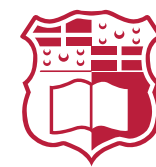


Malta assumed the Presidency of the Council of the EU in January 2017 with a list of priorities ranging from migration to social inclusion, security to the single market. In addition to the challenge the Presidency represents for any Member State, small states are particularly 'stretched' in meeting the myriad commitments the presidency involves. Therefore, from the outset, Malta's Presidency represented a challenge for the Government and Public Service. In addition, Malta was also faced with several 'external' challenges beyond its control but which had the potential to complicate its task at the helm of the Council, including elections in key member states, the formal launch of the BREXIT process and the inauguration of the Trump administration in America; as Malta entered 2017 it truly found itself in the proverbial 'eye of the storm'. After completing its Presidency the consensus in Malta and abroad was that the EU's smallest state had scored highly in delivering on its priorities and that it had been a success. This book represents the first academic assessment of the Presidency and reflects the Institute for European Studies' commitment to contributing to the body of academic knowledge on Malta and the European Union.

Malta's EU Presidency

Harwood | Moncada | Pace (Eds.)



L-Università ta' Malta
Institute for European Studies

Malta's EU Presidency

A Study in a Small State Presidency of the Council of the EU

Editors:

Mark Harwood | Stefano Moncada | Roderick Pace

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*A Study into a Small State Presidency
of the Council of the EU*

MARK HARWOOD | STEFANO MONCADA | RODERICK PACE



MALTA UNIVERSITY PUBLISHING

2018

First published by Malta University Publishing 2018

maltauniversitybooks.com

mupl@muhc.com.mt

Tel. 2340 8904

Printed by Progress Press Ltd

Publishing Rights – Malta University Publishing

Cover artwork & layout by Audrey Abela

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ISBN: 978-99909-44-76-1

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Preface

The Institute for European Studies was established in 1991 as a teaching and research centre within the University of Malta. In the ensuing 25 years, 700 students have passed through the Institute and subsequently graduated with a Bachelors, Masters or Doctorate degree in European Studies. Our graduates have proceeded to populate the public service, managing the majority of Malta's interface with the European Union, as well as being recruited by the EU institutions, international organizations, NGOs and media outlets. The Institute is justly proud of its contribution to having facilitated Malta's membership of the Union with these highly trained graduates who have managed Malta-EU relations, whether as politicians, public servants or members of the general public who also have their role to play in the formation and operationalization of EU policy.

Beyond our teaching commitment, the Institute has also maintained a strong research output, both in terms of its individual academic members as well as collectively; several series of publications have been issued throughout the years with a particular focus upon Malta and have contributed substantially to the body of academic knowledge. Recently, this included a 10-year anniversary series which analysed Malta's experience of membership after the first decade. This paper series and others can be accessed through the Institute's website. As with the Institute's teaching success, the research output is testament to the unflagging commitment of two academics who created and nurtured this Institute, namely Prof. Roderick Pace (as Director of the Institute for 25 years) and Prof. Peter Xuereb (as Chairman of the Board until 2016). I would like to express a particular note of thanks to Prof. Pace. His name is synonymous with European Studies in Malta and his contribution to this volume a clear indication of his continued dedication to the Institute.

This book represents the first in an annual series of publications which aim to focus attention on Malta and the EU, thus contributing to the body of academic knowledge and also providing a clear opportunity for the Institute to focus its research output in the light of important events both at a national and an EU level. It was therefore fitting that the first volume should provide the only academic assessment of the Maltese Presidency of the Council of the EU. I would like to express my thanks to Dr Stefano Moncada who, in cooperation with Prof. Pace, coordinated this exercise, my colleagues who contributed to this volume as well as the various academic contributors who peer-reviewed the chapters.

Dr Mark Harwood
Director
Institute for European Studies
University of Malta

Acknowledgements

In the preparation of this publication, at times we had to call on the help of our colleagues at the University and other institutions for advice or to carry out blind refereeing of some of the submitted texts. We would like to acknowledge the help provided to us by Dr Jelena Agranovska, lecturer Department of European and Comparative Law, Faculty of Laws, University of Malta; Dr Canan Atilgan, Director, Konrad-Adenauer-Stiftung Regional Program, Political Dialogue South Mediterranean, Tunis; Professor Simone Borg, Head of Department Environment and Resources Law at the Faculty of Laws, University of Malta; Ambassador Saviour Borg, Consultant at the Ministry for Foreign Affairs, Malta; Dr Marie Briguglio, Lecturer, Department of Economics at the Faculty of Economics, Management and Accountancy, University of Malta; Dr Jean Claude Cachia, Lecturer, Institute for European Studies, University of Malta; Dr Berta Fernandez at the International Organization for Migration (IOM).

Abbreviations and Acronyms

ACP	African, Caribbean and Pacific Group of States
AFET	Foreign Affairs Committee of the European Parliament
AMIF	Asylum, Migration and Integration Fund
APR	Asylum Procedures Regulation
AVRR	Assisted Voluntary Return and Reintegration
BEUC	Bureau Européen des Union de Consommateurs
CARD	Coordinated Annual Review on Defence
CCA	Cyprus Consumers' Association
CEAS	Common European Asylum System
CFSP	Common Foreign and Security Policy
CERS	Common European Returns System
CMU	Capital Markets Union
CODEV	Council Working Party on Development Cooperation
COM	European Commission
COREPER	Committee of Permanent Representatives
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
CPC	Consumer Protection Cooperation
CSDP	Common Defence and Security Policy
CWP	Commissions' Working Programme
DG	Directorate General
DPEC	Directive on Privacy and Electronic Communications
DSM	Digital Single Market
DSMS	Digital Single Market Strategy
EADI	European Association of Development and Training Institutes
EAM	European Agenda on Migration
EASO	European Asylum Support Office
EBF	European Broadband Fund

ECC	European Consumer Centre
ECD	European Consensus on Development
ECOWAS	Economic Community of West African States
EDAP	European Defence Action Plan
EDD	European Development Days
EEAS	European Union External Action Service
EEIP	European External Investment Plan
EFSD	European Fund for Strategic Investment
EMN	European Migration Network
EMOTA	European eCommerce and Omni-Channel Trade Association
ENISA	European Union Agency for Network and Information Security
EP	European Parliament
EPO	European Patent Office
EPP	European People's Party
ERIN	European Reintegration Network
ESM	European Stability Mechanism
ETIAS	European Travel Information and Authorization System
EU	European Union
EUAA	European Agency for Asylum Regulation
EUR	Euro
EUMS	European Union Member States
EUTF	European Union Emergency Trust Fund
FAC	Foreign Affairs Council
FAO	Food and Agriculture Organization
GAC	General Affairs Council
GAERC	General Affairs and External Relations Council
GDP	Gross Domestic Product
GDPP	General Data Protection Regulation
GFCM	General Fisheries Commission for the Mediterranean

HRVP	High Representative/Vice President of the Commission
ICMPD	International Centre for Migration Policy Development
IDAHO	International Day Against Homophobia, Transphobia and Biphobia
IDPs	Internal Displaced Persons
IOM	International Organization for Migration
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
ILO	International Labour Organization
IMCO	Internal Market and Consumer Protection
IMLI	International Maritime Law Institute
IP	Internet Protocol
IPRs	Intellectual Property Rules
IRMA	Integrated Return Management Application
IT	Information Technology
IVF	In Vitro Fertilization
JWF	Joint Way Forward
LGBT	Lesbian, Gay, Bisexual, Transgender
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersexed
LGBTIQ	Lesbian, Gay, Bisexual, Trans, Intersex, Queer
MBB	Malta Business Bureau
MAP	Mediterranean Action Plan
MCA	Malta Communications Authority
MCCAA	Malta Competition and Consumer Affairs Authority
MENA	Middle East and North Africa Region
MEP	Member of European Parliament
MEPA	Malta Environment Planning Authority
MEUSAC	Malta-EU Steering & Action Committee
MGRM	Malta Gay Rights Movement
MPCC	Military Planning and Conduct Capability

MSs	Member States
NATO	North Atlantic Treaty Organization
NCD	New European Consensus on Development
NGDOs	Non-Governmental Development Organisations
NGOs	Non-Governmental Organisations
NIS	Network and Information Systems
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
QMV	Qualified Majority Voting
QR	Qualification Regulation
RAPR	Renewed Action Plan on Return
RDC	Reception Conditions Directive
REMPEC	Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea
ROCC	Regional Oil Combatting Centre
SCA	Slovene Consumers' Association
S&D	Socialists and Democrats
SDG	Single Market Gateway
SDGs	Sustainable Development Goals
SECG	Inter-parliamentary Conference on Stability, Economic Coordination and Governance in the European Union
SMEs	Small and Medium Sized Enterprises
SMIT	Single Market Information Tool
SMS	Single Market Strategy
SRHR	Sexual and Reproductive Health and Rights
TFEU	Treaty on the Functioning of the European Union
TGEU	Transgender Europe
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union
TTIP	Transatlantic Trade and Investment Partnership
UfM	Union for the Mediterranean

UK	United Kingdom
ULC	Union Luxembourgeoise des Consommateurs
UNHCR	Office of the United Nations High Commission for Refugees
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environmental Programme
UNGA	United Nations General Assembly
UN	United Nations
US	United States of America
VAT	Value Added Tax
WMF	Western Mediterranean Forum

Notes on Contributors

Editors

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Roderick Pace is a Professor and resident academic staff member of the Institute for European Studies, University of Malta since 1993 and a Jean Monnet Professor. He has been a member of the Editorial Board of the journal *South European Society and Politics* published by Taylor and Francis since 2009 which in 2017 had an impact factor of 2.155. His academic interests cover World Politics, the EU's External Relations, Euro-Mediterranean Relations, Small States in world politics, external aspects of migration and Malta in the EU. An updated academic profile can be accessed at <https://www.um.edu.mt/europeanstudies/staff> and some of his Publications are on line at Google Scholar, Research Gate and Academia.edu. His latest publication is a co-authored chapter on the Mediterranean in Tim Oliver (ed.)

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Contributors

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Introduction

A Successful Small Country Presidency

Malta assumed the presidency of the Council of the European Union in the first half of 2017, almost 13 years after joining the Union. The Institute for European Studies of the University of Malta thought that it would be appropriate to assess some of the aspects of this presidency and to do so from a small state perspective. To set the basic conceptual context, it is important to highlight what Anders Wivel observes in his chapter to this volume, that lacking the resources to pursue power politics, small states have to rely on their diplomatic resources. Since the presidency's main role is that of an "honest broker", requiring untiring efforts to achieve concord between the member states on often difficult and divisive dossiers, it calls for attentive and patient diplomacy, an approach that fits well with a small state's preferred methods in world politics.

The resources of small states are inherently limited in many aspects: fewer information sources, a small pool of personnel qualified to take part in the Presidency's work, including in-depth analysis of the issues on the table and, ultimately, restricted financial resources. At the start of the Presidency, Malta's Minister of Finance was reported to have told journalists that the financial provisions to cover the Presidency's expenditure had been set aside in two tranches in two annual budgets approved by Parliament. Notwithstanding these drawbacks, at the end of the Presidency *Politico* was able to report that Malta had been praised for its diplomatic prowess in managing to broker agreement on a range of issues. This is not a small achievement by the EU's smallest member state.

How did Malta manage to achieve this success? We attribute this success to a number of factors. Firstly, decision-makers in small states tend to have a much more holistic view of the process than those in large states who rely on the effort of several bureaucratic layers and narrowly specialized administrators. This advantage compensates in no small way for the disadvantages just mentioned. The space or distance separating decision-makers in small states is much smaller than it is in large states. For this reason, they tend to be appraised of evolving situations directly and almost immediately, in the end enabling them to take quick decisions. Secondly, the political leadership from the Prime Minister down to several key ministers involved in the Presidency – and the running of the country – had a clear idea of how the EU operates and possessed a sense of what was feasible and which methods and approaches were likely to work in achieving the desired goals.

The third element was that the small and tenacious Maltese diplomatic corps and support staff who were summoned to action two years before the start of

the Presidency also impacted positively on the final outcome. By and large they were able to successfully deal with the multitude of issues and Council meetings. But it will be wrong to overlook that behind this frontline of diplomats in the “battle field” stood a support army of administrators working from within the line ministries in Valletta most of whom travelled to Brussels almost every week. Similarly, one cannot ignore the services of the EU institutions and the support provided by the three presidency (trios) structure.

In discussing Malta’s Presidency, we need to factor in that up to 2009, member states played a much bigger role in it than they do now. However, since the Lisbon Treaty came into effect in 2009, the EU presidency has lost some of its importance mainly for three reasons: the trios obliges three member states to work together in an 18-month long programme which means that while each will have its six-month term in the presidency, their ability to take new initiatives is reduced considerably; the second point is that foreign affairs has been shifted to the Foreign Affairs Council (FAC) chaired by the High Representative of the Union for Foreign Affairs and Security and thus the presidency’s role has been reduced considerably; and thirdly the European Council has its own president appointed for a period of two and a half years, renewable once. Previously, the country holding the Presidency of the Council of the EU presided over the European Council meetings which took place during its tenure. In short the “agenda-setting” opportunities afforded by the rotating EU presidency have decreased since the Lisbon Treaty.

The changes affected by the Lisbon Treaty as just pointed out, which effectively stripped the presidency of many of its most highly political roles, in particular the chairing of the European Council as well as Foreign Affairs, has led some to see it as a more ‘technical’ exercise and that running the presidency has become a low-key enterprise that can hardly go wrong. We disagree. The presidency can still fail to deliver and undermine the country’s reputation amongst its peers and this might be a consequence of a lack of preparation and also the reality of a presidency having to deal with events beyond its control. At its starting point Malta’s Presidency looked as if it was going to face strong turbulence. The EU was deeply divided on migration, as it still is, populism was on the rise across Europe and looming national elections in three key member states – The Netherlands, France and Germany – further heightened tensions between the member states. Additionally, the UK electorate had recently voted to leave the EU with the formal notification to start the BREXIT process being scheduled to be delivered by the UK government at the end of March 2017, as indeed happened, in the midst of Malta’s EU presidency. Beyond Europe’s shores, the Maltese presidency coincided with the inauguration of the Trump Administration in Washington with Trans-Atlantic relations set to deteriorate rapidly. It was truly a formidable set of events which the Maltese Presidency saw unravelling

before it as it sought to provide leadership of the Council in the first six months of 2017.

All these events could have had two possible effects on the presidency: the optimistic scenario was that they could provide it with additional opportunities that would show in sharper contrast its leadership qualities; the pessimistic scenario was that these events could prove to be too big for the Presidency and derail its best laid plans. In the end the pessimistic scenario never materialized and Malta was able to carry out its programme up to the end and notwithstanding a surprise national election held on 3 June, in the last month of the Presidency.

Turning once more to the objectives and agenda of this book, we need to stress that the intention was not to provide a comprehensive assessment of all the presidency's actions and achievements. At its inception, it was decided to focus on the most important issues. Hence, in order to compile the work, the Institute for European Studies issued a general call for abstracts, following which the submissions were sifted in accordance with the criteria of quality and relevance to the priorities of Malta's EU Presidency. Briefly, Malta's priorities were:

- Migration – with the twin objectives to swiftly implement previously agreed measures and to maintain migration's importance at the top of the political agenda.
- The Single Market – with emphasis placed on exploiting the single market, developing the Digital Single Market, completing the Internal Energy Market and giving due importance to the Capital Markets Union.
- Security – centred on the aim to contribute towards concrete progress on proposals that addressed regional and global challenges.
- Social Inclusion – where Malta hoped its experience would 'rub off' on its European partners so as to advance gender equality and the rights of minorities and vulnerable groups.
- Europe's Neighbourhood – with a focus on EU engagement which stabilises the Union's neighbourhood with the EU Global Strategy being an important reference point.
- Maritime – with an emphasis on the sustainable development of the maritime sector within the framework of the EU's Integrated Maritime Policy.

All six areas were key issues for the government and the sequence did not imply a hierarchy of priorities with migration being *primus inter pares*. That said, and to ensure continuity, the chapters of this book are arranged so as to follow the sequence listed above.

By way of an introduction, the first chapter focuses on small states in the EU and after briefly tracing the treaty changes that have taken place in the EU

since the Maastricht Treaty, Anders Wivel asks a very provocative question as to whether the Presidency of the Council is making the small member states even smaller? Wivel shows that indeed small states run more risks in holding the presidency than do larger states. However, for small EU member states, the Council presidency offers a good chance for maximizing influence despite the challenges following from the nature of the presidency and the general developments of the EU.

Migration, which has been the cause of much dissonance in the EU, is the focus of Berta Fernandez and Kristiina Lilleorg's chapter on the EU's Migration and Asylum policy in the aftermath of the 2016 migration crisis. It is also touched upon in the chapter on external relations by Roderick Pace. Berta Fernandez and Kristiina Lilleorg provide compelling evidence that the EU has still not been able to institute legal measures to protect refugees and asylum seekers in most need of protection. Though some progress was registered during the Maltese Presidency, there is still a long way to go. What is lacking in the efforts to manage migration are additional safe and legal pathways to the EU for persons entitled to international protection (as well as those seeking other forms of protection), i.e. humanitarian admission and private sponsorship. As noted in their chapter, "the Valletta Summit between the EU and Africa was an important first step towards meeting migration challenges" while "the five clusters of the Valletta Action Plan taken together presented a blueprint for strengthening cooperation between both continents".

The single market was covered in the chapter written by Ivan Sammut who wrote a comprehensive overview of the legislative programme of the Maltese presidency laying special stress on the digital single market which was high in the Maltese agenda. Malta made satisfactory progress on this front as well by continuing where previous presidencies had left off, but also by ensuring that a number of dossiers were completed and closed. Linked to Sammut's chapter we find Claire Ciantar's analysis focusing on the effects of unjustified geo-blocking on the functioning of the single market and how it affects cross-border trade over the internet. Although Malta failed to close the issue during its presidency, it nevertheless gave the legislative process a good push forward so it could then be concluded under the subsequent Estonian Presidency.

The third priority of the Maltese Presidency of the EU Council was social inclusion. As Mark Harwood points out, this was the only Presidency objective in which Malta intended to lead the rest of the EU through its own experience with inclusion, particularly on LGBTIQ rights. Harwood says that the Maltese Presidency was in a way helped by The Netherlands' activism in favour of LGBTIQ rights since 2013 and this has added relevance considering that The Netherlands formed part of the trio-presidency. From this angle the Maltese Presidency was helped in reaching its objective, but at

the same time it was hampered by the fact that the Commission's attention was focused on other matters which led the Maltese government to adopt a more restrained agenda on LGBTIQ equality.

Three chapters then focus on the Maltese Presidency's aims in the Neighbourhood Policy. The first by Francesco Biagi dwells on constitutional developments in North Africa since the Arab Spring. North Africa and the Middle East constitute a vital aspect of the southern dimension of the EU's neighbourhood Policy. To understand the constraints that the EU faces in the region, Biagi assess an important factor of stabilization namely the existence or lack of a political process leading to it – namely constitutional progress. His analysis focuses on Libya, Syria and Tunisia three countries that are constantly under the EU's watch due to their impact on relations in the region and the Union itself. Biagi analyses the EU's engagement in constitution-making in these countries but cautions about the dangers that this poses, particularly premature constitution writing which might condemn such charters to oblivion.

Roderick Pace then provides an assessment of the EU's external relations during Malta's EU presidency. The analysis shows that although the importance of external relations in the EU's rotating presidency has diminished since the Lisbon Treaty reforms, Malta managed to play an important role particularly by chairing a scheduled meeting of the crucial EU-Tunisia Association Council. The chapter provides a comprehensive purview of all the main events that occurred on the external relations front during Malta's presidency – and Malta's role in them.

Finally, Milan Pajic's chapter assesses one of the most important successes of the Maltese Presidency namely the signing of the EU's New European Consensus on Development (NCD) in the final days of the presidency. The fact that Malta held the Presidency, gave it considerable influence in driving the process forward as the Chair of CODEV and penholder of the document. This is surprising considering that in the past, development policy had been neglected and Malta lacked expertise in the matter. This lacuna was filled by the high quality and competence of the negotiators.

Maritime policy, another main objective of Malta's EU Presidency was treated in a separate chapter by Pace. Noting that Malta has long had a keen interest in maritime policy, having itself proposed the Law of the Sea Convention at the United Nations in 1967, Pace goes on to discuss the Blue Economy, especially within the context of the Western Mediterranean. As noted by Pace "as a maritime state, an island state, Malta was able to transmit clearly, diligently and successfully its sensitivities toward the sector and using its first-hand knowledge of the issue it was able to overcome the drawbacks of smallness and lead".

We conclude our book with two chapters which stand outside the context of the Maltese Government's six priority areas but which help ensure a more holistic appraisal of the Presidency. The first, by Kenneth Curmi, analyses the parliamentary dimension of the Presidency. Surprisingly the parliamentary dimension is often side-lined in the rapportage on the presidency because the media focuses on the meetings of the heads of government and their ministers. This is rather odd considering the importance which national parliaments have gained since the Lisbon Treaty came into effect particularly because of their role as scrutinizers of draft EU law to establish whether it respects the principle of subsidiarity. According to Curmi, national parliaments have their own trio structure mirroring the trio-presidency as well as a programme encompassing the three presidencies of the Council of the EU. Parliamentary activity during the presidency brought together national members of parliament from the EU member states and the European Parliament to discuss the salient Presidency objectives. Meetings were also held of the chairpersons of some key national parliamentary committees.

The second, by Petra Bishtawi, addresses an issue which has been at the forefront of Maltese efforts in the area of migration, namely the promotion of burden sharing efforts at an EU level. By the start of the Maltese Presidency burden sharing had become a highly divisive issue amongst the Member States. Petra's chapter analyses a concept that could facilitate a technical solution to relocation should the Member States decide at some stage to agree on internal relocation and therefore represents a contribution to a key issue for Malta and Malta's Presidency.

As can be seen from the chapters contained in this volume, the challenge of running the Presidency of the Council of the EU was a formidable one, especially for the EU's smallest member state. The conclusion from this volume is that Malta managed the Presidency with robustness, meeting many of its targets, brokering compromise amongst the member states and in negotiations with the European Parliament as well as utilising its limited human and financial resources to their maximum capacity, thus embodying the "smart state strategy". We hope that this publication will be treated as another contribution that helps unpack the nature of small country EU presidencies.

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Chapter 1

Maximizing Influence by Leading the Council: Smart State Strategies for Small State Presidencies

Anders Wivel

Introduction

How does a small state maximize their influence when leading the Council? This chapter argues that small states need to prioritize goals and means, network and accept their relative lack of power as the point of departure for their diplomatic efforts if they are to maximize influence when holding the Council presidency.

A small state lacks relative and absolute capabilities and is by definition “the weaker part in an asymmetric relationship, which is unable to change the nature or functioning of the relationship on its own”.¹ Small states “are *not* in command of power resources sufficient to pursue dominant power politics”.² Consequently small states rely on diplomatic means of influence and persuasion.³ They seek to affect or change events or policies in their external environment by use of diplomatic tools for achieving political objectives.⁴

For this reason, international institutions play a key role in most small states efforts to maximize influence on international affairs. International institutions delimit the action space of the great powers by subjecting all their member states to the same rules and to the same sanctions, if they break the rules. International institutions do not negate power politics, and the most powerful member states may use their power to secure special treatment or continue to circumvent or break the rules, they have agreed to. Yet, institutionalization increases the cost for them to do so. The use (and abuse) of power is more visible with formal rules, and the strongest states need to argue why deviating from agreed norms and rules is legitimate.⁵ Consequently, international institutions allow small states to reduce their dependence on individual great powers and to increase their action space,⁶

¹ Wivel, A. *et al.* (2014) p. 9. “Smallness is, in this conception, a comparative and not an absolute idea” bringing to our attention a particular set of policy problems and policy dilemmas. Hanf, K. and Soetendorp, B. (1998) p. 4. Thus, studying small states allow us to explore “the experience of power disparity and the manner of coping with it” Knudsen, O.F. (1996) p. 5; cf. Wivel (2005), p. 395.

² Kelstrup, M. (1993) p. 162.

³ Keohane, R. (1969).

⁴ Thompson, A. (2009) p. 17.

⁵ Neumann and Gstöhl (2006) p. 20.

