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Abstract. Following the financial crisis effects, the issue of debt sustainability became of global importance, even for international security reasons. In the EU, despite post-crisis fiscal austerity measures aimed at rebalancing the public finances, the debt-to-GDP ratio continued to deteriorate. At international level, few countries have legislative mechanisms able to contain the public debt increase. The case of Argentina, pushed into default because of a single uncommon US court decision raised other questions related to the status of sovereign debt. It seems that only by agreeing a multilateral legal framework under UN umbrella the sovereign debt restructuring issues could be addressed.

Key words: Argentina; sovereign debt; global crisis; sovereign insolvency; debt restructuring; rating agencies.
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1. Introduction

The world experience has shown that no particular public debt level should be considered, *a priori*, as being sustainable, the scientists and decision makers failing to reach a consensus regarding the fundamentals of a certain debt-to-GDP ratio, able to ensure favorable prerequisites for both financial stability and economic growth.

The global crisis effects have further complicated the issue of public debt sustainability, bringing to light the implications of other major drivers. On the one hand, it proved that advanced countries are not spared in front of sovereign payment default and cross-border contagion risks (the case of Greece, a member of Euro Area). On the other hand, weaknesses of financial markets mechanisms and regulations facing with severe crisis impacts and adverse shocks on sovereign resilience have been observed.

Overall, it became clear that a crisis of global proportions can trigger, in a very short time and without warning, even deriving from a single secondary capital market failure by spillover effects through worldwide interconnected financial channels, trapping the global economy and overtaking its leaders totally unprepared. Furthermore, it was enough that only a few top management bankers, incompetent or led by greed, to take bad decisions that the entire global financial system to fall into chaos.

In the absence of substantive recovery solutions, under pressure and emergence conditions, the financial crisis burden has been thrown from the banking system to the public debt on medium and long term, transferring systemic risks to the sovereign level.

In many cases, the excessive increase in the public indebtedness level has been caused by both external shocks and economic policy errors. Among these errors, having multiplying adverse effects, were the expansionary budgetary policies, ignoring for years the deepening of the financial imbalances and the risk of FDI flows slowing down by which these ones were financed, the incapacity to notice the signs of the global crisis triggered in the early 2007 in the USA and to foresee the potential effects, the lack of reaction to the crisis shock and the inability to adopt post-crisis policies and measures capable of recovering the economy.

Following the sovereign debt crisis threat in 2010 and 2011, the EU policy dilemma "austerity vs. growth" ended self-dismantled by an anemic growth and further increase in debt-to-GDP ratio in most Eurozone countries (ABN-AMRO, 2015).

If general government contingent liabilities (guarantees, government liabilities related to PPPs recorded off-balance and those of public corporations) are added to the public debt, many EU countries, including Germany, fall into a much worse indebtedness position (Eurostat, February 2015).

Looking at the future, the outlook of a sluggish global recovery and unpredictable internal or international events may hinder macroeconomic rebalancing, missing the financial stability targets and having an adverse impact on debt sustainability of many countries.

The recent case of Argentina, downgraded to default by the rating agencies in July 2014 despite having the capacity to meet its payment obligations and contrary to repayments agreements with creditors from other countries, including members of Paris Club (2014a, b), highlighted another lesson: due to different clauses and treatment of government bonds issues at international level, it may happen that foreign judicial systems decide upon the debt repayment (or restructuring) terms against a sovereign state as witnessed Argentina, pushed into default by a New York federal district court decision afterwards one litigation case.

2. The issue of public debt capping

Under the circumstances of the global financial markets interconnectedness it became obvious that a debt payment problem of a country could trigger financial difficulties to other countries through various transmission channels. More than that, sovereign-to-sovereign debt effects could occur more likely between countries which hold government bonds of/to each other.

There is no analytical study about how countries manage sovereign debt limits at the global level that I'm aware of. However, it seems that, more than the simple lack of a comprehensive approaching, a lot of confusion regarding the crucial importance for all nations of a common approaching of sovereign debt management persists.

At international level, the IMF initiated a debate regarding the debt limits policy that has to be applied to all members (IMF, 2013). The IMF Directors concluded that establishing a unified debt limits framework encompassing all borrowing, regardless of its terms, would provide a more solid basis for debt sustainability of Member Countries, without significant results by now. The IMF re-launched discussions in 2014 on Sovereign Debt Restructuring Mechanism, but the debates and controversies around this proposal stand still (IMF, 2014a).

Most countries have no public debt limits and the few what have one are raising it if needed. The USA and Denmark have similar legislative mechanisms which set ceilings for government borrowing. At least in the case of USA, the debt-ceiling crisis and the lawmakers disputes are well known, the ceiling suspension ending with the automatic reset of ceiling, as happened in 2014 i.e. to 17.2 trillion USD, by 512 billion USD higher than the previous year (the fifth ceiling increase since August 2011), the public debt outstripping 100% of GDP.

Denmark, usually considered as model for how to manage the public debt, has doubled the debt ceiling in the post-crisis year 2010 (from 1000 billion DKK to 2000 billion DKK) the public debt-to-GDP standing currently below 50% (Eurostat, January 2015).

Some countries under regional organizations, as the European Union, have a target of keeping the public debt below 60% of GDP, but this limit is not binding, being applied, along with other criteria, for membership accession, most of EU countries (16 of 28) outstripping in fact this threshold.

Following the European sovereign debt crisis, a stability mechanism was established in 2012, supported by financial instruments providing loans (sovereign bail-out programs) to the EU countries in financial trouble.

A special comment has to be made for Poland, the single European country which has a constitutional limit of 60% set for the public debt-to-GDP, and two legal limits set at 50% as warning level and a threshold of 55%, which, if crossed, the next budget must start to fall. In fact, due to this mechanism, Poland succeeded to return from 56.6 debt-to-GDP ratio in Q32013 to 48.6 in Q3 2014 (Eurostat, 2015).

Some other countries have set targets that cap the public debt based on limiting expenditures to expected revenues adjusted according to the state of the business cycle (Switzerland) or on limiting the structural deficit (to 0.35% of GDP in Germany, Austria having a similar target) or on achieving a net surplus over the duration of the business cycle (1% in Sweden, Chile using also this type of target).

In several countries (Sweden, Canada), the Government is authorized by the legislative to borrow a fixed amount of money for the fiscal year (Austin, 2008, Huffington, 2011).

Having in view the significant expansion of the public debt in recent years, mainly in the post financial crisis period (estimated at almost 60 tn USD at the world level in 2014, most of it belonging to the advanced economies) one could assert that globally, with few exceptions, the tools used for maintaining the public debt under control largely missed the target.

3. The case of Argentina's debt default

In the current non regulated sovereign debt situation at international level, at least two major facts degenerated and became, in my view, totally unreasonable:

- firstly, if a private debtor is made responsible to repay the due debt being chased to the last centime, for huge and unsustainable public debts caused, at least partially, by governing errors there is no individual or institutional responsibility but, beside a sort of sovereign immunity, the entire population is held indebted, including the its next generations;
- secondly, if countries encounters payment difficulties, instead of helping them, the rating agencies are downgrading them, worsening their borrowing conditions/options on international capital markets, making the financial situation much more difficult and thus, speeding the fall into default;

In my opinion, when a major risk of country default occurs, an immediate and orderly restructuring of the sovereign debt is preferable, which is an option not always easy for national authorities to make.

But the prolongation of a state characterized by a debt level appreciated as unsustainable (the case of Greece in 2011) generates overhang effects, worsening the economic situation, increasing the uncertainties regarding the upturn perspectives, exacerbating the management difficulties aimed at the recovering of sovereign payments capacity and to the restoring of financial stability and of market access.

The crucial aspect of the assessment of a debt restructuring success or failure, I think, is whether the country becomes after that, able or not to meet the related debt obligations.

The case of Argentina, even if the timing and modalities of its post-defaulted debt restructuring have not been conducted under optimal circumstances (two waves of debt swap agreements with bondholders in 2005 and 2010, covering 93% of restructured debt), represents a good example of a successful restructuring process.

Looking into history, as a recent study shows (IMF, 2014c, p. 46) among 32 episodes of large sovereign debt restructurings recorded in the world during the last three decades, Argentina has been able to achieve one of the largest and fastest reductions of the debt-to-GDP ratio, i.e. of 120.1 pp between 2002 and 2012 (from an initial 165% to 44.9%, which is 12 pp per year as compared to the median of 6.4 pp for all episodes).

The performing Argentina's debt restructuring is mainly due to the rapid recovering of the economy, able to achieve high GDP growth rates (an annual average of around 7% in the period 2003-2013, one of the highest in the world) proving its resilience under the external adverse circumstances and allowing to meet all the payment external obligations according to the debt restructuring agreements.

It is therefore strange that a country that has demonstrated the will and the effective financial capacity to respect its sovereign commitments to be asked for full payment (plus interests) of 2001 discounted bonds by a small minority of a 7% holdout creditors who refused all deal proposals, guided only to make unfair profits and covered by a US court decision, contrary to the options of most creditors (including from US), to the inter-creditor equity, to the Paris' Club comparability of treatment principle and, more than everything else, in the spirit of good faith effort that should guide the sovereign debt restructuring under the context of no international regime for countries bankruptcy cases.

More than that, even the creditworthiness and country risk assessment is based on key rating factors as macroeconomic performances, economic, institutional and fiscal strength, external finances and structural characteristics (political risk), Argentina being quite well placed to the most of these variables, following the US Lower Court ruling, the rating agencies downgraded the country to default (Fitch, 2014, Moody's, 2014, see also comments by Russo and Porzecanski, 2014).

This uncommon decision endangers not only Argentina, but it makes all other ongoing debt restructuring agreements questionable, not mentioning that also the advanced countries, which hold the most of the global sovereign debt sooner or later may fall under disruptive legal challenges, unless new regulations of international financial and debt markets are set.

In my view, Argentina should undertake some actions in order to limit the public debt increase, so as to make their change difficult once are set, regardless the government type.

As a prerequisite, an analytical study of the current public indebtedness level would be helpful (debt portfolio breakdown on maturity, currency composition, type of creditors, local/central government etc.) highlighting the uses and effectiveness of the sovereign borrowings, the internal and external financial requirements and sources on short, medium and long term including the debt service, the current account and budget deficits, the international reserves, the financial gap and its coverage.

Among the actions that Argentina should consider on the debt side are:

- initiating a constitutional amendment that establish a debt limit as percentage of GDP and a period to comply with from the current level;
- setting a set of warning level thresholds;
- avoiding government bond issuance in foreign exchange unless a long run exchange rate stability is achieved;
- forbidding the issuance of government bonds under foreign laws or including a *pari passu* clause (at most a Collective Action Clause, mentioning that CAC became mandatory for the Euro area government bonds starting with January 2013);
- total transparency for any new sovereign borrowing, explaining its rational, destination, future sources for reimbursement, proving also its public interest.

On the fiscal side, Argentina should have in view:

- setting budget architecture based on primary surpluses up to debt return under control;

- limiting the government expenditures (but avoiding public investments cuts) and establishing a maneuvering space depending on the business cycle;
- reviewing the fiscal regime in order to make it more attractive and predictable for the business environment.

Of major importance for Argentina seems to be also the elaboration of a public debt management strategy for the next years (revised annually) and charging an experts' team (politically noninvolved) for the debt management on long term.

Last but not least, under the circumstances of global interdependences, a favorable repositioning of the country within international politics both towards global powers (including US and UK) and emerging forces (as BRICS), should not be neglected.

As concerns the hedge funds speculating sovereign (and/or) private debt, buying the distressed debt at discounted prices (up to 95%) and claiming then higher prices for bonds or assets (up to the full value, including past due interests) from the debtor with court orders, known as vulture funds, they have a predator lending behavior, as in the case of the New York based Elliott Management Corp. against Argentina (see Hornbeck, 2013; Eavis and Stevenson, 2014; Moore et al., 2014).

What can be done not to allow this kind of financial speculations on the account of countries sovereign debt? firstly, countries themselves have to avoid sovereign bond issuance under foreign laws, removing the risk exposure to vulture funds (Olivares-Caminal1, 2012); secondly, the international financial institutions and regulations should monitor the sovereign debt markets, penalizing highly speculative transactions which threaten the financial balances, at the country, regional and global levels; thirdly, any judicial system of individual countries should not allow international litigations to be solved by the domestic courts, except for those of bonds issuer.

As many other countries, the United Kingdom banned permanently the use of its courts for vulture funds lawsuits in 2011, adding in 2015 that Argentina's interest payments on bonds issued under UK law are covered by UK law (Stiglitz and Guzman, 2015).

USA initiated a similar legislation in 2009 which has been blocked by interested lobbyists, remaining one of the few countries that allows vulture funds searching unfair returns through litigation with highly indebted countries. When a US court judges a lawsuit initiated from a hedge fund known as a vulture against a sovereign country, more weight to the existent legal provisions and rules is expected as concerns prohibiting fraud and manipulation, complying with disclosure requirements, keeping proper business conduct and practices.

4. International debate on sovereign debt restructuring

Due to high interconnectedness of international financial markets and the increasing risk of crisis contagion effects widespread by different transmission channels, the sovereign debt issue became of crucial importance for maintaining the global financial stability.

Along with the public debt limiting issue at national level and learning from the sovereign debt crisis triggered in the Euro area in 2009-2010, i.e. the bail-out of the private banking sector by public funds, the international debate around the financial system regulation should include, as a priority, finding a consensus regarding the status of sovereign debt in order to avoid the payments default at the state level or to take internationally accepted legal actions for addressing situations like sovereign insolvency.

The debate should start with clearly (re)defining basic concepts regarding the matter of sovereign debt as jurisdiction, accountability, enforceability, warning levels and ceilings, government bonds issues under national/foreign laws, budget deficit and primary balance, sovereign credit rating, sovereign default, contagion effects etc. and the related unitary procedures/methodologies for enforcement/assessment.

Obviously, while hoping that international debates arrives at global solutions, despite divergent interests and lobbying battles, countries should try to find the more adequate tools for managing debt, adjusted to their particular situation.

The Resolution 68/304 of UN General Assembly (September, 2014) on sovereign debt restructuring towards the establishment of a multilateral legal framework, introduced by the Group of 77 developing countries and China, at the initiative of Argentina, has been approved with more than two-thirds majority, emphasizing the importance of the question, including for maintenance of international economic security and revealing its global dimension.

In my opinion, at the core of the reasons statement of UN resolution stays the determination of real payment capacity as basis for debt sustainability assessment and restructuring, that is, just what has not been considered when rating agencies downgraded Argentina to default in July 2014, following a hazardous US court ruling.

One of the main reasons explaining the need to create a legal framework that facilitate an orderly restructuring of sovereign debts is preventing vulture funds from speculative benefits via litigations against indebted countries, as happened in the recent case of Argentina, contrary to the spirit of good faith and cooperation that should conduct the negotiations towards reaching a consensual agreement.

Obviously, in order to increase the efficiency, stability and predictability of the international financial system, in line also with the national priorities for achieving a sustainable development, defining the modalities for intergovernmental negotiations and the adoption of the text of multilateral legal framework for sovereign debt restructuring processes, as decided the UN resolution, represents an essential step and an urgent need (Stiglitz and Guzman, 2015).

Going forward, in my view, a clear schedule aimed to a global agreement under UN umbrella, as the most representative and democratic world forum, on international financial regulatory reform, including for sovereign debt restructuring should be set, involving the international financial institutions (IMF, World Bank, BIS), as watchdogs for the appropriate and coordinated functioning of the resolution systems and the global mechanism at all layers (national, sub-regional, regional).

Taking into account the principle of sovereign right of any State to restructure its sovereign debt, which should not be impeded by any measure emanating from another State, in line with the UN resolution, the recent bill passed by the Argentina’s Congress allows the country to make payments locally or in jurisdictions beyond the reach of the US courts decisions (Reuters, 2014).

5. Conclusions

According to the post-crisis approach of sovereign risk at international level, the assessment of public debt sustainability should focuses more on national issues, such as the ability to generate primary surpluses of the budgetary balance, the capacity of compliance with the debt service, the prospects for economic growth and for the taxation level, the costs of deficit financing on international capital markets, the health of the banking system, the vulnerability to external shocks.

In my opinion, the major lesson to be learned after the global crisis is that each nation must ensure, in its own way, the solidity of the internal and external financial framework, a strong competitive economy, a public sector performing management, with a functional market economy and with a transparent and efficient business environment.

Generally speaking, it is known that the public debt sustainability on long term is conditioned by keeping its growth rate below the GDP growth rate, avoiding, at all costs, the debt rollover. In other words, following an appropriate allocation, the borrowed funds have to finance investment projects that contribute to the economic growth in terms of productivity gains or generate higher value added, if not on short term, on medium and long run.

In the case of Argentina, I think the main factor of macroeconomic and financial recovery is represented by achieving a primary balance surplus as a prerequisite of the debt burden reduction, as well as of its costs.

In order to avoid economic policy errors, as a main priority of debt management, the government of Argentina should change its vision from the electoral mandate on short term to the one defending the public interests and the intergenerational equity on long run and, at the same time, to adopt a more realistic approach of external positioning in relation with the global powers axis.

Among factors which can contribute to the increase in the public debt sustainability in Argentina are the revision of methodologies and statistics in the public debt field, the more transparency of reports concerning public debt management, including the commitments for new sovereign borrowings, the implementation of public debt management strategies based on real internal and international environment assessment, predicting essential measures aimed to reduce the debt burden, imposing sustainability standards specific to the country and ensuring the consistency of guiding lines (ceilings), respectively targets of risk exposures, setting strict limits for government bonds issues for refinancing the public debt and the reduction, in this way, of the gross financing needs, optimizing debt portfolio and putting under control the refinancing, the interest rate and the currency risks based on appropriate risk management in the particular case of Argentina.

I think the public debt sustainability depends decisively on the economic growth sustainability, so that Argentina should focus on the real economy development, capitalizing its natural resources and comparative advantages in terms of competitiveness gains which are supposed to consolidate the public finances, easing the debt burden too.

Aiming at recovering the global financial balance, all countries, including Argentina, regardless the development level, have to build a protective shield against the default risk, based on same principles and management procedures under a multilateral legal framework on sovereign debt restructuring.

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