



Implementation of EU Law in Malta

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*Upon accession into the European Union (EU), Malta vowed to incorporate the entire body of European Union law (known as the *acquis*) into its legal system. It has been one of the fastest member states to do so, but has it been done properly? **THINK** magazine interviews **Dr Jelena Agranovska** and **Dr Ivan Sammut** (Faculty of Laws, University of Malta).*

It is sad how EU legislation is seen as a foreign interference, especially after 17 years of membership,' laments European and Comparative Law lecturer Dr Jelena Agranovska (Faculty of Laws, University of Malta). Malta joined the EU 17 years ago and agreed to implement EU legislation, mostly as directives (goals set by the European Union which member states must achieve). These laws effectively override national law. This principle, known as primacy, states that if EU law and national law conflict, EU law wins. All nations wishing to be part of the Union must accept this or walk away.

Making rules for 27 different legal systems isn't easy, especially 27 systems that have evolved over decades or, in some cases, centuries. Member states vary widely in their legal traditions, and what works in one country doesn't necessarily work in another. But how do you create laws that work in Germany, Finland, and Malta? Laws cannot simply be 'plugged' into a different nation. In order for EU law to work in all member states, this law needs to reign supreme, otherwise, loopholes emerge. *The Implementation and Enforcement of European Union Law in Small Member*

States, A Case Study of Malta, aims to increase the transparency and understanding of this complex legal order and codify some of the complicated dynamics that emerge when Maltese law comes into contact with that of the EU.

In great detail, the book attempts to highlight how some laws have essentially been 'copied and pasted over their original placeholders with the goal of satisfying the European Commission rather than any local legal tradition,' as Dr Ivan Sammut (Department of European and Comparative Law, University of Malta) comments. This has been partly the result of the limited resources of the Maltese legislative branch: Parliament. On 20 February, Agranovska and Sammut's book became the first publication on European Union Law in Malta since the country's accession. 'There's nothing written on Maltese and EU law with an international audience in mind,' explains Sammut when talking about why they wrote the book. The book aims to shine a light on 'Malta as a model system for smaller member states to transpose legislation into domestic law' and could guide other nations like Montenegro, who are trying to join the EU in the coming years. ➔



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HISTORY OF MALTESE LAW

With tightly knit connections to continental Europe, the Maltese Civil Code was heavily influenced, along with most European countries, by Roman civil law and carries many of the legal traditions that are still present today. The dominance of Roman civil law in the EU can be attributed to the legal traditions of its six founding members: France, Germany, Italy, Belgium, the Netherlands, and Luxembourg, known then as the European Coal and Steel Community.

Malta was also influenced by the British legal system after they arrived on the Islands in 1800. Unlike most European states, the UK has its own distinctly unique set of rules known as common law, which places importance on precedent and takes into account what decisions have been made in the past, unlike Roman civil law, which, instead places importance on the written word of the law. Having been colonised by the UK for 150 years, Malta assimilated some of Britain's legal traditions.

Malta's legal system combines elements of both civil and common law systems, forming a 'hybrid' structure. Hybrid systems or 'mixed jurisdictions' are found throughout the world. Former British colonies, like South Africa and Cyprus, often have this relatively rare blend of common law and civil law. After joining the EU in 2004, Malta began implementing EU law into national law, turning Malta

into 'a microcosm of hybrid legal traditions, much like in Cyprus,' says Sammut. 'They are both hybrid systems with nothing in common, other than being hybrid systems.'

A COMPLICATED SIZE

'Size doesn't matter...' explains Sammut, '...when it comes to transposing EU law into national law.' Due to its small size, Malta does not have the resources of bigger countries to go through EU legislation with a fine-toothed comb. Instead, directives sent by the EU are 'copied and pasted into national legislation without much thought about how the directive is assimilated into the national legal order'. This can cause problems when national law and proposed directives cannot exist together without much scrutiny, legal costs, and investment of time and resources, of which Malta has relatively few.

Size is a double-edged sword. 'It is easier to transpose the law [due to its small size and centralised government], but on the other hand, the quality of the transposition may affect Malta's populace in the future when it comes to effective implementation and enforcement,' explains Agranovska. 'The lack of negotiation, brainstorming, deliberation, and debate that may be present in bigger countries such as Germany may be missing in Malta, affecting the quality of the transposition of laws.' This may also affect the time in which directives are implemented. In recent cases, Malta has been issued



Dr Jelena Agranovska
Photo by James Moffett



Dr Ivan Sammut
Photo by James Moffett

formal warnings about not fully implementing directives, such as the EU drinking water directive and more recently, the directive on victim's rights. In the long run, Malta's citizens could suffer and lag behind the rest of Europe.

Laws designed to protect citizens can harm them. This has been shown with the potential minimum wage legislation proposed by the EU Commission as reported by MaltaToday in March 2021. The Commission suggested a 'mandatory threshold of decency' which would mean tying the minimum wage in Malta to average minimum wages across the EU. Malta's minimum wage could suddenly double or triple, leading to unemployment and inflation. Discussions are needed to implement directives simultaneously in each state while taking into account a state's unique conditions.

GOING FORWARD

Over half of Malta's population approve of the EU, the highest percentage in Europe according to a recent study by the European Commission. In 2018, 93% of the population of Malta felt that they benefited from the European Union. As previously stated, not all directives sent by the EU have been implemented correctly – and some not at all; however, Malta is still mostly in line with its commitments. This has been a great success story according to Agranovska and Sammut's study. Asked about the potential of the book, Agranovska hopes that 'it will

give birth to more quantitative research being done in particular areas to see how EU law is implemented in reality, as there are areas of law that have not been explored, such as environmental law, as an example of poor compliance'.

The Faculty of Laws is working on another volume on the EU Internal Market. Sammut and Agranovska are also working on the Jean Monnet Project, which explores how the migrant crisis affects the future of the integration process by examining the transit and destination countries within the free trade area. **T**

Further Reading:

Debono, J. (2021). Maltese MEPs nuanced over proposed law for an EU minimum wage. *Maltatoday*. Retrieved 5 May 2021, from https://www.maltatoday.com.mt/news/ewropej/108006/maltese_meps_nuanced_over_proposed_law_for_an_eu_minimum_wage#.YJJbZGYzY1J

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