

Disenfranchisement

Conference on Collective Action Clauses at ILF

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- **majority provisions in Collective Action Clauses**
- **significance of the right to vote**
- **justification for disenfranchisement**
 - **conflict of interest as opposed to mere motivations**

criteria (I)

- ownership or control

**Recommendations
of the G10 working
group on
Contractual
Clauses in 2002:**

“(...) Bonds excluded from the outstanding amount used as a reference for voting provisions are those owned or controlled directly or indirectly by the issuer or its public instrumentalities.”

criteria (II)

- ownership or control

Terms of Greek bonds:

“(...) Any bonds that the issuer owns or controls directly or indirectly will be disregarded and deemed not to be outstanding. For this purpose, Bonds owned, directly or indirectly, by the Bank of Greece or any of the Republic’s local authorities and other local authorities’ entities will not be regarded as, or deemed to be, owned or controlled, directly or indirectly by the Republic. ‘Control’ means the power, directly or indirectly, through the ownership of voting securities or other ownership interests or otherwise, to direct the management of or elect or appoint a majority of the board of directors or other persons performing similar functions in lieu of, or in addition to, the board of directors of a corporation, trust, financial institution or other entity“

criteria (III)

- **Autonomy of decision**

- **disenfranchised if**

- subject to the issuer's instructions
- unable to pursue own interests

- **enfranchised if**

- interests differ from the issuer's
- able to pursue interests independently from issuer

application of the rules (I)

- **enfranchisement of the Eurozone national central banks**
 - **“control“ by the national governments**
 - **autonomy of decision in Eurozone tasks**

Art. 130 TFEU:

“When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions (...).“

application of the rules (II)

- autonomy of decision in national tasks

ECB Convergence Report of May 2010:

“(...) rights of third parties to intervene or to issue instructions to an NCB in relation to the property held by an NCB are incompatible with the principle of financial independence“

“(...) a Member State may not impose reductions of capital on an NCB without the ex ante agreement of the NCB´s decision-making bodies, which must aim to ensure that it retains sufficient financial means to fulfil its mandate under Article 127(2) of the Treaty and the Statute as a member of the ESCB“

transparency requirements

- **list of disenfranchised bondholders**
- **list of controlled bondholders with autonomy of decision**

lack of any disenfranchisement provisions

- **manipulation of the voting**
- **principle of good faith and fair dealing**

Plans for Eurozone model Collective Action Clauses