t ship, and risk being sued; or ship the goods, and risk not being paid.

Breaches of exchange control may be criminal offences, in Greece or in other EU states. If it became illegal under English law, or possibly under other laws, to perform your contract, you will not be obliged to carry on. There may be other legal changes in Greece or elsewhere, which could be quite oppressive, such as restrictions on the movement of assets or people. Foreign governments could pass legislation imposing sanctions on Greece, or attempting to protect their citizens and companies from the worst effects of Greek default. They might enforce mutuality, saying that if Greece is only paying its debts in Drachma, debts owed to Greek parties may also be settled in Drachma.

Guarantees and securities for Greek Euro debts have to be interpreted according to the relevant law, but are likely to follow the main payment obligation: so an English law guarantee of a Greek Euro debt would usually guarantee whatever the payment obligation was under the main contract. Contracts or mortgages relating to land in Greece are likely to be governed by Greek law.

Insolvency and State immunity

Many Greek commercial companies are likely to go bust. Europe-wide recognition of insolvency proceedings probably means that their UK assets will be protected from seizure, so that they are distributed to creditors in an orderly fashion. There is no insolvency law for nations, so enforcing government debts and seizing assets will be a free-for-all. UK creditors may have a head start, as many Greek government and bank financial assets are likely to be located in London.

Foreign governments are protected against being sued, but sovereign immunity does not apply to commercial transactions, including State borrowing.¹ When Argentina defaulted on its sovereign debt, there were many examples of bondholders successfully suing in foreign courts and enforcing against foreign assets. Sovereign immunity would protect the Greek government from claims for damages, for instance to recover losses flowing from its breach of the EU treaties.

¹ [State Immunity Act 1978](#)

What if I'm the debtor?

If you owe money in Euros, you may want to try paying in Drachma. If your contract is closely connected with Greece, you may get away with it. The arguments above apply in reverse, but Greek law may make it more difficult for Greek companies to claim settlement of their bills in unreconstructed Euros.

What should I do now?

Many people will be pulling money and assets out of Greece. If trading there, get paid in advance. Remember that any letter of credit or performance bond may only be as good as the underlying obligation, when it comes to currency. If you have a gambler's mentality and still want to extend credit to Greek parties, make sure your contract is under English law and jurisdiction. If you must make Euros the payment currency, make it clear that you are talking about the European currency and not the Greek one – or perhaps specify the currency of Germany! Include an indemnity by the other party requiring them to compensate you against any loss flowing from their country leaving the Euro, including exchange losses and payment delays. Review what would happen if the other party, or his associates and subcontractors, disappeared in a maelstrom of insolvency and cross-default following Grexit. Make a redesignation of the currency an event of default. And while you're changing your terms of business, what about Portugal, Ireland, Spain, Italy?

If you're a bank, launch an advertising campaign in Athens – seeking deposits in nice, safe sterling in an account in London.

Chris Robinson

May 2012

© Chris Robinson 2012. I don't usually mind friends reproducing my articles with acknowledgement – just ask.

Please comment or discuss this article using the links below.

+44 (0)7770 601840 – chris@cirobinson.co.uk – www.clarityincorporatelaw.co.uk – Blog: www.clarityincorporatelaw.blogspot.com –

Twitter: [@ChrisRobinson58](https://twitter.com/ChrisRobinson58) – LinkedIn: <http://uk.linkedin.com/in/chrisrobinsonlawyer> –

Facebook : www.facebook.com/ClarityinCorporateLaw