⁶ Toje, A. (2011).

and for this reason, “small states generally prefer multilateralism as both a path to influence and a means to restrain larger states”.⁷

Small states find no better place to do this than in the Euro-Atlantic area, where the fundamental problematic of small EU and NATO members has been transformed from a “survival problem” to an “influence problem”.⁸ Their most important international challenge is no longer the threat of military attack from nearby great powers, but political marginalization in a complex network of European and Euro-Atlantic institutions. For this reason, small states have a strong incentive to seek influence in the highly institutionalized European political space. No other organization offers as broad a package of policies (from low politics areas such as culture and education over health, transport and trade to foreign and security policy), as deep a level of cooperation (combining intergovernmentalism with supranationalism) and as diverse a combination of norms (like consensus decision-making) and formal institutions (like the Commission, Council and Parliament) as the European Union (EU). By providing a shelter against external shocks as well as intra-European great power rivalry and a platform for influence within and beyond Europe, the EU is central for any small European state seeking influence.

This chapter zooms in on one aspect of small state influence seeking via the EU by discussing how small states may use the Council presidency to maximize influence on the development of the EU. The remaining part of the argument proceeds in three steps. First, I briefly outline the role of the Council presidency in small state EU policy-making. Second, I discuss the challenges of small states seeking influence in the EU, when holding the presidency. Third, I argue that that by pursuing so-called smart state strategies, small states may enhance their chance of agenda-setting when holding the presidency. Finally, I conclude the analysis.

The Council Presidency and small EU member states

The balance of power between the main institutions of the EU reflects a fundamental compromise between big and small EU member states. This compromise was initiated in the Paris Treaty of 1951 and reproduced in the Treaty of Rome, which served as the baseline for all subsequent revisions and produced a system combining weighted votes in the Council of Ministers, the independence of supranational institutions and avoidance of a permanent presidency.⁹ A series of enlargements gradually shifted the balance in favour of the small states despite changes to the voting weights in connection with the enlargements. Accordingly, the question of “small vs.

⁷ Steinsson, S. and Thorhallsson, B. (2017).

⁸ Løvold, A. (2004).

⁹ Magnette, P. and Nicolaïdis, K. (2004) pp. 3-6.

large states” remained high on the agenda in the debate on the future institutional design of the EU.¹⁰

The Treaty of Nice (which entered into force on 1st February 2003), and The Treaty of Lisbon (which entered into force on 1st December 2009) were attempts at re-balancing the power of large and small member states in the EU. The two treaties also reflected the dual aim of reconciling concerns of democracy with institutional efficiency and avoiding on the one side the dominance of a few EU great powers over the majority of the member states and on the other side the “tyranny of the tiny” allowing a majority of small states to entrap big member states in policy developments that only the big would have the capacity to implement. Thus, even though Germany has 96 seats out of 751 (12.8%) seat in the European Parliament and Cyprus, Estonia, Luxemburg and Malta only have 6 seats each (0.8%), there is one German seat in the Parliament for each 840,625 Germans, but one Maltese seat for each 69,572 Maltese citizens. In the Council, the Treaty of Lisbon mandated a change in voting rules from 1st November, 2014, which abolished the previous voting weights and replaced them with a system where most decisions are taken by double majority qualified majority voting demanding each decision to be backed by at least 55% of member states (15 member states in the current EU) representing at least 65% of the EU’s population.

The Treaty of Lisbon brought important changes to the Council presidency. The introduction of a European Council President to lead the work of the Council and represent the EU internationally in foreign and security policy reduced the importance of the rotating presidency as did the creation of a “High Representative of the Union for Foreign Affairs and Security Policy” merging the Commission and Council expertise on the issue of foreign affairs. Also, the treaty formalized trio presidencies with close coordination among three consecutive presidencies and the Commission on presidency programmes. Historically, the EU presidency was not an integral part of the bargain between small and large EU member states. In contrast, “when the presidency was established in the 1950s it had been a complete afterthought – its creators having little more in mind than to share out the responsibility for chairing Council meetings in some orderly fashion”.¹¹ However, it gradually came to be seen by small EU member states as a rare chance to agenda-set core priorities and showcase political and administrative competencies and therefore also to increase international influence and prestige and solidify domestic support for continued membership. As noted by Bengtsson, Elgström and Tallberg, the presidency can be “translated into normative power through the opportunity to launch and promote novel policy ideas or ideational frameworks and can thus be claimed to be a tool especially well-suited to

¹⁰ Bunse, S. (2009); Magnette, P. and Nicolaïdis, K. (2004); Moberg, A. (2002); Panke, D. (2015); Thorhallsson, B. and Wivel, A. (2006); Thorhallsson, B. and Wivel, A. (2018).

¹¹ Bunse, S. (2009) p. 2.

smaller states [...] which lack traditional power resources”.¹² In sum, the presidency of the Council of the EU historically developed from a practical solution to coordination and Council meeting management to a platform for small states to voice their priorities for the future development of the EU. Developments of the role and influence of the presidency should be seen in the light of the EU’s institutional balance in general, the balance between in the influence of small and large member states and the increased complexity and diversity within the EU following from the widening and deepening of EU integration. In this context, the most recent changes in the role of the presidency can be understood as “a Solomonic decision. It probably satisfied both the preference of the big Member States for more stable leadership in the Council and the wish of the small Member States to maintain the Presidency function as a vehicle for influence.”¹³

Challenges: Is the presidency making small states even smaller?

Small states seeking to maximize influence when holding the Council presidency face three clusters of challenges. The first cluster is related to the nature of the presidency itself and includes six related challenges to small state holding the presidency. First, the presidency is short-term. Six months is a very brief period of time to influence anything in an organization as big and complex as the EU, in particular for a member state with only limited resources. Second, agenda-setting opportunities were limited by the changes to the Council presidency in the Treaty of Lisbon leaving the presidency with mainly low politics issues. Even though, it may be argued that this had limited effect on small states as they were routinely ignored by bigger member states when it came to the high politics of foreign and security policy anyway,¹⁴ the presidency did at least hold a formal opportunity for influence before the changes. Third, holding the presidency demands administrative capacity and competencies that put a strain on many small states, in particular those states that are relative newcomers and therefore only have limited experience with the EU system.

Fourth, while the lack of administrative capacity has to some extent been countered by the introduction of the trio presidencies, the introduction of the trios has simultaneously exacerbated another challenge for small states holding the presidency: the member state holding the presidency is only one among a number of potential agenda-setters. Agenda-setting for the six-month presidency is a collaborative endeavor with the two other states in the troikas well as the Commission and other member state governments. Fifth, the presidency is costly in terms of staff and costs related to meetings and other presidency-related activities. All things equal, holding the presidency takes out a bigger chunk of small member state budgets than of big member

¹² Bengtsson, R.; Elgström, O. and Tallberg, J. (2004) p. 314.

¹³ Jensen and Nedergaard (2014) p. 1037.

¹⁴ See the discussions in Wivel, A. (2005) and Duke, S. (2001).

states budget. Sixth, the combination of high costs and limited ability to influence the agenda of the presidency entails the risk that holding the presidency may backfire in domestic politics as well as in influencing international affairs. The presidency is often sold to domestic audiences as a unique chance to pitch the values and interests of the small state to European and international society, but if it is seen as inconsequential, national electorates may view it as simply a waste of money or even an embarrassing failure and attribute the lack of success to the government.

These challenges are related to a second cluster of challenges related to EU decision-making in general. As noted in a recent analysis on small states in EU decision-making, “[s]maller states have not only fewer votes in the Council, but also considerably fewer financial, staff and administrative resources [...] Size is an advantage in EU negotiations, since bigger states are simply in a position to do more”.¹⁵ In this context, the presidency may risk exacerbating existing structural disadvantages in the EU decision-making system. Small states may appear even smaller, when their weaknesses and limited influence are exhibited by the strains of holding the presidency, and they are often marginalized in times of crisis. For instance, in 2001 after the terrorist attacks on New York and Washington on 11th September 2001, the UK, France and Germany held a mini-summit coordinating military support to the US without inviting other member states or the Belgian Presidency,¹⁶ and during the economic crisis in Europe from 2008, a series of small state presidencies were sidestepped by Germany, which took a leading role in defining the roots of the crisis and the remedies to ameliorate its consequences.¹⁷

Finally, a third cluster of challenges centres around the recent developments of the EU. Over the past decade the EU has experienced a crisis which is unprecedented in its existential, multi-dimensional nature linking economic crisis with a crisis over migration and the continued implementation of the Schengen agreement, a political crisis of the EU following from the British Brexit decision, and increasing security challenges in the Eastern and Southern vicinities of the EU, “where any attempts to mitigate a particular crisis causes further crises”.¹⁸ These crises exacerbates the effect of a longer period of increasing acceptance of intergovernmentalism in the EU since the early 1990s. This has created a larger and more legitimate room for informal great power cooperation and delimited the influence of the Commission, which has typically been viewed as the small states’ “best friend”, because of its role as an independent, technocratic and supranational counterweight to

¹⁵ Panke, D. (2015) p. 62, 69.

¹⁶ The Belgian presidency was invited for a follow-up dinner in addition to the leaders of Italy, Spain and the Netherlands joining the three leading powers, but only after political pressure, see Wivel, A. (2005), p. 403.

¹⁷ See the analysis of Germany’s role as agenda-setter in Nedergaard, P. and Snaith, H. (2015).

¹⁸ Dinan, D.; Nugent, N. and Paterson, W.E. (2017), p. 361.

the power politics of the member states.¹⁹ This development has also challenged the typical grand strategy of small states in Europe working towards a still more effective binding of the European great powers through institutionalization and formal safeguards against the abuse of power among European states.²⁰

Opportunities: Prioritization, networking and being small with a purpose

How should small states meet these challenges and make the most of their EU presidencies? One answer is by use of a so-called smart state strategy.²¹ A smart state strategy has three fundamental characteristics. First, small states need to *prioritize* goals and means and rank their policy priorities. What is the main aim of the presidency? What are the means to achieve this aim? What are the secondary aims? Are there any red lines/policy bastions that designate defensive aims, i.e. policy developments that should be avoided by use of the presidency? Small states must prioritize their resources and signal their willingness to negotiate and compromise on issues that are not deemed to be of vital importance. They lack the resources and competencies to pursue a broad political agenda with many different goals.

Second, if you lack capabilities, you need friends. In military affairs, a distinction is often made between internal balancing (arms build-up) and external balancing (alliance formation). In diplomatic affairs, we can make a similar distinction between building capacity and competencies in a particular issue area and building a coalition. In diplomatic affairs, as in military affairs, the two are not mutually exclusive but most effective when used in combination, and in diplomatic affairs, like in military affairs, small states are particularly dependent on cooperation with others as their capabilities and competencies may be used effectively in a *network* but will rarely be sufficient to stand alone. Any goals of the presidency must be in accordance with the goals of the Union as a whole or at least a sizeable coalition within it, and avoid conflict with existing EU initiatives or political proposals from any of the big EU member states. Small states should not waste resources on picking fights that they cannot win. Instead, they need to identify the niches where they have special competencies and may contribute solutions to the general challenges of the EU. Fortunately, these niches will often coincide with small state interests as they build competencies in the issue areas, which are most important to domestic political actors and economic growth. Small states holding the presidency will need some common understanding with the two other members of the presidency trio in

¹⁹ Geurts, C. (1998).

²⁰ Wallace, W. (1999).

²¹ On smart state strategies for small states, see e.g. Joenniemi, P. (1998) Arter, D. (2000) and Grøn, C. and Wivel, A. (2011).

order to build a workable coalition for their presidency agenda but they will need to build a strong network among likeminded states including some of the big member states if they are to succeed and effectively offset some of the challenges related to the lack of capacity and agenda-setting ability as well as increasing inter-governmentalism.

Finally, holding the Council presidency is an opportunity for small states to take advantage of the agenda-setting powers not otherwise at their disposal. Small states may be in a particularly advantageous position to take on the role of mediator in negotiations. As noted in the introduction of this chapter, small states lack the capabilities for pursuing dominant power politics and must therefore rely on non-coercive diplomatic tools. Small states are structurally disadvantaged by their absolute and relative lack of capabilities, even in a highly institutionalized environment such as the EU, but they are privileged by the non-threatening international posture following from their lack of power, i.e. the soft power following from small state status. As argued by Nye, “soft power – getting others to want the outcomes you want – co-opts people rather than coerces them”.²² In that sense, a small state strategy turns the binding strategy on its head. Rather than seeking “damage control” by limiting the action space of the great powers by binding them to institutional regulations and thereby seeking to curb the negative consequences stemming from small states’ lack of hard power capabilities, small states should aim to *unleash the soft power stemming from being the weaker part in an asymmetric relationship*. They will best do this in policy areas, where they have already built a strong forerunner reputation thereby underpinning their position as competent mediators and offsetting the challenges stemming from the short six-month period of holding the presidency.

Conclusion

As argued by Helen Wallace, “[i]t is a core objective of all member governments to exercise influence in support of their preferences within the EU system.”²³ For small EU member states, the Council presidency offers a good chance for maximizing influence despite the challenges following from the nature of the presidency and the general developments of the EU. Rather than focusing on how to change the institutional set-up of the presidency, small states should focus on how to make the most out of it in its current form. In a highly institutionalized environment such as the EU knowing how to play the game may be almost as important as the cards you are dealt. A smart state strategy emphasizing prioritization, networking and taking advantage of the soft power stemming from being a small state will help

²² Nye, J. (2004) p. 5.

²³ Wallace, H. (2005) p. 36.

small states to take advantage of the Council presidency, maximizing their influence.

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Chapter 2

EU Migration and Asylum in the Aftermath of the 2016 Migration Crisis

Berta Fernandez and Kristiina Lilleorg

Introduction

The European Union (EU) initiatives aimed at regulating migration have recently enjoyed relatively broad and quick support by EU Member States (EUMS), while the facilitation of migration has been selective and either addressing few targeted countries, or small categories of migrants travelling to the EU – the most qualified ones. Migrants in vulnerable situations with specific protection needs and/or asylum-seekers requesting international protection – seeking access to the EU – are still awaiting legislative and policy reforms addressing their needs. Significant progress was made during the Maltese Presidency towards reaching agreement among EUMS on the Common European Asylum System (CEAS) reform. However, the package of seven instruments and the key issues they seek to address remain *work in much-needed progress*.

Given the 2016 ongoing migration flows to the EU via the Central Mediterranean route, the Maltese Presidency started with a clear determination to reduce arrivals from Libya and save lives, as well as to break the business model of smugglers along the route as stipulated in the European Agenda on Migration. A vivid sense of urgency to increase return rates and uphold the credibility of asylum systems was felt by EUMS and the Commission alike. The new return policy package was released in March 2017, paving the way for a future revision of the Return Directive, with a view to building a *Common European Return System* (CERS). On the external front, making development aid contingent on cooperation on returns and readmission in the Migration Partnership Framework approach has been questioned by the European Parliament (EP) and others, arguing it represents a contradiction with aid effectiveness principles which for this reason risk losing ownership and engagement of partner countries.

Politico gave the Maltese Presidency a high mark for its performance and negotiating ability on Migration and Neighbourhood issues (7 out of 10),²⁴ highlighting as achievements the European Travel Information and Authorization System (ETIAS), the new EU Agency for Asylum Regulation (EUAA), visa liberalization for Georgia and Ukraine, and the revamping of the EU Return Policy with a particular focus on Libya. Undoubtedly, these results are consistent with the leadership position that Malta acquired during

²⁴ Politico (2017).

2015/2016 due to the relevance of the Valletta Summit²⁵ after the approval of the European Agenda on Migration (EAM). However, the EU asylum *acquis* reform remains very much work in progress; a sensitive file to be dealt with by the next Presidencies.

European Migration Agenda and Common European Asylum System: Work in Much-Needed Progress

Following the priorities set out in the European Agenda on Migration (EAM) (May, 2015) and the subsequent first and second implementation packages – which brought about, among other measures, the Council Decisions on relocation (September, 2015) – the Commission Communication on the reform of the Common European Asylum System (CEAS) was published in April, 2016.

On 4th May 2016 and 13th July 2016, the Commission submitted seven legislative proposals aimed at reforming the CEAS.²⁶ During its Council Presidency, Malta led the examination of the seven proposals, initiated by the previous two Presidencies – those of The Netherlands and the Slovak Republic. The Maltese Presidency opted for a thematic approach for the revision, given that a number of issues included in many of those proposals were cross-cutting and closely inter-linked: namely, the Qualification Regulation (QR), Asylum Procedures Regulation (APR), Reception Conditions Directive (RCD) and Dublin IV Regulation (Dublin IV). At the same time, from what had started as a 2-package proposal in 2016, the Maltese Presidency inherited the packages somewhat reshuffled according to the progress achieved – with Dublin IV having moved from the first to the second package. This was not due to its reduced importance: quite the contrary, in fact, it was rather because of its importance as the corner stone of the CEAS that the discussions – and also disagreements over it among Member States – had significantly slowed down progress on the negotiation of Dublin IV.

The issue of solidarity and responsibility-sharing among Member States with regard to processing and hosting asylum-seekers remained at the core of the discussions – in other words, nothing has changed in the application of the Dublin regime, whose core principle is that the responsibility for examining an asylum claim lies with the Member State which played the greatest part in the applicant's entry to the EU. In most cases this means it is the Member State of first entry.²⁷ The Commission proposal to reform the Dublin

²⁵ Fernandez, B. (2016).

²⁶ The recast of the Dublin Regulation (Dublin IV) and of the EURODAC Regulation, a proposal for a Regulation on the establishment of the European Union Agency for Asylum (EUAA), a proposal for a Regulation establishing a common procedure in the EU, a proposal for a Qualification Regulation, the recast of the Reception Conditions Directive and a proposal for a Regulation establishing a Union Resettlement Framework.

²⁷ European Commission (2017e).

Regulation did not revisit the responsibility criteria of the current Dublin III mechanism. The proposal, however, included a “corrective fairness mechanism” of relocation²⁸ under which asylum seekers would be subject to a relocation scheme from the country in question only after the potential applicability of the “safe third country” concept has been ruled out in their case.

Even though the proposal was subject to significant changes proposed by the EP during the Maltese Presidency as well as significant efforts towards cluster-agreements around themes – the file of this proposal was handed over to the Estonian Presidency without much overall progress achieved, most notably on the principle of solidarity. To date, the latter remains at the core of persisting differences in Member States’ discussions on the entire CEAS reform, impacting progress also on other instruments, especially the forthcoming APR.²⁹ Reaching agreement on Dublin IV is thus urgently needed not only to unblock the stalemate on the related instruments, but also to allow for the institutionalization of the Emergency Relocation Mechanism.³⁰

At the furthest end of the progress spectrum in terms of potential backing by EU Member States (EUMS) under the Maltese Presidency, was the draft Regulation on the establishment of the EUAA which found principle agreement on all its key tenants. The Commission proposed the transformation of the European Asylum Support Office (EASO) into a full-fledged agency, the European Union Agency for Asylum, with a wider mandate, putting the Agency in charge of operating the corrective fairness mechanism under the proposed Dublin IV, as well as ensuring greater convergence in decision-making and standards between Member States’ asylum systems. The text remains to this date, the most advanced among the seven instruments; its adoption will now primarily depend on the agreement reached by EUMS on the other instruments of the CEAS package.

In its final report to the Council on the progress in the CEAS reform in June 2017, the Maltese Presidency noted that “a consensus had emerged among Member States to support a comprehensive approach of which the reform of the CEAS was just one aspect”,³¹ adding that “policies tackling migratory flows outside the EU, external border management and a strengthened returns framework would need to be enhanced in parallel with the asylum law reform”.³² In the latter priority areas, important efforts were made and achieved under the Maltese Presidency, including, but not limited to, the

²⁸ The mechanism needs to be triggered in Member States facing particular pressure.

²⁹ European Commission (2016b).

³⁰ Council Decision (EU) 2015/1601.

³¹ Presidency of the Council of the European Union (2017a).

³² *Ibid.*

Action Plan on Measures to Support Italy,³³ the most recent amendment to the Schengen Borders Code,³⁴ as well as the Entry/Exist System and ETIAS proposals³⁵ – which were all adopted or significantly progressed towards regulating migration. On the EU external dimension, this was achieved through successful implementation of the EU-Turkey Statement,³⁶ and the adoption of the Malta Declaration. On the migration “facilitation” side, notable successes include the progress made on the Blue Card Directive revision (for qualified professionals), and the successful conclusion of the visa liberalization negotiations with Ukraine and Georgia – essentially allowing visa free travel for the nationals of the two countries in exchange for readmission from the EU.

Meanwhile, migrants in vulnerable situations with specific protection needs and/or asylum-seekers requesting international protection – seeking access to the EU – are still awaiting legislative and policy reforms addressing their needs, most notably through the Schengen Visa and Borders Code reform.

Furthermore, the above-mentioned Maltese Presidency June 2017 progress report also noted a general understanding that the reformed CEAS should ensure the right balance between responsibility and solidarity. In other words, “Member States would need to fully implement the *acquis*, the asylum system should be efficient, avoiding pull factors and discouraging secondary movements, and it should deliver solidarity effectively and efficiently when needed, in particular when a Member State finds itself under disproportionate pressure or adversely affected by unforeseen events”.³⁷ This line was expanded on and reinforced in the Conclusions of the Council meeting held later that same month.³⁸

EU Return, Readmission and Development Policies: Complementary or Contradictory?

During 2016, the efficiency and effectiveness of the EU return system and policy were under serious scrutiny. Even if EU return rates (i.e. enforced return rates as a percentage of the number of removal orders) to third countries increased from 37% (2015) to 46%,³⁹ it was still not seen as good enough considering the inflows. The European Migration Network (EMN) identified a number of challenges that EUMS encountered in the return of

³³ European Commission (2017c).

³⁴ Council of the European Union (2017b).

³⁵ ETIAS Europe (2017).

³⁶ For more info see https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/eu_turkey_statement_17032017_en.pdf

³⁷ Presidency of the Council of the European Union (2017a).

³⁸ European Council (2017a).

³⁹ Eurostat.

rejected asylum seekers that are affecting the effective enforcement of return decisions.⁴⁰ In brief, the current obstacles are four-fold:

- (a) practical (identity determination in the absence of travel documents, individual resistance to return, volatile security situation in some countries of origin.);
- (b) legal (procedural safeguards allowing for late-stage appeals and judicial reviews, impossibility for EUMS to establish contact with the authorities of the country of origin before the asylum procedure is closed.);
- (c) medical (greater prevalence among asylum seekers than other returnees); and
- (d) political (national pressure not to implement removals, and unpopularity of readmission in third countries). Currently, the EUMS are coordinating the implementation of their national return programmes via the AMIF funded European Reintegration Network (ERIN), to reduce costs and to establish common approaches for the provision of reintegration assistance to returnees, whether voluntary or forced. This is in line with what IOM has been advocating for: more harmonization in the field of assisted voluntary return and reintegration (AVRR) as a means of limiting situations where migrants returning to the same country of origin under different programmes would receive different assistance packages.⁴¹ Furthermore, this will reduce the so-called “return shopping”, whereby rejected asylum-seekers and irregular migrants seek those EUMS with the most beneficial return package schemes.

After the Malta Summit,⁴² the EU Return Policy was reviewed to analyse the application of the legal, operational, financial and practical tools available at EU and national levels, in order to identify how to increase return rates. A month later, the Commission adopted a Recommendation for EU Member States on “making returns more effective when implementing the Directive 2008/115/EC”, and a Communication on a Renewed Action Plan on Return (RAPR). According to that Communication of 3rd March 2017,⁴³ “competent national authorities in the Member States need to apply the standards and procedures set out in the Return Directive in a more effective and direct way when carrying out returns in full respect of fundamental rights and safeguards for a dignified return in line with the Recommendation.” The Communication outlines two areas where action is required: making national

⁴⁰ EMN (2016).

⁴¹ IOM has developed an *integrated approach to reintegration assistance* together with Member States and development actors with a view to offer needs-based reintegration assistance to returnees and communities of return, in order to ensure high quality assistance towards dignified return and reintegration. More info at: http://www.iom.int/sites/default/files/our_work/DMM/AVRR/Towards-an-Integrated-Approach-to-Reintegration.pdf

⁴² European Council (2017).

⁴³ European Commission (2017a).

administrative systems and return procedures more effective, and overcoming the challenges of readmission.⁴⁴ In order to tackle the former, the Recommendation includes a series of practical measures aimed at improving the return system through a more uniform implementation of the Return Directive by EUMS. The Renewed APR proposed increased financial support to EUMS (EUR 200 million in 2017) for national return efforts (including assisted voluntary return and reintegration programmes) as well as specific European return and reintegration activities. It also proposed improved information exchange to enforce return using the Integrated Return Management Application (IRMA); increased exchange of best practices to ensure reintegration packages are consistent among all EUMS; and the offer of full support to EUMS by the European Border and Coast Guard Agency on pre-return assistance, including the strengthening of its return support unit and setting up commercial flight mechanisms for financing return (by June 2017) as well as training for third country authorities on return (by October 2017). In this context, there is concern that the Return Directive's procedural safeguards will be reduced, while detention will increase. In preparation for the negotiations leading to the Global Compacts on Migration⁴⁵ and Refugees, civil society and International Organizations are advocating for alternatives to detention (especially for children⁴⁶), which they believe are linked to higher uptake of assisted voluntary return and reintegration (AVRR),⁴⁷ as well as multidisciplinary best interest assessment in return decisions for unaccompanied children. The International Organisation for Migration's (IOM) experience has regularly shown that the use and implementation of AVRR programmes has generally improved the cooperation and dialogue with all countries involved along the return spectrum and thus facilitated administrative aspects such as the provision of travel documents.

The RAPR builds on the 2015 Action Plan on Return, which announced that EU assistance and policies should be used as incentives to stimulate the partner countries' willingness to cooperate and thus increase the EU's leverage on readmission. This translated into the Migration Partnership Framework approach proposed in June 2016, which aims at achieving joint management of migration with countries of origin and transit, with an initial focus on Ethiopia, Senegal, Mali, Nigeria and Niger. Following a series of high level dialogues, cooperation on readmission obligations is now an integral part of the EU's renewed political dialogue with third countries.

⁴⁴ Readmission is the act by a State accepting the re-entry of an individual (own national, third-country national or stateless person), who has been found irregularly entering or being present in another State. Readmission can only happen after a return decision has been made, in accordance with the procedural guarantees set by the Return Directive and the relevant EU asylum rules.

⁴⁵ IOM (2017a).

⁴⁶ OHCHR (2012).

⁴⁷ International Detention Coalition (2017).

While some countries of origin cooperate on the readmission of their nationals (e.g. Georgia), in line with their obligation under international law (and for ACP countries also under Article 13 of the Cotonou Agreement), many others do not cooperate in a way that is satisfactory for the EU.

The Directorate General on Migration and Home Affairs of the Commission (DG Home) and EUMS try to use tailor-made approaches, identifying the interest, incentives and leverages at stake with a third country in order to achieve targets and commitments, and to offer specific support measures – such as effective reintegration of returnees – so as to ensure better management of migration. However, this approach has been widely criticized. Along with the non-governmental organisations (NGOs) active in the migration and development fields, the EP opposes aid conditionality dependent on partner countries cooperating on return and readmission. The Joint Way Forward (JWF)⁴⁸ on migration issues between Afghanistan and the EU, an informal readmission arrangement, is a case in point. The EP is concerned that these kinds of arrangements are being used to avoid democratic scrutiny of the negotiation process, the actual operationalization of returns, and the impact on returnees when the country is not safe, while institutional structures to receive and reintegrate returnees are lacking.⁴⁹

Migration Governance in Partnership with Africa

Addressing the current migration challenge without jeopardising development policy achievements and objectives, subordinating it to foreign policy goals on security and migration control was one of the key issues of the revision of the European Consensus on Development (ECD).⁵⁰ Specifically, the EP has repeatedly suggested the use of need and efficiency based criteria for the allocation of conditionality-free development assistance linked to migration, while focusing on promoting inclusion and economic opportunities, democracy building and good governance.⁵¹ In June 2017 the new ECD⁵² acknowledged

⁴⁸ The Joint Way Forward (JWF) was signed in October 2016 after six months of dialogue between the EU and Afghanistan. It is a non-binding document that does not create obligations since it is a declaration of intent. The Commission believes that “it represents a joint political engagement to manage a complex phenomenon via a structured dialogue, since it has a comprehensive approach (facilitate return, awareness raising campaigns, reintegration assistance, and support to Afghan Government in breaking smuggling business model), and does not cover refugees but those irregular migrants without a valid claim to stay.”

⁴⁹ With the Lisbon Treaty, the EP has an essential role in the conclusion of readmission agreements since it has the right to veto these. The LIBE (Civil Liberties, Justice and Home Affairs) Committee of the EP regularly calls for a detailed examination of the situation in the countries with which such agreements are negotiated. It demands to be informed and consulted regularly from the beginning of the legislative process to the actual granting of the mandate to the Commission by the Council.

⁵⁰ European Parliament (October 2016).

⁵¹ European Parliament (April 2017).

⁵² Joint Statement by the Council and the Representatives of the Governments of the Member States Meeting with the Council, the European Parliament, and the European Commission (8th June 2017).

the central role of migrants as drivers of the global economy, but most importantly it reiterated that short- and long-term cross-sectoral interventions, policies and legal frameworks that meet the needs of both migrants and host populations, and ensure their safety, are essential elements of migration management. In this area, significant steps were made at the Valletta Summit (November 2015), with the adoption of an ambitious action plan that would step up efforts to address the root causes of irregular migration and forced displacement. Since then, the EU has made an effort to consolidate migration as a key part of EU foreign policy dialogue, building on the lessons learned in 2016, and focusing on “migration partnerships” in the political governance of international migration.

Malta contributed €250,000 towards the EU Emergency Trust Fund (EUTF), which was divided between two specific windows: the Horn of Africa and North of Africa.⁵³ The EUTF is funding a joint EU-IOM Initiative for migrant protection and reintegration in Africa along the Central Mediterranean migration routes covering 14 countries, including Libya.⁵⁴

In addition, the Commission launched a new European External Investment Plan (EEIP) in September 2016, and its regulation was developed during 2017. The EEIP will provide a long-term holistic approach to improve investment in Africa and the EU Neighbourhood in order to promote sustainable investment and tackle some of the root causes of migration. Ultimately, it will link financial assistance (EUR 1.5 billion), technical cooperation, and policy dialogue with countries of origin.

Conclusions

This article did not touch upon the creation of much-needed additional safe and legal pathways to the EU for persons entitled to international protection (as well as those seeking other forms of protection), i.e. humanitarian admission and private sponsorship. Clearly, it is paramount that progress is made on all the aspects of the CEAS. This would testify to the integrity of the Union Project when it comes to the protection of those not only in need of it, but entitled to it by the mere application of existing international law.

The Valletta Summit between the EU and Africa was an important first step towards meeting migration challenges in a spirit of mutual responsibility. The five clusters of the Valletta Action Plan taken together presented a blueprint for strengthening cooperation between both continents. A balanced partnership with genuine co-ownership and mutual trust must consider the

The ECD is in line with the Sustainable Development Agenda, which clearly recognizes the positive contribution of migration and mobility to inclusive growth and sustainable development.

⁵³ European Migration Network (2016).

⁵⁴ European Commission (2017d).

needs and interests of countries of origin, transit and destination, as well as the migrants themselves in order for migration governance to work. Increasing the legal pathways into the EU beyond the Blue Card Directive will be the natural next step for a European Commission and an EEAS that have experienced first-hand the chaotic effects of ad hoc emergency measures.

On a diplomatic level, it will be essential that cooperation moves beyond the current focus on return and readmission and progresses further toward enacting shared commitments on development, mobility and protection issues in support of comprehensive approaches to migration governance both within and outside the European Union. Making aid delivery contingent on returns and readmission could potentially undermine efforts to address underlying drivers of irregular migration and forced displacement such as poverty and state fragility.

As for the EU asylum reform, the CEAS package remains an urgent pending negotiation task. In order to make headway, the EUMS would need to consider the concept of solidarity not only in the context of this notion among EUMS, but also in relation with the global community of those countries hosting refugees and asylum-seekers, invoking International Law on responsibility-sharing⁵⁵ as well as recalling the global commitments made under 2016 New York Declaration for Migrants and Refugees. Finally, EUMS would need to balance “solidarity in regulation” with “solidarity in facilitation and protection”, since the least contentious place to start is by ensuring a system facilitating access, reception and protection of refugees.

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⁵⁵ Convention relating to the Status of Refugees (1951).

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Chapter 3

Developments in the Internal Market during Malta's Presidency

Ivan Sammut

Introduction

The single market, referred to in the EU treaties after the Maastricht amendments as the “Internal Market”, is one of Europe’s major achievements encompassing the so called four freedoms. It is an engine for building a stronger and fairer EU economy among the peoples of Europe. By allowing people, goods, services and capital to move more freely it opens up new opportunities for citizens, workers, businesses and consumers. This leads to the creation of jobs and growth in Europe which the EU urgently needs. The more integrated and deeper capital markets are the more they can channel more funding to companies, especially SMEs, and infrastructure projects. Better worker mobility allows people to move more freely where their skills are needed further contributing to the concept of a peoples’ Europe. Combatting tax evasion and tax fraud ensures that all contribute their fair share of tax to the EU’s coffers. This paper seeks to highlight the main achievements towards the evolution of the EU Internal Market during 2017 and in particular during the six months of Malta’s presidency of the EU Council of Ministers between January 2017 and June 2017. The evolution of legislation that happens during a six-month presidency is not necessarily due to the direct input of the presidency itself, and hence the achievements or the lack of them as discussed below, should not be considered as a judgement on the presidency itself. The aim of this paper is simply to discuss what has happened in the mentioned period rather than argue from a legal point of view the successes or failures of the rotating presidency in question. This paper also focuses on some of the main areas of the Internal Market and does not seek to provide a comprehensive overview of all the developments that have occurred.

The deepening of the EU’s Internal Market has been one of highest priorities for Malta, with the presidency pushing for more EU legislation to address the challenges faced by SMEs and consumers. Also high on the list was the end of roaming charges on mobile phones. Developing a digital internal market and an internal market for energy would benefit the economy, businesses, and families.⁵⁶ The first part of the paper focuses on the Digital Single Market. Malta’s presidency gave priority to the e-commerce package as well as the proposed Regulation on cross-border portability of online content services in the internal market. Also reference is made to the

⁵⁶ Government of Malta (2016) p. 2.

discussions on copyright reform. The second part of the paper focuses on the work done on cooperation between the national authorities responsible for the enforcement of consumer protection laws with the aim of reaching a General Approach. The final part of the paper covers the framework of the Single Market strategy and the debate to upgrade SOLVIT and the Single Market Information Tool which are part of the Enforcement Package together with the Single Digital Gateway. The above are the three main issues tackled during the last six months of 2017 and so the paper explores and discusses Malta’s contribution to the formulation of legislation in this field during this period.

The diagram below shows the main objectives of the legislative programme for the Internal Market during the Maltese presidency in 2017 and the progress made on this issue by all the three legislative bodies during this period.⁵⁷ The data and the text for the table below is obtained from the Malta’s presidency’s website and from DG Markt’s website where it indicates the legislations’ current position at the end of 2017. The text on the right column is reproduced ad verbatim from DG Markt’s website.⁵⁸

Diagram 1 - Main Objectives of the Legislative Programme of the Internal Market (January to June 2017)	
What was said in the Maltese pre-Presidency Programme 2017	Appraisal of what was/was not Achieved
Ending roaming charges throughout the EU, so that citizens can stay in touch when they travel;	Achieved - Malta signed off on some of the easier files, already largely negotiated by the Slovak presidency before them. Agreements on ending <u>mobile phone roaming charges</u> and portability of online content, like Netflix subscriptions, were among these. They stewarded negotiations beefing up cooperation among consumer protection bodies and free public Wi-Fi to the finish line.
Making progress towards ensuring that consumers seeking to buy products and services in another EU country, be it online or in person, are not discriminated against based on nationality or country of residence in terms of access to prices, sales or payment conditions (geoblocking);	Achieved – Geo-blocking is a discriminatory practice that prevents online customers from accessing and purchasing products or services from a website based in another member state. In order to remove this barrier, the Council is working with the European Parliament on a geo-blocking regulation. On 29 th November 2017, EU ambassadors confirmed an agreement between the

⁵⁷ Government of Malta (2016).

⁵⁸ www.ec.europa.eu, accessed on 20th December 2017.

	<p>Estonian presidency of the Council and the Parliament to ban unjustified geo-blocking. This was thanks to the work carried out during the first half of the year.</p> <p>The draft regulation, which needs to be adopted by the two institutions, aims to remove discrimination based on:</p> <ul style="list-style-type: none"> • Customers' nationality • place of residence • place of establishment <p>The ban on geo-blocking is an important element of the digital single market strategy.</p> <p>Once it takes effect, the geo-blocking regulation will supplement other landmark achievements such as the end of roaming charges for mobile phones and the introduction of cross-border portability for online subscriptions.</p>
<p>Ensuring a sharper focus in EU legislation in addressing the challenges faced by small and medium-sized enterprises (SMEs) by enabling the development of a wider range of funding sources through action on the Capital Markets Union;</p>	<p>Progress was made but discussions are still on going. The Single Market Strategy is the European Commission's plan to unlock the full potential of the Single Market. The Single Market is at the heart of the European project, but its benefits do not always materialise because Single Market rules are not known or implemented, or they are undermined by other barriers. So the Commission has decided to give the Single Market a boost by <u>improving mobility for service providers, ensuring that innovative business models can flourish, making it easier for retailers to do business across borders, and enhancing access to goods and services throughout the EU.</u></p>
<p>Growth and jobs remain an overarching priority for all EU Member States and for the EU as a whole. The extension in time and financial capacity of the European Fund for Strategic Investment will be a priority file during the Maltese Presidency to help mobilise private investment while making smart use of scarce budgetary resources;</p>	<p>Progress was made but this is an on-going process. The European Fund for Strategic Investment (EFSI) is one of the three pillars of the <u>Investment Plan for Europe</u> and aims to overcome current market failures by addressing market gaps and mobilising private investment. It helps to finance strategic investments in key areas such as infrastructure, research and innovation, education, renewable energy and energy efficiency as well as risk finance for small and medium-sized enterprises (SMEs).</p>
<p>Reviewing the Energy Efficiency package aimed at reducing energy consumption in</p>	<p>Progress was made. On 30th November 2016 the Commission proposed an <u>update</u></p>

<p>residential buildings and industry through improved energy efficiency;</p>	<p><u>to the Energy Efficiency Directive</u> including a new 30% energy efficiency target for 2030, and measures to update the Directive to make sure the new target is met.</p>
<p>Strengthening security of energy supply for all EU citizens, particularly in times of crises;</p>	<p>Progress was made. On 18th May 2017 the European Commission, together with 14 EU countries (Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Malta, Portugal, Spain, and Sweden) signed a political declaration to launch the new 'Clean Energy for EU Islands' initiative. Aimed at accelerating the clean energy transition on Europe's more than 2,700 islands, this initiative will help islands reduce their dependency on energy imports by making better use of their own renewable energy sources and embracing more modern and innovative energy systems. This will help reduce energy costs and at the same time improve air quality and lower greenhouse gas emissions. Signed in Valetta in the margins of the Informal Energy Council, which brings together EU energy ministers, the initiative will provide opportunities to compare notes on common problems that different islands face, building on best practices and experience from pilot projects. Part of the scheme is also intended to make it easier to access new energy technologies and sources of funding. The initiative was originally announced as part of the Commission's "<u>Clean Energy for All Europeans</u>" package of proposals in November 2016.</p> <p>Marking this new initiative, European Commissioner for Climate Action and Energy Miguel Arias Cañete said: "Due to their location, many of our islands have expensive oil-based energy structures which mean that they are still dependent on costly fossil fuel imports. The "Clean Energy for EU Islands' initiative will help them to access the support, expertise and funding they need to go local and generate their own clean, low-cost energy from renewable sources."</p> <p>The initiative will create a forum for all those with an interest in the clean energy transition on EU islands to share best practice and support the creation of a long-term framework to promote funding and technical assistance.</p>

	<p>At the meeting of the Informal Energy Council, ministers also looked at the <u>proposal</u> for a revised <u>Energy Efficiency Directive</u> included in the 'Clean Energy for All Europeans' package, including the Commission's proposal to move to a binding 30% <u>energy efficiency</u> target for the EU as a whole by 2030.</p> <p>The Informal Council was followed by an Informal High Level Meeting on Energy Efficiency in the Mediterranean. Ministers, along with representatives of the Commission, private sector and regional bodies, discussed how to increase energy efficiency in the Mediterranean's buildings and the tourism sector.</p>
<p>Allowing EU consumers to continue enjoying their "home" subscription to Audio Visual online content when visiting another Member State;</p>	<p>Progress was made. The Council agreed on a general approach on a draft regulation aimed at ensuring the cross-border portability of online content services in the internal market.</p> <p>The agreement enables the Council to start negotiations with the European Parliament, once the Parliament has set its negotiating position, under the ordinary legislative procedure.</p> <p>The president of the Council and minister for economic affairs of the Netherlands, Henk Kamp, made the following comments: "This initiative will make life easier for European citizens when they travel, by allowing them to keep accessing online content they have legally acquired or subscribed to in their home member state when they are temporarily in another member state. This means that citizens who are in another member state for purposes such as holidays or business trips can enjoy for example music, films, games or sporting events just like at home".</p>
<p>Reassigning the high speed 700 MHz band (694-790 MHz) currently used for digital television broadcasting and wireless microphones, to wireless broadband services, thus allowing this band to be used for 5G;</p>	<p>Progress was made on what has started during the previous Slovak Presidency.</p>

The Digital Single Market

The internet and digital technologies are transforming our world as we know it, but existing barriers online mean citizens miss out on goods and services, internet companies and start-ups have their horizons limited, and businesses and governments cannot fully benefit from digital tools. The EU's Internal Market's legislative framework as explained in the opening paragraph of this paper has to be improved to make it fit for the digital age – tearing down regulatory walls and moving from twenty-eight national markets to a single one. This could contribute €415 billion per year to our economy and create hundreds of thousands of new jobs.⁵⁹

One of the objectives of the EU throughout 2017 and beyond is to boost e-commerce by tackling geo-blocking and making cross-border parcel delivery more affordable and efficient. The proposed regulation on geo-blocking has an objective to provide more opportunities to customers. It addresses the problem of customers not being able to buy products and services from traders located in a different Member State, or being discriminated against in accessing the best prices or sales conditions compared to nationals or residents. This shows how the current existing legal framework is not sufficient to cater for e-business. The EU's Commission seeks to modernise copyright rules to fit the digital age as well as update EU audio-visual rules and work platforms to create a fairer environment for everyone, promote European films, protect children and tackle hate speech.⁶⁰

The e-commerce package is composed of legislative proposals to address unjustified geo-blocking and other forms of discrimination on the grounds of nationality, residence or establishment. There is also a legislative proposal on cross-border parcel delivery services to increase the transparency of prices and improve regulatory oversight. The package also includes a legislative proposal to strengthen enforcement of consumers' rights and guidance to clarify, among others, what qualifies as an unfair commercial practice in the digital world. The proposed regulation on geo-blocking intends to provide more opportunities to customers. It addresses the problem of customers being stopped from buying products and services from traders located in a different Member State, or being discriminated in accessing the best prices or sales conditions compared to nationals or residents. Online sales of products are growing by 22% per year. The main elements of the proposal include the sale of products and services, access to websites, and non-discrimination in payments.

High prices and the inconvenience of cross-border parcel delivery plus different legislation in Member States are one of the biggest obstacles for consumers and retailers who would like to buy and sell online across the EU.

⁵⁹ European Commission (2017).

⁶⁰ *Ibid.*

The regulation proposed by the Commission on 25th May 2016 will increase price transparency and regulatory oversight of cross-border parcel delivery services. This means that consumers and retailers can benefit from affordable deliveries and convenient return options even to and from peripheral regions. The main elements of the proposal include increased regulatory oversight of all parcel delivery services providers and price transparency through the publication of domestic and cross-border prices for a set of basic services. There is also the requirement of universal service providers to offer transparent and non-discriminatory third party access to multilateral cross-border agreements in the EU.⁶¹

In line with the above proposals the Commission also proposes a review of the Consumer Protection Cooperation (CPC) Regulation. This is intended to give more powers to national authorities to better enforce consumer rights. Relevant authorities will be able to check if websites geo-block consumers or offer after-sales conditions not respecting EU rules (e.g. withdrawal rights) as well as order the immediate take-down of websites hosting scams. The Proposal wants to empower national authorities to request information from domain registrars and banks to detect the identity of the responsible trader. The Commission is also publishing updated guidelines on unfair commercial practices. This is intended to respond to the challenges presented by the digital world. The revised guidance also incorporates two sets of self-regulatory principles agreed among stakeholders. For the geo-blocking proposal to deliver its intended benefits, enforcement is needed. Once adopted, the proposal on geo-blocking would be enforced by the consumer protection authorities in the framework of the CPC Regulation regulating business-to-consumer transactions.⁶²

Another important development is the scaling up of Europe's response to cyber-attacks by strengthening ENISA – the EU cybersecurity agency. This is complemented by creating an effective EU cyber deterrence and criminal law response to better protect Europe's citizens, businesses and public institutions.⁶³ ENISA is the European Union Agency for Network and Information Security and it has a key role to play but is constrained by its current mandate. The Commission presents an ambitious reform proposal, including a permanent mandate for the agency to ensure that it can provide support to Member States, EU institutions and businesses in key areas, including the implementation of the NIS Directive. It will also contribute to stepping up both operational cooperation and crisis management across the EU.⁶⁴

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

The growth of the EU cybersecurity market in terms of products, services and processes is held back in a number of ways, but most of all because of the lack of a cybersecurity certification scheme recognized across the EU. The Commission is therefore putting forward a proposal to set up an EU certification framework with ENISA at its heart. A joint Commission-industry initiative will also be launched to define a “duty of care” principle to reduce product and software vulnerabilities and promote a “security by design” approach for all connected devices.

Another important development deals with the NIS directive. It is necessary to swiftly implement the NIS directive (Directive on security of network and information systems), adopted in July 2016. This is facilitated thanks to the Commission’s guidance on how the Directive should operate in practice and additional interpretation of specific provisions included in the September 2017 package.⁶⁵

Other initiatives seek to unlock the potential of a European data economy with a framework for the free flow of non-personal data in the EU. This ensures that everyone in the EU has the best possible internet connection, so they can fully engage in the digital economy, the so-called “connectivity for a European gigabit society”. This is complemented by the adaptation of e-Privacy rules to the new digital environment. This helps SMEs, researchers, citizens and public authorities to make the most of new technologies by ensuring that everyone has the necessary digital skills, and by funding EU research in health and high performance computing.

During the Maltese Presidency, in June 2017 a Digital Assembly 2017 was held. The key priorities discussed were: a) Data economy; b) New digital opportunities; c) Cybersecurity and Internet of Things; and d) Digital transformation. One of the matters discussed was e-Privacy. The e-Privacy Directive and the General Data Protection Regulation provide the legal framework to ensure digital privacy for EU citizens. The European Commission has reviewed the Directive to align it with the new data protection rules. Common EU rules have been established to ensure that personal data enjoy a high standard of protection everywhere in the EU. Currently, one can mention two main pillars of the data protection legal framework in the EU are the e-Privacy Directive (Directive on Privacy and Electronic communications), and the General Data Protection Regulation, adopted in May 2016.

The EU General Data Protection Regulation ensures that personal data can only be gathered under strict conditions and for legitimate purposes. Bodies and authorities that collect and manage one’s personal information must also protect it from misuse and respect certain rights. The e-Privacy Directive

⁶⁵ *Ibid.*

builds on the EU telecoms and data protection frameworks to ensure that all communications over public networks maintain respect for fundamental rights, in particular a high level of data protection and of privacy, regardless of the technology used. The European Commission adopted a proposal for a Regulation on Privacy and Electronic Communications to replace the 2009 Directive on 10th January 2017.

The e-Privacy Directive requires Member States to ensure that users grant their consent before cookies are stored and accessed in computers, smartphones or other device connected to the Internet. The draft Regulation introduces the concept of “privacy by design” whereby users opt for a higher or lower level of privacy. Telecom operators and Internet Service Providers possess a huge amount of customers’ data, which must be kept confidential and secure. Sometimes sensible information can be stolen or lost, or illegally accessed so the e-Privacy Directive ensures that the provider reports any “personal data breach” to the national authority and informs the subscriber or individual directly of any risk related to personal data or privacy. No specific provisions on personal data breaches are included in the draft Regulation. One needs to rely on the relevant provisions of the General Data Protection Regulation.

Another initiative discussed during the June 2017 Valletta Conference was the European Commission wish to promote free Wi-Fi connectivity for citizens and visitors in public spaces such as parks, squares, and do on. The idea is to have Wi-Fi everywhere in Europe through WiFi4EU. Other discussions focused on the Next Generation Internet, International connectivity, the Digital Single Market mid-term review, the European Broadband Fund and Data economy.

Enforcing Consumer Laws

During Malta’s presidency of the Council of the EU, a boost was given to the Consumer Protection Cooperation (CPC) which is a **network of authorities** responsible for enforcing EU consumer protection laws in EU and EEA countries. It allows any authority in a country where consumers' rights are being violated, to **ask its counterpart** in the country where the trader is based to **take action** to stop a breach of law. The Consumer Protection Cooperation (CPC) Regulation sets a list of minimum powers which each authority must have to ensure smooth cooperation. These include power to obtain the information and evidence needed to: a) tackle infringements within the EU; b) conduct on-site inspections; c) require cessation or prohibition of infringements committed within the EU; and d) obtain from traders’ undertakings. Authorities can also **alert each other to malpractices** that could spread to other countries. With the Commission's support, they can also **coordinate their approaches in the**

application of consumer protection law to tackle widespread infringements.⁶⁶

On 25th May 2016, the European Commission launched a proposal for the reform of the Consumer Protection Cooperation. The reform addresses the need to better enforce EU consumer legislation, especially in the fast evolving digital sphere. During 2017, progress was made in this regard. Enforcement authorities will get the powers they need to work together in a quicker and more efficient manner. They will be able to request information from domain registrars and banks to detect the identity of the responsible trader. They can also carry out mystery shopping to check geographical discrimination or after-sales conditions, and order the immediate take-down of websites that host scams. The Commission will eventually be able to launch and coordinate common action by consumer protection authorities in the Member States to address EU-wide problematic practices. A one-stop-shop approach to consumer law is being proposed. Enforcement authorities in the Member States will notify the businesses concerned of the issues, asking them to change their bad practices.⁶⁷

To detect market problems earlier, organizations with an interest in consumer protection such as consumer organizations and European Consumer Centres will be able to signal bad cross-borders practice to enforcers and to the European Commission. Finally, one can mention the list of laws to which this modernized framework applies. This will be updated to ensure that all the relevant consumer protection rules are included, especially in the transport and retail financial services sectors. The Commission's proposal is being discussed by the European Parliament and Council and this was an important objective during both the Maltese and Estonian presidencies during 2017.

The reform addresses the need to better enforce EU consumer legislation, especially in the fast evolving digital sphere. Enforcement authorities will get the powers they need to work together in a quicker and more efficient manner. The new **shared enforcement** approach, first applied to the in-app purchases initiative launched by the CPC and coordinated by the Commission in 2014, has also been used to resolve problems encountered by consumers when renting a car (2016). In 2017/2018, the focus is on social media operators requesting them to modify terms that appear to infringe consumer law and create a mechanism for removing frauds and scams misleading consumers. An **E-enforcement academy was set up** to boost the CPC and product safety networks' ability to conduct online investigations. The CPC projects have used the **CPC knowledge exchange platform**, an IT

⁶⁶ European Commission (2016).

⁶⁷ *Ibid.*

tool developed in 2014-2015, to support collaborative work and share results with the wider CPC network.⁶⁸

The Single Market Strategy

The Single Market Strategy is the European Commission's plan to unlock the full potential of the Single Market called the Internal Market by the Maastricht amendment. Efforts are already underway to improve companies' access to private finance through the Investment Plan and the Capital Market Union. The Commission is bringing forward proposals to create a European venture capital fund-of-funds supported by the EU budget and open to others to attract private capital. The Commission will also simplify VAT regulations, reduce the cost of company registration and put forward a proposal on insolvency to give a second chance to entrepreneurs who become insolvent.

Information on regulatory requirements can be accessible through a simple digital gateway. It has also been suggested for the Commission to push for high quality, online public services, to reduce the administrative burden and make Europe a more attractive destination for innovators. The Commission should also work on clear and SME-friendly intellectual property rules. The Commission should also take the final steps needed for the unitary patent to become an attractive and affordable way for European companies, including SMEs, to capitalize on their ideas.⁶⁹ Unitary Patents will make it possible to get patent protection in the EU Member States by submitting a single request to the EPO, making the procedure simpler and more cost effective for applicants.

The Commission wants to be able to take legislative and enforcement actions in order to ensure that consumers seeking to buy services or products in another EU country do not face differing prices, sales conditions or delivery options, unless this is justified by verifiable reasons. Without this the Internal Market cannot function properly. This applies to purchases both online and in person. The approach is similar to the geo-blocking initiative in the Digital Single Market Strategy and is part of the approach to further increase fairness in the Single Market.

To speed up investment and avoid protracted litigation, the Commission intends to help EU Member States with a voluntary, ex-ante assessment mechanism of the procurement aspects of certain large-scale infrastructure projects. The Commission seeks to promote networking between first instance review bodies and provide legal and technical assistance to the EU member states to set up fast and fair remedy bodies. The Commission and the Member States working together want to establish contract registers

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

covering the life cycle of contracts. This improves the transparency and the quality of national procurement systems, and support the development of a data analytics and anomaly-detection tool. The Commission supported by the Council also intends to push through the final steps to make the unitary patent a reality and clarify how it will interact with national patents and national supplementary protection certificates. As already announced in the Digital Single Market Strategy, the Commission will seek to review the enforcement of EU intellectual property rules (IPRs).⁷⁰

Despite the overall success of the Internal Market, significant obstacles remain for citizens and businesses to make the most of it. EU citizens interested in moving to another Member State and businesses wanting to sell products or provide services across borders still encounter problems. Currently, people and companies wanting to live, work or do business in another EU country find it difficult to find online the information they need to meet local requirements which remain different in each Member State and hence a daily reminder that the economic union is far from complete in practice. Even when existing national and EU services offer information and assistance, it is fragmented, incomplete and of uneven quality. Procedures that are online in some member states are not accessible to users from another member state. As a result, users cannot exercise their rights in the same way as locals.

Another reason why many of the opportunities offered by the Internal Market are not realized is caused by the lack of enforcement or implementation of EU law. In mid-2015, around 1,090 infringement proceedings were pending. Non-compliance weakens the Single Market's potential and lowers citizens' confidence in it. Enforcement of the Single Market includes national authorities ensuring that products are safe and compliant with the rules. There are still too many unsafe and non-compliant products sold in the EU market, which puts compliant businesses at a disadvantage and endangers consumers. In several areas, the principle of mutual recognition which ensures that goods that are lawfully marketed in one EU country enjoy the right to free movement and can be sold in another EU country, is not being applied. This prevents companies, especially SMEs, from selling their products elsewhere in the EU.⁷¹

The Commission with the support of the Council is taking important steps to encourage a culture of good governance, compliance and enforcement by improving services and assistance for citizens and businesses interested in grasping the opportunities available in the biggest market in the world. In May 2017, the Commission adopted a package of measures to make it easier for

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

people and companies wanting to work, live or do business in another EU country, and to help ensure that commonly agreed EU rules are respected.⁷²

The Commission adopted a proposal for a regulation to establish a Single Digital Gateway. This initiative will make it easier for anyone interested in living, working or doing business in another EU country to find information about rules, procedures and assistance services, and also access national procedures through one user-friendly interface in a language they can understand. Feedback on the service will be used to constantly improve it. This will save citizens and businesses considerable time and money. To this one can add the proposal for the Single Market Information Tool (SMIT), which will allow the Commission to obtain, in clearly framed cases, timely, comprehensive and reliable information from selected market players in specific instances, and as a last resort, where there are indications of serious difficulties with the application of EU Single Market legislation. The information is to be handled subject to strict confidentiality requirements.⁷³

Conclusion

It is difficult to gauge the legislative success of a presidency of the Council of the EU for EU legislation is not its sole domain but requires an equal input from both the European Commission and the European Parliament. More than this, it is not just a six-month effort but a continuous effort by all the three legislative institutions to achieve a better legal framework for the better functioning of the EU's Internal Market. From the above one can see that more or less, 2017 and the Maltese presidency for the first part of the year achieved a number of pre-established goals and progress was made in the legislative framework of the EU's Internal Market. Naturally, more progress is needed, but one can say that the main achievements towards the evolution of the EU Internal Market during 2017 and in particular during the six months of Malta's presidency of the EU Council of Ministers between January 2017 and June 2017 were satisfactory.

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⁷² *Ibid.*

⁷³ *Ibid.*

Government of Malta (2016) *2017 Maltese Presidency of the Council of the European Union Priorities* at <https://www.eu2017.mt/en/Documents/Maltese-Priorities.pdf>, p.2. (accessed on 20th December 2017).

Chapter 4

Geo-Blocking in the European Union and the Maltese Presidency

Claire Ciantar

Introduction

The Single Market is at the core of the European Union's (EU) integration and economic structure, and can be billed as one of the greatest achievements of post-war Europe. Since its establishment in 1992, the Single Market has guaranteed the free movement of goods, people, services and capital. Over the years, a number of changes have been introduced to facilitate these freedoms even more, allowing consumers and traders to buy and sell freely within the Single Market.

The Single Market has broadened the opportunities for consumers to have wider choice to goods and services across the EU. Consumer choice was further strengthened with the creation of the Internet. More than 250 million Europeans make daily use of the Internet among which 66% of these Internet users ordered goods and services online during the period of 2017.⁷⁴ As a result of this, the digital economy is growing seven times as fast as the rest of the economy with much of this growth being fuelled by the Internet.

Seeing this success, the EU saw the need to create a Digital Single Market – an area where free movement of goods and services is also ensured in the digital world. This allows access to online activities under fair competition irrespective of the country of residence of the consumer.⁷⁵ The intention of the EU in promoting the Digital Single Market was to bring more benefits to the EU by ensuring its position as a global leader in the digital economy, and providing help for businesses in the EU to grow and succeed worldwide.⁷⁶

This article sets out to explore the phenomenon of geo-blocking practices in the EU's e-Commerce sector. It will seek insight into how these practices are actually impacting the EU's small Member States. It will analyse the action taken by the European Commission (CION) in ending unjustified geo-blocking practices through its adoption of a geo-blocking proposal. Since this proposal was mainly discussed during the Maltese Presidency of the Council, this article will assess the work undertaken by the Maltese Presidency during its mandate of the Presidency of the Council in 2017.

⁷⁴ Eurostat (2017) p. 13.

⁷⁵ European Commission (2015) p. 1.

⁷⁶ *Ibid.*, p. 3.

Statement of the Problem

The Internet has created new opportunities for international trade.⁷⁷ Irrespectively, consumers are still faced with barriers that prevent them from buying goods and services using the online world. This is the case when traders refuse to sell goods online to consumers residing in another country, or decide to change prices depending on the country where consumers reside. This is usually implemented by using a consumer's Internet Protocol (IP) address that provides a rough indication of the consumer's location whenever connecting to the Internet. Thus traders can decide to block consumers from freely accessing online goods and services. Such territorial limitations are known as *geo-blocking* and contribute to the Single Market's fragmentation; Geo-blocking is defined by Kra-Oz "as limiting the user's access to digital content, by the content distributor, based on the user's geographical location."⁷⁸ In practice, geo-blocking segments consumers on the basis of their residential location through the recognition of their IP address.

In its Digital Single Market Strategy, the CION made a distinction between what it described as "unjustified" and "justified" geo-blocking. According to the CION, geo-blocking can "sometimes" be justified, especially when traders have to comply with particular legal obligations. However, the CION emphasises that "in many cases online geo-blocking is not justified". The practice of geo-blocking is mostly common in situations where traders apply higher prices or different conditions to consumers depending on their place of residence. As a consequence, such a practice deprives consumers from having access to the best offers, thus discriminating against them in an unjustified manner.⁷⁹

The digital content referred to earlier by Kra-Oz can be of many types, including audio-visual, software, portability of content, or e-Commerce. The most common form of unjustified geo-blocking occurs in the latter, which involves the practice of using electronic means to do business.⁸⁰ As defined by the CION, the geo-blocking practice in e-Commerce can occur in three forms, namely:⁸¹

- Denial of the right to conclude a contract by electronic means via a website;
- Redirecting (re-routing) to other websites of the same commercial organization; or
- Automatic adjustment of the offered transaction terms (including prices) depending on the consumer's location.

⁷⁷ Kommerskollegium (2012) p. 1.

⁷⁸ Kra-Oz, T. (2017) p. 388.

⁷⁹ European Commission (2016a) p. 2-3.

⁸⁰ Chaffey, D. (2007) p. XIV

⁸¹ European Commission (2015) p. 21.

Therefore, in order to provide a more focused and coherent study, this article will focus on geo-blocking within the context of unjustified practices in the e-Commerce sector.

This article will also look at unjustified geo-blocking practices from an EU-level perspective mainly focusing on the work done on geo-blocking by the 2017 Maltese Presidency of the Council of the EU. The Maltese Presidency had six main priorities on its agenda with the second priority focusing on the Single Market. The aim was to work to “fully exploit the Single Market and develop the Digital Single Market ... and improving protection and access to services for consumers.”⁸² A number of concrete objectives fell within this second priority, with one concrete objectives solely focusing on “making progress towards ensuring that consumers seeking to buy products and services in another EU country, be it online or in person, are not discriminated against based on nationality or country of residency in terms of access to prices, sales or payment conditions (geo-blocking).”⁸³

Digital Globalisation vs. Geo-graphical Filtering

The Internet has connected the world more than ever before.⁸⁴ As explained by Berners-Lee *et al.* the Internet has managed to create a powerful new tool for humanity that facilitates the finding, integration and sharing of information.⁸⁵ This increase in integration of flows of data and information is defined by Lund and Manyika as digital globalisation.⁸⁶ While digital globalisation may be seen as an opportunity to develop an integrated digital world, Crenshaw and Robison point out that digital globalisation is threatened by various obstacles. Such obstacles include the requirements of data localisation, market restrictions, and geographical discrimination. This may threaten the disruption of the flow of data globally, thus leading to an increase in costs for business and consequently consumer harm.⁸⁷

The impact of digital globalisation on businesses and on consumers is of major importance since consumer use of the Internet is growing substantially.⁸⁸ Consumers are nowadays searching for and buying goods and services online from businesses operating across borders. According to Meltzer, this is providing traders with the possibility of selling goods online, participating in international trade and becoming involved within the global economy in new ways.⁸⁹ However Zittrain and Palfrey point out that the rise

⁸² Government of Malta (2016) p. 3.

⁸³ *Ibid.*

⁸⁴ Manyika, J. *et al.* (2016) p. 1.

⁸⁵ Berners-Lee, T. *et al.* (2006) p. 769.

⁸⁶ Lund, S. and Manyika, J. (2017) p. 5.

⁸⁷ Crenshaw, E. and Robison, K. (2006) p. 191.

⁸⁸ Meltzer, J. (2016) p. 6.

⁸⁹ Meltzer, J. (2015) p. 97.

of digital globalisation “puts pressure on the strategy of control”.⁹⁰ This refers to the idea of controlling the information environment within the borders of different countries.⁹¹ This therefore creates complexity among different geographically-situated countries, traders and consumers, resulting primarily in the blocking of access to information as the basic form of control.⁹²

Blocking access to information over the Internet by enabling distributors to correctly identify the geographical location of Internet users with great accuracy, is defined by various scholars as *geographical filtering*. This is usually achieved through the filtering of Internet traffic over a proxy server.⁹³ It can be argued that geographical filtering is contradictory to the concept of digital globalisation as it primarily blocks the integration of flows of data and information. This therefore acts as a barrier to the widening of digital globalisation.

Geographical filtering was initially created in order to enhance security, to tailor advertising based on the customer’s location, or to provide the best suited content for consumers.⁹⁴ However, today geographical filtering has become more complex and has led to the creation of barriers in an “otherwise borderless environment”.⁹⁵ Therefore, this has created a situation where whenever users try to access a geographically filtered site, their access is denied.⁹⁶

This geo-blocking situation is even more relevant in the Single Market since the Single Market’s main aim is to remove barriers to the movement of services, goods, labour and capital amongst all EU Member States.⁹⁷ Thus, Pelkmans points out that, regardless of the Single Market’s aim of creating a community with no borders and barriers, the problem of market segmentation created by geo-blocking is still acting as an obstacle for online traders and consumers to practise the freedoms of goods and services.⁹⁸ As a result, Bauer and Erixon emphasise how geo-blocking is leaving a negative impact on the EU as it is creating “fragmentation” within the whole Union which goes beyond the Single Market’s main aim.⁹⁹

⁹⁰ Zittrain, J. and Palfrey, P. (2008) p. 32.

⁹¹ *Ibid.* p. 31.

⁹² Kerr, J. (2014) p. 4.

⁹³ This refers to a server that clients connect to in order to request some kind of service including web page and connection.

⁹⁴ Young, B. (2014) p. 2.

⁹⁵ Duch-Brown, N. and Martens, B. (2016) p. 3.

⁹⁶ Young, B. (2014) p. 2.

⁹⁷ Martens, B. (2013) p. 2.

⁹⁸ Pelkmans, J. (2016) p. 3.

⁹⁹ Bauer, M. and Erixon, F. (2016) p. 17.

In their technical report, Duch-Brown and Martens examine the impact¹⁰⁰ of removing geo-blocking restrictions in the EU and conclude that both consumers and traders are being impacted negatively by geo-blocking, and both would gain if these restrictions were removed. The report also points out that small Member States suffer the most from geo-blocking as consumer choice is limited in such countries and price competition is lower due to the limited size in market. Therefore the removal of geo-blocking restrictions would be of particular benefit to small EU Member States.¹⁰¹

The Impact of Geo-Blocking on EU Member States

This research was conducted in order to examine the impact of geo-blocking practices on consumers purchasing goods and services in other Member States. It sought insight into how these practices are actually impacting the EU's small Member States with particular focus on Malta. In order to have a comprehensive understanding of this argument, Malta's case study will be seen in the light of other small EU Member States by comparing the impact that geo-blocking is having on countries like Cyprus, Luxembourg and Slovenia. Cyprus is a small island similar to Malta and is geographically situated away from the larger Member States on the periphery of the EU. Comparison with Cyprus will therefore help the researcher establish any similarities between the two countries since they both have similar characteristics given the size of their population,¹⁰² geographical position, and that both are islands. On the other hand, while Luxembourg is considered as a small State,¹⁰³ it is surrounded by some of the large EU Member States, thus creating a contrast between Malta, which is geographically more distant from most of the larger Member States. Finally, Slovenia provides an interesting comparison since its population¹⁰⁴ is larger than the other mentioned Member States but it still seems to be highly impacted by geo-blocking.¹⁰⁵

¹⁰⁰ Duch-Brown and Martens used a database on sales of four electronics products (smartphones, tablets, laptops and desktop computers) in 10 EU countries. The database contained information on prices, sales volumes and product characteristics. They firstly estimated a consumer demand model with product differentiation to capture preferences and substitution patterns. They secondly added an oligopolistic supply side to recover marginal costs and profits. They thirdly performed a series of simulations to analyse the equilibrium described by the data and some counterfactuals where they recreated a world without geo-blocking. They fourthly computed the welfare effects of removing geo-blocking in terms of consumer and producer surplus. They finally extrapolated the results of these four product categories to all e-commerce and the 28 EU states.

¹⁰¹ Duch-Brown, N. and Martens, B. (2016) p. 18.

¹⁰² Cyprus has a population of 1.17 million inhabitants.

¹⁰³ Luxembourg has a population of 589,972 inhabitants.

¹⁰⁴ Slovenia has a population of 2,065 million inhabitants.

¹⁰⁵ According to the European Commission's Staff Working Document on geo-blocking practices in e-Commerce, 63% of EU traders do not sell cross-border in at least one product category in Slovenia.

The research was based on a qualitative case study structure and adopted an inductive approach. This study generated primary data from twelve semi-structured interviews conducted with selected international and local trade and consumer organisations. The interview sample consisted of seven consumer organisations and four trader organisations from local, other Member States and EU wide representative bodies, and one Member of the European Parliament currently involved in the European Parliament Committee tackling geo-blocking (IMCO Committee). Most of the interviewed persons participating in this study were directors, legal officers or heads of policy. The local trade sector was represented by the Malta Business Bureau (MBB), Malta Chamber of Commerce, Enterprise and Industry and the Malta Communications Authority (MCA), while the EU business sector was represented by European e-Commerce and Omni-Channel Trade Association (EMOTA). On the other hand, the local consumer sector was represented by the European Consumer Centre, Consumers' Association, and Malta Competition and Consumer Affairs Authority (MCCAA), while the EU consumer sector was represented by the Bureau Européen des Unions de Consommateurs (BEUC), Union Luxembourgeoise des Consommateurs (ULC), Cyprus Consumers' Association (CCA) and Slovene Consumer's Association (SCA). The study also made use of secondary sources which complemented the data generated from the interviews.

Through the conducted research, a number of views emerged on the impact of geo-blocking on EU Member States. In the first instance it was noted how the idea of having a completely integrated Single Market must first be completely supported by the individual EU Member States, since one cannot expect the removal of geo-blocking practices if Member States do not perceive the importance of having a unified Single Market.

This geo-blocking situation is especially present in Malta. According to the 2015 Eurostat data, 44% of Maltese consumers made cross-border transactions over the Internet. This is a relatively high rate of online purchases when compared to the rate of larger EU Member States such as Italy (11%), Germany (13%) and France (21%).¹⁰⁶ However, even though Malta is ranked as the country with the second highest number of purchases of goods over the Internet, interviewees reported that geo-blocking is having a big impact on Maltese consumers. Seeing this situation at a local level, the Maltese Presidency saw the need to focus on geo-blocking as one of its main priority objectives.

This issue is even more challenging when looking at it from a trader's perspective. Contrary to what consumer organisations believe, trader organisations seem to view geo-blocking practice as an unimportant situation

¹⁰⁶ European Commission (2016b) p. 8.

that barely impacts consumers in Malta. So who is actually correct? The reality attests that, according to the study held by the European Parliament's Internal Market and Consumer Protection (IMCO) Committee on "Combating Consumer Discrimination in the Digital Single Market", Malta is classified as one of the countries mostly affected by geo-blocking practices. According to this study, more than 30% of Maltese consumers were exposed to geo-blocking practices in 2016.¹⁰⁷ This obviously questions the views expressed by trader organisations, as it can be clearly affirmed that the geo-blocking situation in Malta is not mere "hype", but is actually a reality that needs to be tackled in short order.

One can argue with some conviction that a similar situation does exist in other small Member States. This situation in Malta can be compared to other 'small' countries within the EU that are also negatively impacted by geo-blocking. Luxembourg tops the list of most online purchases made out of all EU countries with 68% of individuals making cross-border purchases over the Internet. Conversely, although the study's interviewees emphasised the importance of e-Commerce in both Cyprus and Slovenia, the Eurostat survey showed that only 20% and 17% of Cypriots and Slovenes respectively purchase cross-border over the Internet.¹⁰⁸ Additionally Luxembourg, Slovenia and Cyprus are also ranked amongst the Member States most impacted by geo-blocking practices¹⁰⁹ with Slovenia and Cyprus having a low rate of cross-border purchases. In such situations, Cypriot and Slovene consumers may be reluctant to buy online goods because of the constant geographical blocking in their regard.

So why are small Member States mostly impacted by geo-blocking practices? Small Member States are generally the countries suffering from less choice and limited internal demand, which makes these states less attractive for traders operating from other Member States.¹¹⁰ Considering this, interviewees mentioned two main reasons why small Member States are mostly impacted by geo-blocking, namely, small market size of a state, coupled with the periphery location of the state.

The "small and periphery state syndrome" is the most obvious, yet more complex issue that small States are constantly facing. Panke explains how small States face "structural disadvantages" when compared to the larger

¹⁰⁷ [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU\(2016\)587315_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU(2016)587315_EN.pdf) Simonelli, F. (2016) p. 14.

¹⁰⁸ European Commission (2016b) p. 8.

¹⁰⁹ [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU\(2016\)587315_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU(2016)587315_EN.pdf) Simonelli, F. (2016) p. 14.

¹¹⁰ *Ibid.*

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU\(2016\)587315_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU(2016)587315_EN.pdf)

States due to limited financial and economic capacities.¹¹¹ It therefore comes as no surprise that geo-blocking practices affect “consumers from smaller and peripheral Member States to a greater extent”.¹¹² Island states, in particular, face this problem to a greater degree since such countries have no land borders and traders have to cope with greater logistical issues.

Interestingly, however, this study notes how interviewees had two contrasting views as to why they believe their countries are being faced with geo-blocking. On one hand, the interviewees from Malta and Cyprus blame the size of their country and their peripheral isolation with no land borders for complicating the situation for traders from other Member States selling goods in these countries. On the other hand, because Slovenia¹¹³ and Luxembourg are practically land-locked countries surrounded by larger Member States, it is more viable for traders to sell goods and services elsewhere. This contradictory situation leads to the conclusion that the peripheral positioning of a country is not the real cause of geo-blocking, but rather the smallness of the state embeds the true problem.

This argument tied to the small size of a country can thus contribute to other aspects that are conducive to geo-blocking in so far as small Member States are concerned. A small country will most likely have a small domestic market when compared to larger States, which makes it impossible to benefit from economies of scale.¹¹⁴ This will create a situation of higher unit cost of goods and services when compared to the bigger Member States. Additionally, the small size of a country’s domestic market will also constrain competition. Due to their small domestic markets, a number of these countries are generally “undiversified in their production”.¹¹⁵ Therefore traders might not see any potential in a small State but instead opt for selling goods cross-border to larger Member States.

The study has therefore concluded that small Member States are the countries mostly impacted by geo-blocking practices. This problem has been reflected in the Maltese Presidency’s decision to focus on geo-blocking as one of its main priorities.

¹¹¹ Panke D (2008) p. 3-5.

¹¹² Simonelli, F. (2016)

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU\(2016\)587315_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587315/IPOL_STU(2016)587315_EN.pdf) p. 14.

¹¹³ Slovenia has a small coastline but otherwise has land borders with Austria, Croatia, Italy and Hungary.

¹¹⁴ This occurs when more units of goods and services are produced on a bigger scale with less costs of input.

¹¹⁵ Commonwealth/World Bank (2000) p. 11.

Geo-Blocking Proposal and Discussions during the Maltese Presidency

Efforts have been made by various Member States to raise consumer awareness on price discrimination and geo-blocking practices.¹¹⁶ However up to the date of the writing of this article, no Member State has changed its national rules and practices as a follow-up to these efforts. Additionally, all interviewees claimed that no national legislation tackling geo-blocking practices has been put into place in Malta, Cyprus, Slovenia or Luxembourg. However, according to CION, Malta is the only country out of all the Member States that has issued its own guidance on discrimination. Nevertheless, this has not had any noticeable results. The CION therefore decided to act in order to end unjustified geo-blocking practices and ultimately eliminate discrimination amongst EU consumers.

Regardless of the present non-discrimination principle in Article 20(2) of the Services Directive,¹¹⁷ European consumers are still facing different conditions when buying goods or services over the Internet. Therefore, on the 25th May 2016, the CION launched a proposal on addressing geo-blocking in the EU.¹¹⁸ This proposal aims at prohibiting “the blocking of access to websites and other online interfaces and the rerouting of customers from one country version to another”.¹¹⁹ The proposal, however, does not address pricing, since traders are left at liberty to set their own prices.

Discussions on this draft Regulation were initiated during the 2016 second rotation of the Presidency of the Council of the EU led by the Slovak Presidency. By the end of 2016, the Council had adopted its negotiating position on the draft Regulation. This dossier was then taken on by the Maltese Presidency during the first half-year mandate of the Presidency of the Council in 2017. During this period, the Maltese Presidency prioritised this dossier and aimed at finalising negotiations on the geo-blocking proposal.

Considering that geo-blocking became one of the most debatable topics of the CION’s Digital Single Market initiative, this was not an easy task for the Maltese Presidency. Although progress moved fast, a final agreement could not be reached by the Council and the European Parliament on the final text of the draft Regulation by the end of the Maltese Presidency. Thus, the Council and the Parliament resumed trilogue negotiations under the Estonian Presidency. On 29th November 2017, the EU Member States approved the informal agreement reached by the Council and the European Parliament on the final text of the regulation.

¹¹⁶ European Commission (2016a) p. 22.

¹¹⁷ Directive 2006/123/EC of the European Parliament and of the Council of 12th December 2006 on services in the internal market.

¹¹⁸ European Commission (2016c).

¹¹⁹ European Commission (2016c) p. 2.

Several points of disagreement arose between the European Parliament and the Council during the Maltese Presidency term. The first main disagreement was related to the inclusion of the scope of non-audio-visual copyright related services in the draft Regulation, such as music streaming and e-books. The CION's proposed draft Regulation did not include audio-visual and electronic communications services; however, there was no unanimity on some of the proposals contained in this draft Regulation. Hence, the European Parliament, on one hand, was in favour of the inclusion of non-audio-visual copyright related services, while on the other hand, the Council was insisting on not factoring these services within the scope of the draft Regulation.

The second major disagreement was related to the relationship of the draft Regulation with competition law. While the European Parliament wanted the draft Regulation to take priority over selective distribution agreements,¹²⁰ the Council wanted competition rules to take precedence. These disagreements prolonged the process of achieving an agreement and finalising the draft Regulation. Therefore, the Maltese Presidency did not fulfil its aim of finalising negotiations on the geo-blocking proposal during the term of its presidency.

The final agreed text of the Regulation was however achieved under the Estonian Presidency. The approved text prohibits online traders from discriminating between consumers within the EU based on their place of residence. However, the rules will only apply in three narrowly-defined situations. In the first instance it will apply when traders refuse to sell based on the consumer's country of residence but the Regulation does not impose an obligation to deliver goods. Secondly, it will apply when traders provide electronically supplied services such as cloud services and data warehousing. However, services consisting of the provision of copyright-protected content are excluded from the Regulation. Finally, it will apply when traders provide services that are supplied in a country different to that of the consumer. Additionally, the final agreed text annuls any obligations imposed on traders in relation to the priority over selective distribution agreements since this is generally considered anticompetitive and would infringe EU competition rules.

Therefore, the Regulation was formally adopted by the European Parliament and the Council and was published in the Official Journal of the EU in February 2018. This will enter into force by the end of 2018.

Conclusion

This study set out to explore the phenomenon of unjustified geo-blocking practices on consumers purchasing goods and services in other Member

¹²⁰ This refers to the restriction of the number of authorised distributors.

States. It sought insight into how these practices are actually impacting the EU's small Member States and how these practices are contributing to the fragmentation of the Single Market. Additionally, by providing an insight of the proposed Regulation on the elimination of unjustified geo-blocking practices, this article provided an analysis of the work done by the Maltese Presidency of the Council of the EU during the first six months of 2017.

Irrespective of the effort put by the Maltese Presidency to reach an agreement in this area, the Regulation was ultimately finalised under the Estonian Presidency. However, although this proposed Regulation is a step forward in terms of limiting geo-blocking practices, there still seems to be areas that remained out of the scope of the finalised Regulation. This includes the exemption of the audio-visual service which will still allow consumers to be geo-blocked out of certain sites.

For Malta, the EU's smallest country, its first chance of taking on the rotating presidency of the Council of the EU was overall quite successful. Tasked with leading discussions on such an important dossier on geo-blocking, Malta managed to push this Regulation forward, even though it failed to strike a compromise between the Council, Commission and Parliament.

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Chapter 5

The Maltese Presidency and Social Inclusion: Malta's Push for LGBTIQ Rights

Mark Harwood

When Malta launched its Council of the EU Presidency in January 2017, the Government outlined its intention “to contribute”, “to focus” and “to deliver” in various sectors but it was only in the area of social inclusion where Malta intended “to lead” with the aim that “we hope our experiences can rub off on our European partners”.¹²¹ This statement reflected the reality, both domestic and European, of the state of social inclusion (and LGBTIQ¹²² rights in particular) across Europe; on one side, it showed that Malta had made significant advances in the area of civil rights and felt able to lead while the EU's track record was more mixed, reflective of its limited competence in this area and, some would argue, a lack of political will from the member states to allow the Union to be involved in this area of civil rights.

The Maltese government listed its 3 objectives under social inclusion as the improvement of female participation in the labour market, efforts to combat gender-based violence and, finally, LGBTIQ issues, primarily the holding of a “Ministerial-level Conference on LGBTIQ issues in order to further explore the Commission's roadmap on this area”.¹²³ With LGBTIQ rights a cornerstone of the Maltese Government's domestic policy (gay marriage was introduced as the first legislative act of the Labour Government after winning the 2017 general election), the importance of this presidency priority rested in the fact that it represented the first time a Member State had included LGBTIQ issues in a Presidency's list of priorities. In this way, Malta entered its Presidency keen to build on its track record which placed the country first in Europe for LGBTIQ rights but restricted in what it could hope to achieve due to the Union's limited competence.¹²⁴ Therefore, the aim of this chapter will be to see what was achieved and whether its inclusion as a Presidency Priority will have a long-term legacy. In addition to press releases issued by the Maltese Government, reports by ILGA-Europe on the state of LGBTIQ rights across Europe and the opinions of MEPs as reported in the press, the primary source of information came from a series of interviews conducted in

¹²¹ Government of Malta (2016) p. 5.

¹²² Acronyms are particularly problematic in this area of social rights. Lesbian, Gay, Bisexual, Transgender, Intersex, Questioning (LGBTIQ) is the acronym which is used by the Maltese Government though some prefer LGBT or LGBTI – when referenced in the context of a law, institution or person, the acronym used in that context or by that actor is the acronym used in the text.

¹²³ Government of Malta (2016) p. 5.

¹²⁴ Ranking according to ILGA-Europe (2017).

the summer of 2017. Those interviewed included the Minister for EU Affairs and Equality (Dr Helena Dalli), the Director of the Human Rights and Integration Commission (Dr Silvan Aguis), the Head of MEUSAC (Dr Vanni Xuereb), the Chairperson of the Malta Gay Rights Movement (Ms. Gabi Calleja) and other LGBTIQ activists.

The EU and LGBTIQ Rights

European states have been at the forefront of the granting of civil rights to the LGBTIQ community, however, this is at odds with the work of the European Union where the promotion of equality has been limited by the EU's lack of competence in this area.¹²⁵ While the European Parliament adopted a resolution on equal rights for lesbians and gays in 1994, going on to declare in 1998 that it would block accession of new member states to the Union which “violated the human rights of lesbians and gay men”, the Union's milestone contribution to LGBT civil rights was the 1999 Treaty of Amsterdam which included articles to combat discrimination based on sexual orientation as well as the Charter of Fundamental Rights, legally binding from 2009 onwards, which also prohibits any discrimination based on any grounds, including sexual orientation. However, since then progress has been limited, especially regarding the proposed anti-discrimination law (*Equal Treatment Directive*) outlawing discrimination in areas of social protection, education, access to the supply of goods and social advantages which remains stalled in the Council. In 2016 the Commission issued a list of actions to advance LGBTI equality, the roadmap referenced by the Maltese Government in its priorities. The “List” is divided into 6 priority areas and covers:

1. Improving rights and ensuring legal protection of LGBTI people and their families in key areas of EU competence (including approval for the Equal Treatment Directive).
2. Strong monitoring and enforcement of existing rights of LGBTI people and their families under EU law.
3. Reaching citizens, fostering diversity and non-discrimination.
4. Supporting key actors responsible to promote and advance equal rights for LGBTI people in the EU.
5. Figure and facts for policy makers on LGBTI challenges at the EU: data collection and research activities.
6. External action: LGBTI issues in Enlargement, Neighbourhood and Third Countries.¹²⁶

However, while the 28 member states agreed, in 2016, to a Dutch backed initiative to fight “any discrimination” against LGBT people and to ramp up

¹²⁵ Interview with Evelyne Paradis, Executive Director of ILGA-Europe. “Gay rights organisation: The EU no longer leading on LGBT rights”, Euractiv, 16/12/15.

¹²⁶ European Commission (2015).

efforts on equality, some argued that the conclusions, which included reference to “fully respect ... member states’ national identities and constitutional traditions” would be used to stop progress in this area as a member states need merely indicate that a proposal undermined national identity or constitutional tradition to halt its adoption, a Trojan horse which legitimised homophobia according to the EP’s Intergroup on LGBTI Rights Co-President, Ulrike Lunacek.¹²⁷

Such concerns would appear to be justified. While the EP has been vociferous in calling for LGBTIQ rights, the Commission has been accused of hiding behind the member states and reflected a shift in recent years to view equality issues in terms of subsidiarity, an issue to be tackled by the national governments.¹²⁸ Further to this, there has been extensive opposition to certain rights being given to the LGBTIQ community, primarily from the Central and Eastern European member states. An earlier declaration on LGBTIQ equality, due in 2015, had been blocked by Hungary while Poland was also notable in declaring its opposition. In this way, the EU’s involvement in LGBTIQ rights has been important in ensuring anti-discrimination laws are adopted in the member states, but does not go significantly beyond that and does not advocate rights such as marriage, surrogacy or adoption. It was against this backdrop that Malta adopted its priority in terms of social inclusion and the LGBTIQ community.

Malta and LGBTIQ Rights

As a colony of the UK, Malta had adopted the British penal code where homosexuality was a criminal act but in 1973 the Socialist Government of Dom Mintoff decriminalised homosexuality. However, no progress was seen subsequently with homosexuality remaining a morality issue heavily influenced by the teachings of the Catholic Church. With global shifts in the 1990s seeing a greater acceptance of the civil rights of the LGBTIQ community, Malta saw the founding of the Malta Gay Rights Movement (MGRM) in 2001 and with it, a more organised lobby petitioning for the community’s civil liberties. Malta, with a Westminster/Whitehall political system is dominated by two political parties, namely the Social Democrats (Labour Party) to the centre-left and the Christian Democrats (Nationalist Party) to the centre-right and the parties seemed relatively hesitant to prioritise LGBTIQ rights during the 2008 general election campaign. In 2009 ILGA-Europe, the primary LGBTIQ umbrella group in Europe, held its annual conference in Malta and by this time, a shift had started to emerge within the parties with the socialists establishing an LGBT wing in 2009, and the ruling Nationalists promising a bill to regulate cohabitation (irrespective of sexual orientation) in 2010. In 2011 the country was rocked by the

¹²⁷ European Parliament (2016).

¹²⁸ LGBTIQ activist interview by the author (02/06/17).

decision to hold a referendum on divorce, often seen as a morality issue on an Island where the Constitution gives the Catholic Church the obligation to teach what is right and wrong. While not politicised by the parties, the vote in favour of divorce appeared to precipitate change within the Church (undermining its ability and willingness to involve itself in public debates), within the ruling Nationalist party (creating a schism between its right wing and more moderate factions) and the Labour party which appeared emboldened to push a progressive social agenda as it pursued the youth vote in the 2013 general election.¹²⁹ Subsequently, the Labour party promised civil unions for same-sex couples as part of its electoral manifesto, amongst other promises, and went on to win a landslide victory, passing the Civil Union Bill in April 2014.

Malta has, in the last 5 years, become a world leader in LGBTIQ rights.¹³⁰ In addition to the Civil Union Act (and gay marriage in 2017) the country has also provided full adoption rights to same-sex couples (as well as LGBTIQ individuals), passed legislation amending the Constitution in 2014 to protect against discrimination based on sexual orientation and gender identity as well as banning conversion therapy and outlawing sterilisation and invasive surgery on intersex people as part of the *Gender Identity, Gender Expression and Sex Characteristics Act* of 2015. While surrogacy remains unlawful, IVF access for female same-sex couples was to be introduced in 2017 while the government also announced its intention to remove the ban on gay and bisexual men donating blood (with restrictions) as well as the introduction of non-binary X gender passports and ID cards for transgender or intersex individuals. In opening the “Ministerial-level Conference on LGBTIQ issues” Minister Helena Dalli also announced that further developments being taken by the Government included a trans/intersex policy in schools, a policy for trans prisoners, and gender neutral toilets across all ministries, Parliament, and the law courts.¹³¹ In this way, Malta has seen a transformation in the civil rights of the LGBTIQ community with much of those changes being attributed to the political will of the Socialist Government, a change in popular sentiment regarding gay rights, a diminished capacity for those opposing such rights to influence the debate as well as the committed work of NGOs like MGRM and other individuals who constitute the LGBT Consultative Committee which has helped the Government in drafting much of its LGBTIQ civil rights laws. It is therefore not surprising that the Government would include the LGBTIQ agenda as part of its Presidency Priorities and to outline its intentions to lead in this sector.

¹²⁹ For a more detailed analysis of the significance of the 2011 Divorce referendum see Pace (2012).

¹³⁰ Ranking according to ILGA-Europe (2017).

¹³¹ Government of Malta (2017a).

The Presidency

The decision to include LGBTIQ issues as part of the Presidency agenda was made early on in the planning of the Presidency. Minister Helena Dalli noted in her speech to the Ministerial-level Conference held in Malta in February 2017 that The Netherlands had been consistently pushing LGBTIQ equality from 2013 with the organisation of the first IDAHO congress to mark the International Day Against Homophobia. As part of the trio (The Netherlands, Slovakia and Malta), the Dutch continued to push LGBTIQ issues, as with the 2016 Council declaration against the discrimination of LGBT people, a first in terms of agreement amongst the 28. As Malta's trio partner it was therefore easy for Malta to continue this work though the Maltese were less interested in securing Council declarations on the issue but sought to normalise the issue (namely the rights of the LGBTIQ community) as well as raise its visibility.¹³² At the core of this was to be the Ministerial-Level Conference, an event fully funded by the Maltese government and therefore costed at an early date, indicating that the Government had always planned to give prominence to this initiative.¹³³

The Conference

The High Level Ministerial Conference on LGBTIQ Equality Mainstreaming was held in Malta on 22nd and 23rd February 2017 with the stated aim 'to provide a platform for ministers, European Union officials, policy makers and civil society representatives to take stock of the current situation, share experiences and best practices and learn from one another for better LGBTIQ equality mainstreaming in all policy spheres'.¹³⁴ The Conference was spread over 2 days, the first day being open to the general public and included speakers from the Maltese Government, DG Justice and Consumers, the EP's Intergroup on LGBTI Rights as well as specialised panels on LGBTIQ equality mainstreaming and education, healthcare and public safety. On the second day the Minister indicated that the delegations held an informal discussion of various issues relating to the LGBTIQ community, especially the need for education to tackle intolerance as well as the cultural dimension of attitudes towards the community. For the Minister, the important point for Malta was to show that change could happen and happen rapidly if there was the political will.¹³⁵ The Conference was used by the Commission to launch the 2016 *Annual Report on the List of Actions to Advance LGBTI Equality*.

Beyond the Conference the Government's priority was to drive home the normalisation message with the 2016 Malta Pride being given prominence in the Presidency launch video first aired in November 2016 while all publicity

¹³² Dr Silvan Agius, interviewed by the author (01/06/17).

¹³³ Hon. Minister Helena Dalli interviewed by the author (27/07/17).

¹³⁴ Letter of invitation sent to delegates.

¹³⁵ Hon. Minister Helena Dalli, interviewed by the author (27/07/17).

material related to the Presidency included reference to the LGBTIQ community. Malta placed special emphasis on marking the International Day Against Homophobia (17th May) and cooperated with authorities in having the rainbow flag painted on zebra crossings outside the Berlaymont in Brussels. Groups took the opportunity afforded by the importance given to LGBTIQ issues to launch key initiatives during the events organised by the Maltese Presidency including Transgender Europe (TGEU) which launched its second edition of the *Human Rights and Gender Identity Best Practice Catalogue* on the margins of the Ministerial Conference. The Report featured Malta prominently following the adoption of the *Gender Identity, Gender Expression and Sex Characteristics Act* which the group held to be best practice for legal gender recognition. Richard Kohler, Senior Policy Officer at TGEU said, “Since the publication of the first best practice catalogue in 2011, trans rights across Europe have advanced in leaps and bounds. It is actually very fitting to launch this edition in Malta, whose progress in this area of human rights has become an inspiration for other countries to follow, and a beacon of hope for trans people across the continent”.¹³⁶ With this in mind, what was the impact of the Government’s initiative in terms of this Presidency Priority?

An Assessment

The Maltese Presidency was clear from the inception that it did not seek binding declarations or new road maps with which to lead in this area, allocating, within this Priority area, relatively limited goals, primarily to lead through example. This limited agenda reflected several realities, the first being that the Commission appeared to have lost the energy to lead in the promotion of civil rights. Faced with opposition from some member states as well as a Commission focused on the European economy and migration as well as a Commission less keen on road maps (which are difficult to push forward), the Maltese Government could only hope to maintain focus on the LGBTIQ agenda and to show that change and progress, at the national level, was possible. As noted by the Minister in her address to the Conference, “us politicians are here to help shape public opinion and not be led by it. Countries that are often discounted as not ripe for progress can change, and can change fast the moment that there is the political will and a strong civil society”.¹³⁷ This sentiment was reflected by the Vice-President of the European Parliament and Co-President of the European Parliament’s Intergroup on LGBTI Rights, Ulrike Lunacek, who praised Minister Dalli and the Maltese Presidency for putting LGBTIQ rights on the agenda, saying “what you are doing here, with the successes you have had and you have fought for, and with civil society here, is really something that I strongly appreciate and thank you for, especially coming from a very

¹³⁶ Government of Malta (2017b).

¹³⁷ Government of Malta (2017a).

Catholic country myself Austria, that has not achieved as much as you have been doing during the past years”¹³⁸.

The limited goals of the Presidency in this area also reflected the concerted opposition from several member states to advance the road map and, in particular, to accept the *Equal Treatment Directive*. With many states from Central and Eastern Europe adamantly opposed to LGBTIQ rights, the Maltese Government had to contend with the reality that there was limited enthusiasm for binding resolutions on this topic. While gay and lesbian rights have become more accepted, those of transgendered people as well as intersex, where Malta leads, are especially lacking. Therefore, for Malta, the key was the normalisation drive as well as showing that transformation is possible and that societies were more open to LGBTIQ rights than previously thought (the Labour Party went on to win a 2nd landslide victory in the 2017 general election, based on a booming economy as well as its civil rights platform, showing that the promotion of LGBTIQ rights was not a vote-loser).

For those attending the conference in Malta, the impact was positive with MEP Viotti noting that Malta’s engagement was important for the EU.¹³⁹ Silvan Agius, Director of the Human Rights and Integration Commission, noted that the event was key for showcasing best practice and for enabling a heavy press influx which allowed local activists to see how their work was appreciated abroad, giving a boost to these groups as well as giving hope to other groups in other MSs that change can happen and can happen rapidly. In an interview with Minister Dalli, she noted how delegates took the opportunity to approach the Maltese delegation about best practice, especially in the area of transgender rights. Of particular note was a request from the Greek delegation for Malta to visit Greece to show best practice in this area.¹⁴⁰

In this way, the Maltese Government adopted a limited agenda under its priority for LGBTIQ equality. Hampered by the realities of a Commission focused elsewhere, a Union with limited competence in this area as well as a group of member states unwilling to push for further civil rights (and especially in the area of transgendered and intersex people), the Maltese Government sought primarily to raise the profile of this issue, to ensure it stayed on the Union’s agenda as well as focusing energy on normalising a sector of the population which, in some member states, remain on the fringe, unseen. In that respect, the Presidency can be assessed to have met its limited agenda in this area. However, the hope that this would have a lasting legacy is too early to state. With Malta followed by two Central and Eastern

¹³⁸ Government of Malta (2017b).

¹³⁹ EU Observer (2017).

¹⁴⁰ Hon. Minister Helena Dalli, interviewed by the author (27/07/17).

European states, it is unlikely that any more leadership will be seen from the Council in the next few years. The next Presidency from a country in the top 10 of LGBTIQ rights in Europe (according to the ILGA-Europe Rainbow Map), Finland, will not take place before the end of 2019 though the Malta case has shown that things can change rapidly if there is the political will and a shift in popular sentiment. While LGBTIQ rights do not appear to be an EU priority, for many states like Malta, they are and the Union is, ultimately, constituted by its member states. United in diversity, Malta's efforts in this area remain centred on the hope that the 28 become less diverse on the civil rights of the LGBTIQ community in the future.

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Chapter 6

Constitutional Developments in the MENA Region during Malta's EU Presidency

Francesco Biagi

Introduction

Since the beginning of the Arab uprisings, the European Union has supported the constitutional reform processes taking place in the MENA region, thus following the strategy provided for by Article 3(5) of the Treaty of the European Union, which stipulates that the EU “shall uphold and promote its values and interests” in “its relations with the wider world”.¹⁴¹ This support to the democratic transitions in North Africa and the Middle East continued during the semester of the Maltese presidency of the Council of the European Union, i.e. from January 1st to June 30th 2017. Indeed, the priorities of the Maltese presidency for the EU's Southern Neighbourhood included “ensuring that the democratic transition in Tunisia remains on track”, “the stabilisation of Libya through a peaceful transition”, and “contributing to the EU and international efforts to address the Syrian conflict”.¹⁴² As will be discussed in this short paper, the semester of the Maltese presidency (and the days which immediately followed that period) saw significant constitutional developments in all these three countries. In Tunisia some important organic laws implementing the 2014 Constitution were adopted, in Libya the Constitutional Drafting Assembly approved a new draft Constitution, and in Syria the Russian Government presented its draft proposal for a new Syrian Constitution.

Tunisia: The Implementation of the 2014 Constitution

Seven years after the beginning of the “Arab Spring”, most countries in the MENA region have remained either authoritarian or “hybrid” regimes.¹⁴³ It seems that the only State that has thus far managed to mark a clean break with its illiberal past is Tunisia, especially thanks to the adoption – on 26th January 2014 – of a Constitution which is often rightly considered as one of

¹⁴¹ Tohidipur, T. (2016) p. 879.

¹⁴² Government of Malta (2016); Lowell, M. and Talbot, F. (2017).

¹⁴³ “Hybrid” regimes are those regimes that combine democratic and authoritarian elements (Diamond, L. (2002) p. 21). They fall into a “political gray zone [...] between full-fledged democracy and outright dictatorship” (Carothers, T. (2002) p. 9 and 18).

the most democratic Constitutions (or the most democratic Constitution) in the Arab world.¹⁴⁴

In order to measure the sincerity of the innovations introduced by this Constitution, the process of implementation is extremely important. The European Union, which has supported the democratic transition in Tunisia since 2011, reiterated its commitment to continue to support the process of reforms – and in particular the process of implementation of the Constitution – even during the Maltese presidency of the Council of the European Union. For example, in the thirteenth session of the Association Council of the European Union and Tunisia, which took place in Brussels on 11th May 2017, the Minister of Foreign Affairs of Malta, George Vella, and the Minister of Foreign Affairs of Tunisia, Khemaies Jhinaoui, issued a joint statement in which the EU “welcomed the unprecedented nature of the Tunisian democratic experience, renewed its resolute commitment to continue to support the process of reforms undertaken by the Tunisian authorities *with a view to ensuring the effective implementation of the Constitution [...]*” (emphasis added).¹⁴⁵

During the semester of the Maltese presidency there were some relevant developments with respect to the enforcement of the 2014 Constitution. In the first place it is important to mention the adoption of the Organic Law no. 2017-17 of 14th February 2017, which amended and completed the Organic Law no. 2014-16 of 26th May 2014, regarding elections and referendums. Among the most significant innovations of this new Organic Law, which regulates municipal and regional elections, one has to mention the fact that the right to vote in these elections has been extended to the military and the members of internal security forces (Art. 117 *septies*). This issue was extremely sensitive and caused months of political deadlock. The main fear was that the involvement of the military and the police in the elections would have undermined a tradition of political neutrality.¹⁴⁶ The parliamentary majority, however, decided to grant them the right to vote in municipal and regional elections.

Furthermore, the new Organic Law has strengthened the principle of equality between men and women. Indeed, since 2011 the electoral law has provided for the principle of “*vertical*” equality, according to which “lists shall be established in such a way to alternate between men and women”.¹⁴⁷ Although

¹⁴⁴ On the 2014 Tunisian Constitution see Al-Ali, Z. and Ben Romdhane, D. (2014); Ben Achour, R. (2014) p. 783.; Groppi, T. (2015) p. 189.; Groppi, T. and Spigno, I. (2015); La Constitution de la Tunisie – Processus, principes et perspectives (2016).

¹⁴⁵ “Joint statement on the occasion of the EU-Tunisia Association Council of 11th May 2017” (2017).

¹⁴⁶ Ghanmi (2017).

¹⁴⁷ Article 16 of Decree-Law no. 35 of 10th May 2011. This provision was later confirmed in Article 24 of the Organic Law 2014-16.

the adoption of the principle of alternation was undoubtedly extremely important so as to ensure a significant representation for women in Parliament (at present, 31% of the seats are held by women), it was not immune to criticism. Indeed, the law does not specify which position women must have in the electoral lists, with the consequence that only a few parties placed women in the highest positions. Therefore, small parties that only won one seat did not have any female representative in Parliament. In order to reinforce equality between men and women in municipal and regional elections, the new Organic Law has adopted the principle of “horizontal” equality (Art. 49 *nonies* par. 3), according to which “political parties will be obliged to respect the equality of sexes, not only in the same list but also between the lists that they present in different constituencies in such a way that if in Constituency A the lead candidate of a list is a man, the lead candidate in Constituency B must be a woman.”¹⁴⁸ Furthermore, Organic Law no. 2017-17 promotes the participation of young people and disabled people. Indeed, each electoral list has to include among its first three candidates a candidate who is not older than 35 years (Art. 49 *decies*, par. 1), and among its first ten candidates a candidate affected by disability (Art. 49 *undecies*, par. 1).

Another important organic law adopted during the semester of the Maltese presidency is Organic Law no. 2017-10 of 7th March 2017, concerning the procedures for the denunciation of corruption in the public and private sector and the protection of those who denounce it. The public institutions affected by this Organic Law are the following: the presidency of the Republic, the Assembly of the Representatives of the People, the presidency of the Government, the Supreme Judicial Council and all judicial authorities, the Constitutional Court, independent constitutional bodies, ministries and secretariats of state, the Central Bank of Tunisia, public institutions and enterprises, credit institutions, public financial institutions, local authorities, and independent public institutions. Complaints of corrupt practices have to be submitted before the Good Governance and Anti-Corruption Commission.¹⁴⁹ In addition to this Law, Parliament recently adopted Organic Law no. 2017-59 of 24th August 2017, on the Good Governance and Anti-Corruption Commission, which is an independent institution responsible for “contribut[ing] to policies of good governance, and preventing and fighting corruption” (Art. 130 Const.). The abovementioned Organic Laws are important measures in the fight against corruption, which has long been one of the scourges of Tunisian society.

Parliament also adopted the Organic Law no. 2017-58 of 11th August 2017, on the elimination of violence against women.¹⁵⁰ This Organic Law

¹⁴⁸ Mekki, N. (2017).

¹⁴⁹ Democracy Reporting International (DRI) (2017) p. 27

¹⁵⁰ The law will enter into force six months after its publication in the Official Gazette of 15th August 2017.

represents the latest link in the chain of measures aimed at promoting gender equality in the country. Indeed, as is well known, Tunisia has been for a long time at the forefront of the Arab world with respect to women's rights and the recent constitutional developments – including in particular the adoption of the 2014 Constitution – continue to move in this direction. Among the most relevant innovations, the Law imposes harsh sanctions for sexual harassment in public spaces and makes it easier to prosecute domestic violence (Arts. 15 and 16). Moreover, it calls for the Ministries of Education, Religious Affairs, Health, Social Affairs, Justice and Interior to organise trainings on how to prevent and handle cases of violence against women (Arts. 7 ff.), and stipulates that young generations should be educated about human rights and gender equality (Art. 7). Last, but certainly not least, Tunisia has joined a movement across the Arab world to get rid of the so called “marry your rapist laws”, which allow rapists to escape prosecution if they marry their victims. Thus, Article 227bis(4) of the Tunisian Criminal Code, which contemplated this “escape route” for rapists, has been repealed (see Art. 15 of Organic Law no. 2017-58). Despite the fact that in a number of Arab countries similar provisions are still in force, in the past few years there has been a trend towards their abolishment. Indeed, Egypt and Morocco repealed their laws respectively in 1999 and 2014, and in 2017 (in addition to Tunisia) Jordan and Lebanon also joined this group of countries.¹⁵¹

The adoption of the new Organic Law on the elimination of the violence against women is extremely important in a country where women very often experience domestic and public violence. In 2016, the Tunisian Ministry of Women, Family and Childhood reported that 60% of Tunisian women were victims of domestic violence, and 50% of women declared that they experienced aggression in a public area at least once in their lives.¹⁵² Furthermore, in 2016 the Centre for Research, Study, Documentation and Information on Women, a Tunisian research centre that works closely with the United Nations, reported that from 70% to 90% of women had been victims of sexual harassment between 2011 and 2015.¹⁵³

The adoption of the abovementioned organic laws represents an important step in the process of constitutional implementation and a positive contribution to the democratic transition that Tunisia is currently experiencing. All in all, the path followed by the country thus far seems to be the right one.¹⁵⁴ Having said that, one should not forget that several innovations provided for by the 2014 Constitution have still remained “on paper” (the most evident example is probably given by the fact that the Constitutional Court has not been established yet), and that the country is

¹⁵¹ Dehnert, E. (2017).

¹⁵² Blaise, L. (2017) p. 4.

¹⁵³ Blaise, L. (2017) p. 4.

¹⁵⁴ Feldman, N. (2013) p. 10; Mezzetti, L. (2016) p. 246–247.

facing a number of complicated challenges from a political, social, and economic standpoint. Moreover, terrorism continues to represent a major threat, which explains why the state of emergency has been in place since November 2015. Therefore, the positive outcome of the process of transition should not by any means be taken for granted.¹⁵⁵

Libya: The Adoption of a New Draft Constitution

Seven years after the death of Muammar Gaddafi Libya is still in the middle of an extremely complicated process of stabilisation. Current Libya comprises several different local realities trying to exist and prosper within a highly anarchical context. The country has a UN supported Government of National Accord – led by Prime Minister Fayeze al-Sarraj – which is based in Tripoli, while the eastern part of the country is *de facto* ruled by General Khalifa Haftar and his army. Moreover, part of the south and the far south of the country are lost to any central authority and are controlled by different local tribes. The extremists of ISIS, which have lost much of their territory (including the city of Derna in July 2015, and their stronghold in the city of Sirte in late 2016), are now regrouping in rural areas. In addition to that, the state of human rights and the rule of law in the country is bleak, and the scourge of human trafficking has not been eradicated yet.¹⁵⁶

In this highly problematic context, Libya is also facing a very important challenge, namely drafting a new Constitution.¹⁵⁷ A Constitutional Drafting Assembly was elected on 20th February 2014, and on 21st April of the same year it started its activities in the city of Al-Baydha, in the eastern part of the country. It should be noted that the European Union has often called on the Assembly to complete its mandate as soon as possible, and this support for the constitution-making process continued also during the semester of the Maltese presidency. On 23rd May 2017, for example, the EU, the African Union, the League of Arab States, and the United Nations (i.e. the so-called “*Quartet*”) issued a joint communiqué commending “the efforts by the Constitutional Drafting Assembly to finalize a draft constitution” and expressing their “appreciation for the work made so far”. They also “called for the constitution-drafting process to be concluded as soon as possible to pave the way to general and presidential elections.”¹⁵⁸

The latest draft of the Libyan Constitution was approved by the Constitutional Drafting Assembly on 29th July 2017, without broad

¹⁵⁵ Sigillò, E. (2016) p. 9.; Namane, W. (2017).

¹⁵⁶ Indeed, it is well known that the country has become a “springboard” for migrant exodus to Europe: every day smugglers pack desperate migrants into unsafe boats bound for Malta and Italy. According to the International Organisation for Migration, 2,357 people died in the Mediterranean in the period from 1st January to 12th July 2017 (<https://www.iom.int/news/mediterranean-migrant-arrivals-reach-103175-2017-2357-deaths>).

¹⁵⁷ Schnelzer, N. (2016).

¹⁵⁸ “Meeting of the Libya Quartet: Joint Communiqué” (2017).

consultation or public debate.¹⁵⁹ As far as the form of government is concerned, the draft provides for a bicameral legislature (the House of Representatives and the Senate, which are both directly elected) and an executive branch which consists of the President of the Republic and his appointed Prime Minister and Ministers. On the one hand, the President of the Republic enjoys wide (and in some cases excessive) powers (Arts. 104 ff.), thus making the draft Constitution very similar to the majority of the new (or recently amended) Arab Constitutions,¹⁶⁰ but on the other hand the independence of the judiciary has been reinforced (Arts. 118 ff.) and the Constitutional Court has been granted a number of significant prerogatives (Art. 139).¹⁶¹

An entire chapter of the draft Constitution (Chapter 6) is devoted to decentralisation and local government, which has been for a long time a very sensitive issue in the country. Article 143, in particular, makes reference to the “principle of expanded decentralisation [...] within the unity of the State”. The draft states that the country will be divided into governorates, municipalities and other administrative levels directly elected by the people. Despite the fact that the draft seems to grant them a certain degree of autonomy (also from a financial standpoint), the real degree of independence that these local government units might achieve is hard to predict, also in the light of the fact that the regulation of some important issues (including the competences of the local government units) is left to ordinary legislation.

The draft Constitution (like many other Arab Constitutions, particularly those from oil and gas-rich countries)¹⁶² also includes some provisions regarding natural resources. Although certain aspects are far from clear (in particular the management structure and the distribution of revenues), the draft contains some provisions that are in line with comparative best practices. Article 172, for example, stipulates that a law has to allocate a proportion of the revenues deriving from the exploitation of natural resources for the benefit of future generations.

There is one aspect in the draft Constitution that stands out, namely the special recognition granted to Islam and *sharia* and the lack of specific provisions guaranteeing the free exercise of religious practices.¹⁶³ This Islamic-oriented approach can be found, first of all, in Article 6, which stipulates that “Islam shall be the religion of the State, and Islamic *sharia* shall be a source of legislation”. Furthermore, the President of the Republic,

¹⁵⁹ The text of the draft Constitution is available at the following address: <http://www.constitutionnet.org/vl/item/draft-constitution-libya-29-july-2017>

¹⁶⁰ Biagi, F. (2018).

¹⁶¹ Al-Ali, Z. (2017) p. 7.

¹⁶² *Oil and Natural Gas: Constitutional Frameworks for the Arab States Region* (2014).

¹⁶³ It has been observed that “Since the start of the Libyan revolution, talk of the role of *Sharia* has dominated political and revolutionary discourse” (Saad, R. (2017)).

the Prime Minister, the Ministers, and the members of the House of the Representatives and the Senate must be Muslim (see Arts. 99, 113, 69 and 76). The President of the Republic must also be born to Muslim parents (Art. 99). Islamic principles and values also inform the establishment of the family and the right to education. Indeed, Article 27 states that “The family that is *established on sharia based marriage* between a man and a woman shall be the foundation of society. It shall be founded on *religion*, ethics, complementary roles between its members, as well as on affection and mercy [...]” (emphasis added). Article 52 stipulates that “educational curricula” are based, among other things, on “the teachings and values of the Islamic religion”. Nor is the National Council for Human Rights immune from this approach, as its task is to reinforce and promote the culture of human rights and public liberties “provided for in Islamic *sharia* and international conventions” (Art. 159). The draft Constitution also provides for a *Sharia* Research Council, responsible for expressing opinions on matters referred to it by State authorities, addressing religious issues and issuing *fatwas* (Art. 161).

It goes without saying that some of the provisions mentioned above are not in line with international standards and comparative best practices. It must also be stressed (as mentioned above) that in the draft Constitution specific provisions guaranteeing the free exercise of religious practices are lacking. Furthermore, it is emblematic that Article 7 does not include religion among the grounds on which discrimination is prohibited. All this raises serious concerns for religious minorities and stands in sharp contrast not only with a number of Islamic Constitutions, but also with the current Libyan Constitution, namely the 2011 Constitutional Declaration. The latter, indeed, stipulates that “The State shall guarantee for non-Muslims the freedom to practice their religious rituals” (Art. 1) and that “Libyans shall be equal [...] without distinction on the grounds of *religion, belief*, language, wealth, gender, kinship, political opinions, social status, or tribal, regional or familial adherence” (Art. 6) (emphasis added).

According to the draft Constitution, Parliament has 90 days after the entry into force of the Constitution to approve the laws governing the elections of the President of the Republic, the House of Representatives and the Senate. These elections would then be held within 240 days from the approval of those laws (Art. 183). Thus, over one year, this roadmap would give Libya a new Constitution, an elected President, and two houses of Parliament, which might contribute to strengthen the legitimacy of State institutions.¹⁶⁴ Things, however, are much more complicated, also in the light of the fact that the destiny itself of this draft Constitution is very uncertain. Indeed, the new Constitution will only enter into force following its ratification in a popular referendum. However, on 17th August 2017, the appeal court in the city of

¹⁶⁴ Toaldo, M. (2017).

Al-Baydha invalidated the vote of the Constitutional Drafting Assembly approving the draft Constitution. As a consequence, the notifications to the House of Representatives to draft a law authorising a referendum and to the Elections Commission to prepare such a referendum were considered null and void. This case will be probably examined by the Supreme Court, but this might take months.¹⁶⁵

Libya is currently facing a number of very serious and complicated challenges. The priority should be to address the concrete needs of the population, such as guaranteeing public services to the people, addressing the economic and liquidity crisis, rebuilding destroyed cities, working to withdraw heavy weapons from urban centres, guaranteeing greater security to the people, and reinforcing the protection of human rights: “Without this broader strategy, a constitution born with such a flawed process risks [doing] little to stabilize Libya.”¹⁶⁶

Syria: The Russian Draft Proposal for a New Syrian Constitution

In November 2011, Syrian President Bashar al-Assad appointed a committee to draft a new Constitution to replace the one introduced in 1973. The new Constitution – that continues to grant the President extremely broad powers – was approved by popular referendum in February 2012. In the past two years, the reform of this Constitution has started to be considered crucial by the international community in resolving the still on-going conflict in the country. In particular, on 18th December 2015, the United Nations Security Council passed Resolution 2254 that – *inter alia* – outlines the UN’s support for a Syrian-led political process that “establishes credible, inclusive and non-sectarian governance and sets a schedule and process for drafting a new constitution” within six months. The resolution also recommends “free and fair elections, pursuant to the new constitution, to be held within 18 months” under UN supervision. However, the numerous peace talks held in Geneva under the auspices of the United Nations (and strongly supported by the European Union) between the Syrian government and the opposition have not thus far achieved the above-mentioned aims.

Since the start of 2017 the role played by the UN and the EU in the conflict has been partially overshadowed by the initiatives of the Russian Government, which has increasingly begun to play a prominent role in the Syrian crisis. In particular, Moscow set up its own Syria peace talks in Astana, Kazakhstan, with Iran and Turkey, and on 23rd–24th January 2017, it officially presented its draft proposal of a new Syrian Constitution,¹⁶⁷ which Konstantin Kosachev, the head of the Russian Senate’s Foreign Relations

¹⁶⁵ “CDA Vote on Draft Constitution Ruled Invalid by Beida Court” (2017).

¹⁶⁶ Toaldo, M. (2017).

¹⁶⁷ The text of the draft Constitution is available at the following address: <https://sputniknews.com/middleeast/201701311050216226-syrian-constitution-full-text/>

Committee, referred to as Moscow's "contribution to catalyse the peace process".¹⁶⁸

The content of this draft Constitution has caused some perplexity. Indeed, it has been rightly stressed that "this document stands as an important example of a non-liberal constitutional model put forward as a solution to one of the world's most intractable conflicts."¹⁶⁹ In the first place, the draft Constitution – by relying heavily on the constitutional model of the Eurasian countries¹⁷⁰ – continues to provide for a strong concentration of powers in the hands of the President of the Republic, who is the leader of the executive branch. According to the draft Constitution, the President, *inter alia*, appoints the Prime Minister and the Ministers (Art. 64), issues decrees, edicts and instructions (Art. 57), concludes international treaties (Art. 58), may call for a referendum on important issues which affect the strategic interests of the country (Art. 59), and is the Commander in Chief of the Armed Forces (Art. 60). Moreover, whilst the draft Constitution states that the same person cannot hold the office of the President for more than two consecutive terms, still it provides for a very long term in office, i.e. seven years (Art. 49). In the light of the fact that Assad's current term ends in 2021, the draft Constitution would then allow him to remain in office until 2035.

Furthermore, there are certain constitutional provisions that go "beyond executive power and wield power to supervise and unify all branches of power in the state."¹⁷¹ In fact, the President is the "guarantor of independence, unity, and territorial integrity of the country", ensures the "continuous operation of public authorities", and acts as an "intermediary for the state authorities, and between the state and the society [...]" (Art. 55).

On a positive note, the draft Constitution contains some provisions specifically dealing with the Kurdish question. This is *per se* a step forward, especially if one considers that in the current 2012 Constitution "the existence of Kurds in Syria is completely ignored,"¹⁷² despite the fact that they form the largest ethnic minority in the country, constituting an estimated 10% of the population. Article 4 of the draft Constitution stipulates that Syrian citizens have the right to "educate their children in their native language" and that "government agencies and institutions of Kurdish Cultural Autonomy shall use both Kurdish and Arabic equally." Moreover, Article 15 states that Syria consists of "constituent parts", and that the organization of the local authorities is based on the principle of decentralization. On the other hand, however, the draft contains some questionable points. In particular, it stipulates that the relationship between

¹⁶⁸ Suchkov, M. (2017).

¹⁶⁹ Partlett, V. (2017).

¹⁷⁰ Partlett, V. (2017).

¹⁷¹ Partlett, V. (2017).

¹⁷² Bammarny, B. (2016) p. 491.

the central government and the regional authorities, their mandate, financial revenues, control over their work, the appointment or election of their representatives, as well as the status of the Kurdish Cultural Autonomy are regulated by *law* (art. 15), thus leaving the possibility for the central government to significantly limit the scope of autonomy of the Kurds.

Only time will tell if and to what extent the draft Constitution released by the Russian Government will influence the content of a new Syrian Constitution. In any case, at the moment the adoption of a new Constitution can hardly be considered a solution to the conflict, also in the light of the fact that in the recent negotiations held “both in Astana (where the [draft constitution was] presented) and in Geneva (where this issue has been recently evoked), the [Syrian] government and the opposition showed very little interest in serious discussion about a new constitution.”¹⁷³

Conclusion

By supporting the constitutional processes in North Africa and the Middle East during the semester of its presidency of the Council of the European Union, Malta followed the path of its “predecessors”. In the case of Tunisia, the hope is that the EU will continue to support the process of implementation of the 2014 Constitution, as the latter is of the utmost importance for a successful outcome of the transition. This process of implementation, however, must be accompanied by structural reforms that are necessary to put the economy on track. Indeed, the riots that took place in many Tunisian cities and villages at the beginning of 2018 are due to the dire economic situation of many parts of the country.¹⁷⁴

In the cases of Syria and Libya, the European Union is supporting the constitution-making processes that are taking place in both countries. The EU should push more for the adoption of constitutions which are in line with international standards and comparative best practices and make clear that any deviation from these democratic standards will have negative consequences for future relations.¹⁷⁵ This is particularly important in the cases of Syria and Libya, where the constitution-making processes are taking place in times of conflict. Indeed, the risks of drafting a constitution in these contexts are numerous and different in nature, including where they touch on the consolidation of the position of those who are in power, the exclusion of women and minority groups, and the lack of consensus within the society on its shared values and vision of a common future: “Premature constitution writing risks condemning the constitution to oblivion, as it will neither reflect any such vision nor be able to keep pace with changes on the ground.”¹⁷⁶ In

¹⁷³ Trombetta, L. (2017).

¹⁷⁴ Mezran, K. and Neale, E. (2018).

¹⁷⁵ Burke, E. (2013).

¹⁷⁶ Bisarya, S. and Zulueta-Fülscher, K. (2016).

other words, the risks are so serious that one may even question the utility of the adoption of a constitution in times of conflict. In any case, an unconditional support for the constitutional reform processes (which sometimes seems to be the approach adopted by the European Union) does not help the democratic development of Arab countries and is not in the interests of the EU itself.

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Chapter 7

Malta's Presidency of the EU Council: External Relations in the Presidency of a Small State

Roderick Pace

On the 4th July the European Parliament in Plenary met to discuss the report on Malta's Presidency of the Council of the European Union. The Prime Minister Joseph Muscat and the President of the European Commission, Jean-Claude Juncker both addressed the meeting. The session was very poorly attended by Members of the European Parliament (MEPs) and this led to an altercation between Juncker and the President of the European Parliament Antonio Tajani. Addressing the Chair, Juncker said, "*Monsieur le Président, Monsieur le Premier ministre, le Parlement européen est ridicule, très ridicule. Je salue ceux qui se sont donné la peine de se déplacer ici, mais le fait qu'une trentaine de députés seulement assiste à ce débat démontre à suffisance que le Parlement n'est pas sérieux, et je voulais le dire aujourd'hui. Si M. Muscat était Mme Merkel difficilement imaginable – ou M. Macron – plus imaginable ... We would have a full House. The Parliament is totally ridiculous.*" Mr Tajani asked the President of the Commission to moderate his tone, reminding him that though Juncker could criticize the Parliament, it is not "*la Commission qui doit contrôler le Parlement. C'est le Parlement qui doit contrôler la Commission*".¹⁷⁷ Juncker pressed the point further: "*There are only a few Members in the plenary to control the Commission. You are ridiculous! I wanted to pay tribute to the Maltese Presidency ... I will never again attend a meeting of this kind. The Commission is under the control of the Parliament, but the Parliament has to respect even the presidencies of smaller countries*" concluded Mr Juncker.¹⁷⁸

The absence of the MEPs from the Plenary does not reflect on the performance of Malta's Presidency, but the episode brings to light in a very clear and concrete way an important constraint within which small EU Member States have to work, namely that they are considered as "unimportant" despite the lack of evidence to back this argument. Small States suffer from lack of human and financial resources and the cost of running the Presidency are comparatively larger in comparison to their economic size. However, broadly

¹⁷⁷ Free Translation: "Mr President, Prime Minister. The European Parliament is ridiculous, very ridiculous. I welcome those who have taken the trouble to be here. But they are just thirty in all who are here to follow the debate and this shows well enough that the European Parliament is not serious. Had Joseph Muscat been Angela Merkel or Emanuel Macron, it is difficult to imagine – we would have a full house..." President Tajani replied that "it is not the Commission which has the duty to control Parliament but Parliament which has the duty to control the Commission ..."

¹⁷⁸ European Parliament (2017).

speaking they do make an effort at completing as many dossiers as they can. Diana Panke (2010) observes, that although small EU Member States have fewer resources in order to participate in argumentative-based or bargaining-based policy shaping strategies, they are not unimportant for the dynamics and outcomes of EU negotiations *per se*. Small States can concentrate their contributions and efforts on issues of higher relevance and ably apply a variety of shaping strategies.

This is exactly what Malta managed to do during its Presidency of the Council of the EU as will be shown in this chapter by reference to Malta's Presidency and the external policies of the EU.

A Focus on the Essentials

At the start of the Malta's Presidency, The High Representative of the Union for Foreign Affairs and Security Policy Federica Mogherini (henceforth the High Representative) held bilateral talks with Foreign Minister George Vella, where they agreed that "Migration" and the "Situation in the Mediterranean" were to be the main objectives of the foreign policy initiatives to be pursued by the EU during Malta's Presidency of the Council of the EU. With respect to the Mediterranean two countries were to particularly occupy the EU's attention, namely: Syria, and the EU Regional Initiative for that country, and Libya.¹⁷⁹ The other priority, Migration, had an "internal EU aspect" characterized by deep divisions among the Member States and an external aspect concerned with saving lives at sea (a humanitarian concern as well), stopping the irregular flows of migrants and strengthening the EU's borders in collaboration with partner countries.

At the start of Malta's Presidency, the EU was facing a few uncertainties which are discussed in the next section. Each one of them could potentially rock the Union in a serious way and conditioned the decision-making environment surrounding Malta's Presidency. However, not all of them were in the Presidency's sight or it's "to do list". Correctly, and in line with small state capabilities, and the short duration of the Presidency (six months is not a life time), Malta's Presidency adopted a pragmatic approach and decided to focus on Migration and the Mediterranean. Maritime policy was another priority objective of the Presidency with external policy ramifications. Of course, Malta had also to operate within the parameters of the three Presidency programme (Malta, Slovenia and the Netherlands), and work together with the High Representative in building diplomatic bridges to facilitate agreement on matters already on the CFSP/external relations agenda. It also sought to coordinate its efforts with the informal "Mediterranean Group" or Club Med. i.e. the EU Mediterranean Member states in advance of key EU meetings and summits.

¹⁷⁹ European External Action Service (2017).

The EU and the World at the start of 2017

At the start of Malta's Presidency of the Council of the EU, there were several external relations issues that promised to mark the Presidency as one of the most interesting in recent times. Of most immediate concern were the Ukraine crisis and relations with Russia, the situation in Syria as well as the challenge it posed to the post-conflict stabilization of that country and the adjoining sub-region. Turbulence in the EU's neighbourhood was also unrestrained: Turkey was still unsettled after the 2016 failed coup attempt; stability in Libya had not been achieved; the Middle East crisis was still simmering. Irregular migration was testing the EU's resolve, internal unity and cohesion. Migration had long been an important internal EU and foreign policy issue but the 28 Member States were nowhere near resolving it in a definite way. In 2015, EU consensus had jelled around the notion that apart from strengthening its borders and cooperating with its immediate neighbours such as Turkey and Libya, which were themselves "transit countries", the EU needed to speak with the neighbours of its neighbours, mainly the countries of the Sahel and beyond in order to deal more effectively with the problem. Shaping external policy on migration looked relatively easier than approving internal measures such as the EU asylum policy, the reform of the Dublin regulation and the thorny issue of intra-EU relocation.

The start of the Trump administration in the USA coincided almost exactly with the start of Malta's Presidency. It led to several uncertainties foremost among which were doubts (later allayed) about Washington's continuing support for the North Atlantic Treaty Organization (NATO) and the future of the Trans-Atlantic Trade and Investment Partnership (TTIP) which is still at a stalemate and mired in controversy on both sides of the Atlantic, and of course climate change and the US pledge to pull out of the Paris agreement.

Then there was BREXIT which was lumped on Malta's Presidency agenda when the 23rd June 2016 referendum decided in favour of Britain leaving the EU. London's announcement that it would trigger Article 50 by the end of March, as indeed happened, meant that the BREXIT process would begin in the middle of Malta's Presidency. This would add another complication to a small country running the EU Presidency for the first time. Important national elections due in the first half of 2017 in France and the Netherlands and later in Germany also cast their shadows on the Presidency. The main concern here was whether Europhile parties would manage to hang on to power in these countries and give the EU a breathing space to sort itself out on the aftermath of the recession and the divisions on migration or whether Eurosceptic parties would enter government and unravel the Union. This uncertainty about the future of the EU coincided with the 60th anniversary of the Rome Treaties which also fell during the term of Malta's Presidency.

The calling of a snap election in Malta on 1st May 2017 can perhaps be considered as the only bolt from the blue originating from domestic politics. It was only the second time in EU history that a national election was called during a Member State's Presidency, but then this was due to a constitutional requirement. Malta's Presidency managed to plod on and ended successfully notwithstanding the distraction caused by the election and the real risk of a disappointing *finale*.

Small State Presidencies

Before the analysis of the Maltese Presidency can proceed further, it is important to dwell briefly on the role of small country Presidencies of the Council of the EU in the Union's external relations, a subject which has always been complex and controversial. Before the appointment of Javier Solana as the first High Representative for the Common Foreign and Security Policy (CFSP) in 1999, and during the debates leading to the ill-fated Constitutional Treaty and then the Lisbon Treaty, there was a general mistrust of Small States' ability to lead the EU's external relations dimension even though the records did not show that the larger EU member states really outshone them in this respect. Up to a certain extent this mistrust can still be felt today, though the situation has changed radically as a result of the Lisbon Treaty changes. External relations have almost been completely taken out of the hands of the six-month rotating Presidency and placed in the hands of the High Representative and the President of the Council. As a result, the rotating Presidency has lost most of its ability to influence policy-making while it has become relatively easier for the larger EU member states to shape the EU's foreign policy by focusing their influence on these two top officials appointed by the European Council. Although the smaller EU Member States can still influence, if not also to a certain extent frustrate the EU foreign policy-making process since decisions are taken by unanimity, they tend to rely more on achieving their foreign policy objectives through the CFSP than the larger EU member states for whom the EU is just one of several "arenas" where they can act with a modicum of independence.¹⁸⁰

Given these complications, any analysis of Malta's six-month Presidency and the EU's foreign policy is very challenging. It is important to keep in mind the dualism that persists between the Union's external relations and the national foreign policies of the Member States. Broadly speaking, national foreign policies constrain the development and operation of the EU's external policies, but not the other way around. There is no pain associated with blocking consensus on EU external relations, particularly in the CFSP and its component the Common Defence and Security Policy (CSDP) or in pursuing national goals regardless of the Union's interests. The Court of Justice simply has no role in the CFSP. For a small country EU

¹⁸⁰ Lehne (2012).

Presidency with its characteristic lack of resources, managing 27 other Member States in this domain raises several difficulties.

The second major observation concerns the structural change that has been brought about by the Lisbon Treaty since it went into effect in 2009. Before the ratification of the Treaty, the Member State holding the Presidency of the Council of the EU used to Chair the General Affairs and External Relations Council (GAERC) composed of the Foreign Ministers of the Member States. This is what gave the rotating EU Presidency policy shaping opportunities. The Lisbon Treaty split the functions of this Council configuration and created the Foreign Affairs Council (FAC) and the General Affairs Council (GAC). FAC is chaired by the “two-hatted” High Representative of the Union for Foreign Affairs and Security Policy who is also a Vice President of the Commission.

The Lisbon Treaty also gives the EU its own legal personality. It has created a permanent Presidency of the EU Council (which is composed of the Heads of State and/or Government of the Member States) and the European External Action Service (EEAS) with its uneasy relationship with the European Commission. Given time the EEAS may also develop into a powerful policy shaping institution, if it has not already done so. The rotating Presidency used to form part of the “Troika” which played a crucial role in the EU’s diplomacy, but the Lisbon Treaty dispensed with that as well when the permanent Presidency of the European Council and High Representative took over the international responsibilities formerly exercised by the rotating Presidency.

The final observation concerns the global context in which the EU’s external policies are pursued and which make life even more hectic for small states. The ongoing strengthening of communications, the increase in inter-regional trade and the multiplicity of global interdependencies have in certain instances weakened national governments’ control over their own borders and territories and has led to the phenomenal growth in importance of “non-state” actors in world politics. The globalization of world politics has blurred the dividing lines between “domestic” and “foreign” policies. One consequence of this is that it is no longer possible to distinguish clearly between health, education, the environment, law and order, migration and terrorism as internal, purely “domestic” policies from trade, development, security and the traditional concerns of foreign policy as different, exterior or international policies. It is evident, and even recognised by all stakeholders, that what happens “out there” affects the lives of people at home, and what happens at home shapes national outlooks about foreign policy, forcing governments to adopt stances and responses in the EU’s external relations policy-making processes.

The latter point complicates our analysis of Malta's Presidency because in the same breath as we claim that the Presidency's role in the EU's foreign affairs has been weakened considerably since the Lisbon Treaty's ratification, Malta's Presidency was involved in several decisions on matters which appear to be of an internal or "domestic" policy nature, but which have a clear direct impact on external relations. There are many examples of policies that have this duality – global warming, migration and terrorism being three of them. But in the analysis carried out in this chapter, the problem has been simplified for us because at the start of the Presidency following the Vella-Mogherini meeting, the Presidency's main objective in external relations were listed as migration and the Mediterranean. The "Mediterranean" was also a vague reference which could include a lot of things.

The Foreign Affairs Council (FAC)

Before carrying forward the analysis, we need to clarify one further issue, the mechanics of the FAC. The Foreign Ministers of the Member States of the EU meet in the Foreign Affairs Council chaired by Federica Mogherini, the High Representative. At times the Council brings together the Ministers of Defence to discuss security and defence, development ministers and trade ministers. When FAC discusses trade policy, it is presided by the EU Member State holding the EU rotating Presidency, in this case Malta. The FAC is also responsible for the bilateral Association and Cooperation Councils which are held periodically between the EU and its partner countries. The meetings of the FAC and related events which took place during Malta's Presidency are listed in **Diagram 1**. Several meetings took place at Ministerial and Senior Officials level in Malta and Brussels, but the eye catchers were: the FAC meeting of 6th February 2017 which met in Brussels and which led to the formation of the Quartet on Libya composed of the United Nations, the League of Arab States and the African Union and the EU; the Informal Trade Ministers meeting of 3rd March 2017 chaired by Dr Chris Cardona, Minister for the Economy, Investment and Small Business which was also attended by European Commissioner for Trade Cecilia Malmström; and the 26th–27th April 2017 meeting in Malta of European Defence Ministers which was followed a day later by a Gymnich meeting of Foreign Ministers.

On behalf of the EU High Representative for Foreign Affairs and Security Policy, the Minister for Foreign Affairs, George Vella, co-Chaired the EU-KYRGZ Republic Cooperation Council (6th March 2017); the EU-Angola Ministerial Dialogue (7th March 2017); co-Chaired the EU-ECOWAS Ministerial Dialogue (4th April 2017); the ACP-EU Council of Ministers (4th-5th May 2017); the EU-Tunisia Association Council (11th May 2017); and the EU-Tajikistan 6th Cooperation Council (15th May 2017).

It must also be kept in mind that Mogherini's portfolio does not only cover FAC. As Vice President of the European Commission she is also in charge of the European Neighbourhood Policy, Enlargement, Humanitarian Aid and Crisis Management, International Cooperation and Development as well as Trade. The High Representative is also involved in the external aspects of Climate Action, energy, transport and migration. In June 2016, Federica Mogherini unveiled the EU's "Global Strategy" to replace the European Security Strategy launched by Javier Solana in 2003 and the strategy marked its first anniversary towards the close of Malta's Presidency.

The Best Laid Plans – Migration and Development

The easiest way to assess Malta's performance in external relations is to compare what was stated in its Presidency Programme with what was achieved, while taking into account related circumstances and contexts. In its Presidency Programme, Malta did not present very ambitious objectives, but working within the strictures of the Lisbon Treaty, pledged to support the work of the High Representative.

One of the policy priorities identified was Migration. On the external dimension of migration, the Presidency Programme stated that: "*Addressing the External Dimension of Migration will require the continued resolve of the EU and Member States to maintain a comprehensive approach deploying the full range of the EU's policies and instruments. The implementation of the new Partnership Framework with third countries will be further pursued as tasked by the European Council in December 2016, as well as actively contribute to the ongoing negotiations of the Global Compacts in the follow-up to the adoption of the New York Declaration for Refugees and Migrants*".¹⁸¹

The Maltese Presidency Programme stressed a nexus linking development and security and another one linking migration-development.¹⁸² The approach pursued during the Presidency of linking migration and development aid, was inspired by the decisions taken during the EU-Africa Summit held in Malta in 2015 and the establishment of the Emergency Trust Fund for Africa.¹⁸³ The EU-Africa Valletta Summit had agreed on an Action Plan which was to be financed from the Trust Fund. The Action Plan sought among other things to mainstream migration in development policies, develop a system of legal migration and reward states, mainly in Africa, which cooperated with the EU on restraining illegal migration and in implementing socio-economic programmes intended to eliminate the root-causes of irregular migration in the longer-term. It was in the context of the

¹⁸¹ Government of Malta (2016) p. 14.

¹⁸² Government of Malta (2016) p. 17.

¹⁸³ European Commission (2015); Pace (2016).

Valletta Summit that the security-migration-development nexus was sharpened into an EU policy instrument.

Migration in the Central Mediterranean was the subject of the informal European Council meeting which took place in Malta on 3rd February 2017. These types of meetings normally end with a summary by the President and a statement or declaration instead of an official conclusion. The Malta meeting ended with the Malta Declaration on the external aspects of migration, particularly the Central Mediterranean route linking Libya with the rest of Europe.¹⁸⁴ The Declaration focused on the importance of stabilizing Libya by training and equipping the security forces there, disrupting the smugglers' business model, improving reception centres for migrants, but also looking beyond Libya's borders by stepping up information campaigns in the countries of origin and assisted return activities. It was a good sign that Malta went straight to the point on its most central objective it wanted to achieve in external relations.

To complete the circle, Malta's Presidency worked to ensure that the EU's new development policy would be in line with this approach. Malta had pre-announced this at the very start of the Presidency when it declared that one of its main priorities would be to achieve agreement on "*a new European Consensus for Development*" in order to "*provide a new shared vision of how the EU institutions and Member States will work together to achieve the Sustainable Development Goals*".¹⁸⁵ The "new" consensus was proposed by the European Commission in November 2016,¹⁸⁶ FAC approved it in on 19th May 2017 and the strategy was signed by the EU Member States and the Institutions on 7th June 2017.¹⁸⁷ The European Consensus on Development is not legally binding, but it provides the framework for the EU and its Member States' development aid efforts in the context of achieving the UN's 2030 Sustainable Development Goals (SDGs) and more. Malta's Presidency worked assiduously and succeeded in closing this dossier. Indeed, this success can be recognised as one of the main achievements of Malta's Presidency. Not only, but the adoption of this Consensus marked the fact that for the first-time the EU has put in place a framework for a common EU and Member States approach that goes a long way to strengthen the relations between the EU and its Member States with the developing countries.

Malta had also tried to reach agreement on the External Investment Plan (EIP) to help in the financing of projects to achieve the SDGs and deal with the root-causes of migration, but this only came into effect in September 2017.

¹⁸⁴ Council of the European Union (2017c).

¹⁸⁵ Government of Malta (2016) p. 17.

¹⁸⁶ European Commission (2016).

¹⁸⁷ European Commission (2017a).

The New Consensus on Development has been criticised by several international non-governmental organizations working in the developmental field for linking development and security – in other words for tying aid to compliance in controlling irregular migration.

Malta's Presidency also tried to heal internal EU rifts on migration by proposing a "cash solution" to the problem that many Member States continue to adamantly refuse to accept the relocation of refugees from Italy and Greece. The main line of the proposal was to give Member States a sum of €60,000 per refugee which they accept to relocate and to fine Member States by the same amount for every refugee which they refuse. The fine could also be paid in kind through the provision of material help and expertise. A three-year phasing in period was also proposed for the scheme.¹⁸⁸ The proposal failed to gain approval by Council mostly because the Member States refusing to resettle refugees were liable to pay several millions in cash or in kind. For example, Poland which refused its share of 6,182 refugees would have had to pay around €37 million in fines.

The Mediterranean Region

On the other objective to be pursued during the Presidency, regarding the Mediterranean region, several FAC meetings which took place in the first half of 2017, focused on the trouble spots of the region particularly Syria and Libya. The initiative in this case was more in the hands of the High Representative Mogherini. (Vide Diagram 1)

Of most immediate interest to Malta, was the establishment of the Quartet on Libya composed of the UN, the Arab League, the African Union and the EU. The Libya Quartet met twice during Malta's presidency. It is too early to judge how the Quartet will fare in its objective and this is certainly an issue which must be followed in the future.

Some other Mediterranean initiatives considered as of a lower 'high politics' level but which are nevertheless significant for the region were on maritime affairs. Cooperation in the maritime sector is a functional and pragmatic approach that was prioritized in Malta's Presidency objectives. This policy initiative does not fit well in the CFSP quadrant, but it is extremely relevant for the EU's Neighbourhood Policy, another area of special priority for Malta's Presidency

A MedFish4Ever Ministerial Conference held in Malta ended with a Ministerial Declaration on 30th March 2017. The Conference forms part of what is referred to as the Catania process which was started in February 2016 by Karmenu Vella, the Maltese Commissioner in charge of the Environment, Maritime Affairs and Fisheries at a meeting in the Sicilian city that gave it its

¹⁸⁸ Baczynska (2017).

name. The Malta meeting was attended by the European Commission, eight EU Mediterranean states (Spain, France, Italy, Malta, Slovenia, Croatia, Greece, Cyprus), seven of the EU's Mediterranean partners (Morocco, Algeria, Tunisia, Egypt, Turkey, Albania, Montenegro), FAO, the General Fisheries Commission for the Mediterranean, the European Parliament, the EU Mediterranean Advisory Council. The aim of the Catania process is to safeguard fish stocks in the Mediterranean by managing fishing, collecting data, eliminating illegal fishing and encouraging small scale fishing and aquaculture.¹⁸⁹ The initiative which is based on EU soft law [ministerial declarations as opposed to legally binding instruments],¹⁹⁰ falls within the scope of the EU's integrated maritime policy and the "Blue Growth" initiative. Such initiatives rarely capture attention, but being of a functionalist, or "soft" nature, they link EU and non-EU states into a cooperative relationship of mutual benefit and strengthen mutual understanding. Under the aegis of the much-castigated EU's Barcelona Process, the Neighbourhood Policy and the Union for the Mediterranean, the EU has launched several such initiatives in the region over the last two decades. In most instances this type of cooperation is resilient to the vagaries of regional instability and political shifts.

A month later another informal Ministerial meeting met in Malta to discuss "Blue Growth"¹⁹¹ which refers to the expansion of maritime and coastal economic activities such as tourism, fishing, aquaculture, shipping, etc. in a sustainable way). The EU had published a "Blue Growth Strategy" in 2012. At the end of the Malta meeting, the Valletta Declaration endorsed by the ministers, not only listed a series of positive initiatives and achievements but called on the Council "to endorse the declaration as a substantial component of the Union's priorities for Jobs, Growth and Investment and the forthcoming Presidencies, in close cooperation with other EU Institutions, to take appropriate initiatives and set milestones, taking this declaration as a basis, to further develop and implement the 2012 EU Blue Growth Strategy".¹⁹² Blue growth also serves as a soft policy approach to strengthen cooperation between the states on both shores of the Mediterranean Sea, as is

¹⁸⁹ European Commission (2017b).

¹⁹⁰ European Commission (2017c).

¹⁹¹ The documents published by the European Commission on Blue Growth include the following: Initiative for the sustainable development of the blue economy in the western Mediterranean (19/04/2017): Framework for action; Report on the Blue Growth Strategy: Towards more sustainable growth and jobs in the blue economy (31/03/2017); Communication from the Commission: Innovation in the Blue Economy: realising the potential of our seas and oceans for jobs and growth – COM(2014) 254/2 (13/05/2014); Marine Knowledge 2020: roadmap accompanying the document; Communication from the Commission: Blue Growth opportunities for marine and maritime sustainable growth (13.09.2012). They are available at https://ec.europa.eu/maritimeaffairs/policy/blue_growth_en (accessed on 02.01.2018).

¹⁹² Government of Malta (2017c).

exemplified by the initiative for the sustainable development of the blue economy in the western Mediterranean.¹⁹³

Enlargement and Turkey

During Malta's EU Presidency no major progress was recorded on the enlargement front. In a speech to the Foreign Affairs Committee of the European Parliament (AFET), Minister for Foreign Affairs George Vella had placed a lot of emphasis on maintaining the momentum on enlargement. Dr Vella referred to the transformative power of the EU and the effect that this could have on the Balkan countries and Turkey. He also argued that the EU must see enlargement in the context of the competition it was facing from other powers in its neighbourhood. The minister proposed that "Enlargement is a key contributor in shaping the Union".¹⁹⁴

A substantive part of Minister Vella's presentation to AFET focused on the EU's relations with Turkey. While stressing the EU's well-aired concerns about the political situation in Turkey, he urged the Union to upgrade and modernize its customs union with that country. However, no progress was made on this proposal which is still being discussed by the Council. In the meantime, in his State of the Union speech delivered some three months after the end of Malta's Presidency, Commission President Jean-Claude Juncker ruled out the possibility of Turkey joining the EU in the foreseeable future, adding that it (Turkey) had been taking giant strides away from the EU for some time. He was referring to the deteriorating political and human rights situation and the imprisonment of journalists in Turkey.¹⁹⁵

The EU-Tunisia Association Council

As already indicated, during Malta's Presidency, the Minister for Foreign Affairs, George Vella, co-chaired a number of important meetings on behalf of the High Representative Federica Mogherini. One of these meetings was that of the EU-Tunisia Association Council, particularly in view that Tunisia is one of Malta's important neighbours and a country which has enjoyed long-standing relations with the EU. It was in Tunisia that the Arab uprisings were triggered off and it is the only country in the Arab world that has made great strides in advancing in its road to democratic transition.

The EU-Tunisia Association Council met in Brussels on the 11th May. The Minister for Foreign Affairs of Tunisia, Khemaies Jhinaoui, participated and Co-Chaired the meeting. Important to note also that the European Commissioner for Neighbourhood Policy and Enlargement Negotiations, Johannes Hahn, also participated in the meeting. The discussions covered the latest political and institutional developments and progress made in the

¹⁹³ European Commission (2017d).

¹⁹⁴ Government of Malta (2017b).

¹⁹⁵ European Commission (2017e).

process of democratic transition in Tunisia. Views on the situation in Libya and on security and counter-terrorism were exchanged.

Like most Mediterranean rim countries of both the northern and southern shores, but for different causes and reasons, Tunisia has suffered economic disruption that has left it with several problems particularly high unemployment rates. For demographic reasons, Tunisian young people are the more adversely affected by unemployment. During the Association Council meeting, the dialogue focused on this pernicious aspect of the unemployment problem – namely youth unemployment, education, employability and participation in public life.

The Council discussed the priorities of the EU-Tunisia partnership, namely: namely support for socio-economic development, trade relations as well as migration and mobility.¹⁹⁶

Conclusion

In this brief appraisal of Malta's Presidency and the external relations of the EU, we have focused on a few major objectives in Malta's pre-Presidency Programme. Reference was made to the decision-making structures and the constraints placed on any Member State heading the Presidency of the Council of the EU in the field of foreign policy. These constraints are more acute in the case of small Member States which have much more limited human resources as well as sources of information on which to rely. Yet, Malta's Presidency has shown that if a Member State puts its mind to it, organizes its limited resources well and focuses on the most urgent and burning issues, then it can make headway.

The main task of the Presidency is not to solve all the issues confronting the Union at any time, in any case six months are insufficient for doing that, but to help the unfinished business on the EU's agenda to cross the finishing line. To achieve this a Member State requires patience and diplomacy. A Small State can neither entice compliance by offering advantages nor force recalcitrant States through the fear of punishment. It has neither carrots nor sticks but a genuine desire, leadership and the political acumen in the search for a suitable and balanced compromise which often convinces bigger States to overcome their fears and suspicions.

Malta's success in moving the migration agenda forward owes much to its ability to remain focused. Indeed, neither the heated trans-Atlantic exchanges that reared their head as soon as the Trump administration took the oath of office, nor the ups and downs of BREXIT or the negative attitude of a section of the British press deflected the Maltese side from its objective. It was also useful that Malta had achieved some experience on the issue of migration in

¹⁹⁶ Council of the European Union (2017b).

diverse ways: it had confronted the migration challenge for close to 17 years, had explored every nook and crevice of the EU’s legal structure in the hope of finding what is useful to help it confront the challenge in the EU institutions and had at times stood alone and isolated as other Member States failed to come to its rescue when the arrival of irregular migrants had become acute. The experience gained at the EU-Africa Summit of November 2015 was also a useful springboard to the results achieved by the 2017 Malta’s EU Presidency.

The analysis in this chapter has focused on the main objectives in the CFSP/external relations dimension which fall under the wings of the High Representative, the FAC and the EEAS. But by reference to two initiatives in the maritime sector, one of Malta’s six main Presidency priorities, it was shown how a Small State Presidency of the Council of the European Union can also play a distinct role in promoting regional understanding and cooperation. While the hard-foreign policy issues such as the Syrian and Libyan crisis stayed almost entirely in the hands of the High Representative and the FAC, the maritime initiatives took place in informal ministerial meetings unconnected with “High Politics” but perhaps equally or more fruitfully effect in promoting mutual understanding between States in the longer-term perspective. The modest steps taken in pushing the agenda forward within the maritime sector also shows the kind of role that Small States can play in shaping the international or regional agenda during their short EU Presidencies of the Council of the European Union.

Diagram 1 - Foreign Affairs Council Meetings and Related Events during Malta’s EU Presidency		
DATE (2017)	TYPE AND PLACE OF MEETING	MAIN TOPICS DISCUSSED
16 th January	FAC, Brussels. The first meeting which took place in the Europa Building which is the new seat of the European Council and the Council of the EU.	Syria and the Middle East. The Council reiterated the EU’s full support to the UN-led process in Syria and the EU regional initiative on the future of Syria after the end of the conflict. The meeting also discussed the Middle East peace process. The council also reaffirmed its support for the democratic process in Lebanon.
6 th February	FAC, Brussels.	Libya was the main topic. The EU decided to join the United Nations, the League of Arab States and the African Union to form a Quartet to stabilise Libya. The council reaffirmed its support for a comprehensive agreement on the Middle East and the two state

		solution. Situation in Egypt and the Ukraine was also discussed.
2 nd -3 rd March	Informal Meeting of Trade Ministers which was held in Malta	The meeting was chaired by Dr Chris Cardona, Minister for the Economy, Investment and Small Business. European Commissioner for Trade Cecilia Malmström attended the meeting.
6 th March	FAC, Brussels.	Western Balkans, Security and Defence particularly improvements in the CSDP missions. Guidance on strengthening synergies on climate change were also agreed.
6 th March	EU-Kyrgyzstan Cooperation Council, Brussels	The Cooperation Council was chaired by Dr George Vella, Minister for Foreign Affairs of Malta. The Council discussed trade and development but the main focus was on political issues. The EU encouraged the Kyrgyz Republic to strengthen further competitive parliamentary elections and the rule of law, the fight against corruption and judicial reform. The EU called on the Kyrgyz government to guarantee the independence of the judiciary. The EU welcomed the rejection by the Kyrgyz Parliament of the "foreign agent law" as a recognition of the important positive role that the civil society traditionally plays in the Kyrgyz Republic.
13 th March	EU-Algeria Association Council, Brussels.	The meeting decided the EU-Algeria Partnership Priorities and €40m worth of projects mostly in renewable energy.
18 th March	Libya Quartet, Arab League Headquarters, Cairo.	The first Quartet meeting on Libya.
31 st March	EU-Moldova Association Council, Brussels.	It was attended by Moldova's Prime Minister Pavel Filip and discussed bilateral relations, the reform process in Moldova and security and defence policy. Moldova is negotiating a deep and comprehensive free trade area with the EU.
3 rd April	FAC, Brussels	The Council adopted the EU Strategy on Syria. It also discussed Yemen and Libya.
4 th -5 th April	Conference, Brussels	The EU, Germany, Kuwait,

		Norway, Qatar, the United Kingdom and the United Nations co-chaired the Brussels Conference on Supporting the future of Syria and the region.
26 th -27 th April	Informal Meeting of Defence Ministers, Malta	The meeting was hosted by Malta and was chaired by High Representative of the EU for Foreign Affairs and Security Policy Federica Mogherini. The Secretary General of NATO and the UN Under Secretary General for Peacekeeping Operations were also present for part of the discussion.
28 th -29 th April	Foreign Ministers, Gymnich meeting, Malta	Hosted by Malta, an informal meeting of all EU Ministers of Foreign Affairs who later in the afternoon met their counterparts from the candidate countries.
11 th May	EU-Tunisia Association Council, Brussels.	It was chaired by Minister for Foreign Affairs, George Vella representing Federica Mogherini. The Minister for Foreign Affairs of Tunisia, Khemaies Jhinaoui participated. The discussions covered the latest political and institutional developments and progress made in the process of democratic transition in Tunisia. Views on the situation in Libya and on security and counter-terrorism were exchanged.
15 th May	FAC, Brussels.	The focus was on Africa but Venezuela, Eastern Partnership, Security and Defence were also discussed. On Africa, the EU announced that it wished to refocus the relationship from aid to Partnership.
23 rd May	Libya Quartet, Brussels.	Second meeting of the Quartet.

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Chapter 8

A Small State at the Wheel: Malta's Contribution to reaching the New European Consensus on Development

Milan Pajic

Introduction

This chapter examines the contribution of Malta's Presidency of the Council of the European Union to EU Development Policy, which culminated with the signing of the New European Consensus on Development (NCD) in the final days of its term.

The essay analyses the processes, influences and demands behind the drive towards the NCD, and explores the role that Malta's Presidency played in concluding the text. Considering that Malta does not have a long track record in development policy, it was interesting to assess how it managed to drive the process to conclusion within the term of its Presidency. This is even more relevant, considering the nature of the NCD, which is not a *typical* EU document (i.e. it is neither a legal act nor a Council conclusion), but a hybrid text of political importance concluded between the EU and its Member States.

The paper also looks into small state influence in the EU, and provides more empirical evidence for the theoretical framework of actor-based institutionalism, while further validating the hypotheses on how small states can influence EU decision making.

Theoretical Framework and Hypotheses

Measuring the level of influence that a small member state exerts in the EU is a complex topic, mostly because there are diverse interpretations among scholars of the term "influence", especially when applied to small states.¹⁹⁷ For this reason, the chapter rather looks at how Malta worked to promote its goals in EU Development Policy during its Presidency.

The underlying theoretical framework is based on the paradigm of "actor-centred institutionalism", developed by Mayntz and Scharpf in their work "*Gesellschaftliche Selbstregelung und politische Steuerung*" [*Social self-regulation and political control*].¹⁹⁸ This concept effectively incorporates institutionalist and rational choice assumptions which state that institutions are a crucial factor in affecting the behaviour of states, which provide both

¹⁹⁷ Baillie, S. (1998) p. 94.

¹⁹⁸ Baillie, S. (1996) p. 7-14.

opportunities for, but can also restrict action.¹⁹⁹ This approach was already used by several authors²⁰⁰ to analyse the influence of small states on the EU institutions and different policy areas.

The hypotheses in this paper also incorporate an “actor-centred institutionalist” approach on small state influence which was developed by Baillie in her work on Luxembourg and the EU institutions.²⁰¹ These hypotheses hold that a combination of factors relating to the EU set-up and the specificities of small states can contribute to them achieving their aims. Namely:

- (1) The EU decision making system itself gives small states many possibilities for representation and cooperation to gain from;
- (2) A small state might be specialised or have unique resources in a specific sector;
- (3) A state’s limited resources can allow it to exert more influence, because it is not seen by the bigger states as a threat, and has fewer vested interests which allows it to be an impartial coordinator, i.e. an “honest broker”;
- (4) The size of a small state’s administration creates internal cohesion and solidarity, reduces the lines of communication and facilitates decision making;
- (5) Cooperation and forming alliances with other countries gives small states more chances of safeguarding their interests.

Methodology

Since the NCD was concluded recently, the academic research on the topic is still sparse. Therefore, the empirical research consisted of primary sources (official publications), and third-party commentaries (NGOs and think tanks). The qualitative research consisted of elite interviews with the persons who were responsible for the drafting of the NCD in the EU institutions and the Maltese Presidency. Since there is no public record of the negotiations leading up to the conclusion of the NCD, interviews with officials provided the best way to learn what happened during the negotiations and to test the hypotheses outlined above, as well as assess the role that the Maltese Presidency played.

Literature Review

The available academic literature on the topic mainly concerns the previous European Consensus on Development from 2005, with the respective authors emphasising its importance in the evolution of EU Development Policy since

¹⁹⁹ *Ibid.*

²⁰⁰ Goetschel, L. (2000); Bunse, S. (2009) ; Baillie, S. (1998); Panke, D. (2010); Nasra, S. (2011).

²⁰¹ Baillie, S. (1996).

the late 1990s and early 2000s.²⁰² They highlighted its symbolic meaning for EU Development Policy as the first time that all EU institutions and the MS “agreed on a common view and set of strategies to guide their policies and actions in the promotion of international development”.²⁰³ Moreover, this was also the first time that the EU developed its own direction on development policy, independently from the “Bretton Woods system” and the “Washington Consensus”. This impetus came after the EU was strongly criticised by NGOs and certain MS on the lack of its capacities and accountability in external aid programmes.²⁰⁴

The literature on the NCD itself is mostly composed of contributions from NGOs to the European Commission’s public consultation on NCD as well as position papers on the draft text; papers by the most prominent development NGOs such as Oxfam,²⁰⁵ the European NGO Confederation for relief and development (Concord)²⁰⁶ and the Overseas Development Institute²⁰⁷ outline what the NGO community would have liked to see in the final text of the NCD. Overall, they were positive on the vision set out in the NCD and its comprehensive approach, and their main demands were for stronger prioritisation of issues and the drafting of strategies for the implementation and financing of the vision outlined in the NCD.

What is the New European Consensus on Development?

The NCD created a common framework for European development cooperation which, for the first time, applied in its entirety to all EU institutions and each EU Member State (MS), unlike the European Consensus on Development (ECD) from 2005 which was divided in two parts: one applying to the European Commission and the other to the MS, and focussed on complementarity and coordination of EU development policy, and thus differentiating between EU and MS actions.²⁰⁸

According to development policy academics,²⁰⁹ the Organization for Economic Cooperation and Development (OECD)²¹⁰ and certain civil society organizations,²¹¹ the ECD was a useful tool, fostering a shared and common

²⁰² Carbone, M. (2007); Dearden, S. (2007); Orbie, J. and Carbone, M. (2011).

²⁰³ Carbone, M. (2007) p. 1.

²⁰⁴ Grimm, S. (2006).

²⁰⁵ Oxfam (2016).

²⁰⁶ Concord (2017b).

²⁰⁷ “The proposed new European Consensus on Development – Has the European Commission got it right?” Faure, R. and Maxwell, S., Policy Briefing, ODI, February 2017.

²⁰⁸ Official Journal (2006).

²⁰⁹ *Supra*, note 11.

²¹⁰ OECD (2007).

²¹¹ “The European Consensus on Development”, CARE International, September 2016.

vision for EU and MS development cooperation and holding the EU and MS to account on their commitments.²¹²

The update of the ECD was necessitated by the long period since its conclusion, and the many new developments that occurred since then, both within the EU²¹³ and on the multilateral level.²¹⁴ To accommodate these changes, the European Council proposed the modernization of the consensus on 12th May 2016.²¹⁵ The initiative came from High Representative/Vice President of the Commission (HRVP) Federica Mogherini and Commissioner for International Cooperation and Development Neven Mimica, who aimed to use it as “a tool to implement the 2030 Agenda for Sustainable Development”.²¹⁶

The Commission (COM) presented its proposal for a new European Consensus on Development to the Council and the EP on 22nd November 2016,²¹⁷ and was preceded by a comprehensive public consultation.²¹⁸ At the start of its Presidency in January 2017, Malta ambitiously took it upon itself to steer the file to conclusion within its tenure.²¹⁹ After a last-minute attempt by one MS to alter the text of the NCD (see below), the final agreement was reached by EU foreign ministers at the Council meeting on 19th May 2017.²²⁰

In essence, the NCD sets down a blue-print on how the EU and its MS will conduct their respective development policies and implement the SDGs, up to 2030. It also recognises the strong links between development and other policies, such as peace and security, humanitarian aid, migration, the environment and climate change.²²¹

According to an EU MS diplomat, the NCD is a “very important document”, likened to a “constitution for EU Development Policy”,²²² and in the words of a development policy practitioner, “the consensus will shape how some 14 billion Euros a year is spent for the next decade”.²²³ This was also underlined

²¹² “The New European Consensus on Development”, European Parliamentary Research Service, 2017.

²¹³ Such as the conclusion of the Lisbon Treaty (2009), and the EU Global Strategy (2016).

²¹⁴ Namely, the Addis Ababa Action Agenda (2015), the Paris Climate Agreement (2015) and the 2030 Agenda for Sustainable Development (2015).

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²¹⁹ Interviews.

²²⁰ Council of the EU (2017).

²²¹ “The new European Consensus on Development – EU and Member States sign joint strategy to eradicate poverty”, Council of the European Union, 7th June 2017, Brussels.

²²² Interviews.

²²³ “An uneasy European consensus for development”, Publish what you fund, 9th June 2017.

in an interview with a development policy academic who stated that the NCD provides a basis on which the European Parliament and the European public can measure the EU and its MS achievements in Development Policy.²²⁴

Despite the comprehensive nature of the NCD and the public consultations, it was received quite critically by NGOs and Non-Governmental Development Organisations (NGDOs).²²⁵ While most commended it for making a reference to their specific areas of interest, some of the more influential NGDOs (like Concord²²⁶ and Oxfam²²⁷) disapproved of the fact that the final text included language on tackling migration and linking it to security; Oxfam emphatically stated that “EU governments have chosen to put their own political objectives ahead of those of development.”²²⁸ Unsurprisingly, all the EU and MS officials interviewed said that the criticism was unfounded, citing that only three points (39, 40 and 41) out of the 123 in the NCD concern migration. Secondly, the topic of migration and security touches on the difficult debate of ensuring security before development can take place. Nevertheless, while tackling migration does not form part of the SDGs, ensuring security is one of the main goals, and it is enshrined in SDG 16: Peace, Justice and Strong Institutions. Overall, it is difficult to argue that the references to tackling migration in the NCD were not included for national political purposes, while the NGDO concerns with the migration and security nexus will only materialise if the EU starts shifting resources from eradicating poverty to funding security contractors, however this paper will not go into that debate.

Starting Positions

Maltese Presidency Priorities

Historically, Maltese involvement in overseas aid was mainly carried out by the Catholic Church which included aspects of missionary work, poverty alleviation but also political engagement.²²⁹ Traditionally, Malta was perceived as a net beneficiary of aid,²³⁰ and it was only in 2004 that it included a development policy heading in the national budget.²³¹ With the country’s entry into the EU, it started building its capacities in this regard, like many other new EU MS.²³² In 2006 development assistance policy was outlined as one of the twenty areas under the Strategic Objectives of the Ministry for Foreign Affairs.²³³ Subsequently, the 2013 Guiding Principles of

²²⁴ Interviews.

²²⁵ “EU signs new consensus on development amid NGO outcry”, Jessica Abrahams, DEVEX.

²²⁶ Concord (2017a).

²²⁷ Oxfam (2017).

²²⁸ *Ibid.*

²²⁹ Calleja-Ragonese, I *et al.* (2014).

²³⁰ Grech, O. (2009).

²³¹ “Malta’s overseas development policy”, Times of Malta, 23rd January 2005.

²³² Lightfoot, S. and Szent-Iványi, B. (2015).

²³³ Malta MFA (2006).

Malta's Foreign Policy mentioned that Malta will "take a more participatory role in the field of humanitarian and development assistance".²³⁴ However, it was only in 2014 that Malta elaborated on its development policy goals,²³⁵ by outlining ten priorities for action through the years 2014 to 2020, highlighting areas such as democratization, good governance, migration and asylum.

With the rise in the numbers of undocumented migrants arriving to its shores, curbing immigration was a top policy challenge for the Maltese Government ever since it joined the EU in 2004. According to the ex-Foreign Minister, Michael Frendo, "the link between migration and development was important from the start of Maltese [Official Development Assistance]".²³⁶

The importance given by Malta to the development/migration nexus is also shown in its Presidency priorities,²³⁷ which stated: "Malta wants to push for a holistic approach to migration, including both the internal and external aspect".²³⁸ Although development policy as such did not feature among the top six priorities of its Presidency, concluding the NCD was nevertheless a main priority in the National Programme of the Presidency.²³⁹ However, in this instance, it also was linked to migration, where Malta explicitly wished the NCD to focus on the "migration and development nexus" in order to "achieve a comprehensive and balanced approach that addresses the root causes of migration and forced displacement."²⁴⁰ Overall, it seems that Malta wanted to address the multifaceted causes of migration in all the possible policy areas, and NCD provided such a platform.

Therefore, at the moment of starting negotiations on updating the NCD, Malta did not have a strongly set agenda like other MS with a long track record in development policy. Moreover, the fact that it held the Presidency also meant that it had to be seen as a "neutral broker" in order to build consensus between the different EU institutions and the MS,²⁴¹ which constrained its possibility to push for any specific foreign policy or development interest. However, Malta did see an opportunity to conclude the NCD file within its term, and according to Maltese officials, "give it the visibility that this important EU policy deserves, in front of [EU] partners".²⁴² This attitude is also typical in the Council, since Presidencies generally try to conclude as many dossiers as possible during their term.

²³⁴ Malta MFA (2013) p.4.

²³⁵ Malta MFA (2014).

²³⁶ Ragonesi, I *et al.* p. 108.

²³⁷ Government of Malta (2017a).

²³⁸ *Ibid.*

²³⁹ Government of Malta (2017b).

²⁴⁰ *Ibid.* p. 17.

²⁴¹ Bunse, S. (2009).

²⁴² Interviews.

Priorities of the European Commission and Parliament

Along with the Council, both the European Commission and the European Parliament (EP) also wanted to update the EU's development policy to take into consideration the recent developments. There was a tacit agreement between the COM and the EP that the NCD must be finalised by the European Development Days (EDD)²⁴³ that were to be held in June 2017.²⁴⁴ Although the two institutions had similar overarching goals, they disagreed on the technical level of how stringently the EU should keep the MS to their commitments on development policy. For example, while both institutions wanted to have stronger language on Sexual and Reproductive Health and Rights (SRHR), the EP was adamant to keep the MS's commitment to dedicate 0.7% of their Gross National Income to Official Development Assistance (ODA).²⁴⁵

Priorities of the Council of the EU

While it would be difficult to outline the priorities of each EU MS in this chapter, given their various approaches to development, diverging priorities (including geographical ones) and vested interests (many with a long ODA history), one has to consider that the issue of migration has been very high on the political agenda of most countries over the past few years. The influx of refugees and migrants from Europe's southern and eastern dimensions and the terrorist attacks within the EU, propelled strong public sentiment in the EU. Thus, similarly to Malta, addressing the complex migration/development nexus was also a political priority for the other MS. This is reflected in the COM's proposal,²⁴⁶ which already included language on migration, and thus pre-empting the political priorities of the MS, including Malta.

At this point, it is important to note that Malta adopted the COM's proposal as the base document for discussions in the Council, showing that the COM had taken in advance many of the MS preferences and red-lines into consideration. This also provides evidence that, from a small states' perspective, building on work undertaken by institutions with more resources is often a necessity.²⁴⁷

Reaching the Consensus: How the talks progressed

The hybrid nature of the NCD left the institutions and especially the Maltese Presidency without a blue-print to follow, which increased the initial complexity of how to deal with the dossier. As already mentioned, the COM's proposal was the basis for negotiations at the level of the Council

²⁴³ The EDD are a yearly gathering of the most important actors in the development policy field from the EU, partner countries and international organisations.

²⁴⁴ Interviews.

²⁴⁵ European Commission (2016b).

²⁴⁶ European Commission (2016a).

²⁴⁷ Pace, R. (2015).

Working Party on Development Cooperation (CODEV), chaired by the Presidency. CODEV consists of officials in charge of development policy from the MS Permanent Representations to the EU who meet on a weekly basis. The text was then to be adopted by the Foreign Affairs Council. An issue that added to the complexity was that in CODEV, the MS came to a decision by unanimity, meaning all MS had to agree with the text in its entirety.

On the side of the EP, the lead negotiators hailed from the main parties: Bogdan Wenta (Poland) from the European People's Party (EPP), and Norbert Neuser (Germany) from the Socialists and Democrats (S&D). The EP's negotiating position was based on a resolution penned by the two.²⁴⁸

Secondly, since there was no previous set-up for concluding a hybrid text like the NCD, the Maltese Presidency decided to apply the Community Method to the discussions. This entailed basing the inter-institutional negotiations on the COM proposal as well, while the Council and the EP provided their feedback after internal consultations. This also meant that from the beginning, the inter-institutional negotiations were held in an informal trilateral format (with a rotating chair), composed of representatives from the EP, COM, and the Presidency representing the Council and being its penholder. Such a set-up allowed the stakeholders to save time since all parties involved were familiar with the Community Method and its processes.²⁴⁹

The negotiations progressed smoothly overall, with the major disagreement between the EP and the Council being on the 0.7% GNI threshold for ODA. Considering that many EU MS were still recovering from the effects of the financial crisis, and some have never before achieved such a high level, they were unwilling to agree on a strong language in the NCD urging them to meet the threshold.²⁵⁰ The EP eventually decided not to push for this commitment due to strong resistance from the Council and other political reasons, namely, it did not wish to appear imposing on MS following the UK vote to leave the EU.²⁵¹

After a relatively short but vigorous period of negotiations (discussions were held between January and May 2017), an agreement was reached at the tripartite level on the symbolic date of 9th May 2017 (Schuman Day).²⁵² However, there was an unexpected setback at the final stage in the Council of Ministers; although the Hungarian representatives in CODEV agreed to the

²⁴⁸ European Parliament (2017).

²⁴⁹ Interviews.

²⁵⁰ European Parliament (2017) p.10.

²⁵¹ Interview with MEP Neuser.

²⁵² