



### **SOME REFLECTIONS ON THE FAILURE TO REGULATE THE INSOLVENCY OF EU SOVEREIGN MEMBER STATES**

The reflections made in the present paper are based on the legal framework with regard to insolvency of Sovereign States. The International Community, in fact, has never deliberately adopted any set of rules aimed at regulating the bankruptcy of Sovereign States. This was certainly due to several reasons, like the complexity of the subject, the absence of principles and rules of International customary law, but also the fact that in the past the phenomenon of public default mainly concerned less developed countries only. However, in an increasingly globalised world and with the recent economic and financial crisis also affecting Western most developed countries, the issue of regulating national defaults has become of utmost importance, in particular, with regard to the rights related thereto and the position of creditors. The International Monetary Fund has had an important role in the past in solving some public debt crisis, though with the primary scope of monetary stability and without a strong international support to this end, unless an IMF structural reform occurs, changing its statutory scope. The EU has tried to take the first steps in this direction through the adoption of a series of instruments aimed at the prevention of insolvency phenomena and their contagion across the EU. The creation of the European Stability Mechanism and the adoption of the so called Fiscal Compact, the Six-Pack and the Two-Pack go in this direction, though mostly aimed at the economic and monetary stability rather than solving the problem of Sovereign States' insolvency. An important step forward, however, has been made with the new rules on single banking supervision aimed at solving the insolvency of cross border banks which represent a possible systemic risk, thus separating their insolvency from the default of the Sovereign State of origin. The paper argues that these rules are only partial solutions to the problem of Sovereign States' insolvency. Some other rules, like international treaties and EU legislation, are much needed. They need to fully respect the independence and the sovereignty of States, while identifying at the same time the rights and obligations of Sovereign States, on one side, and of creditors, on the other, thus giving the latter the necessary clarity and certainty with regard to their legal position vis-à-vis a public authority.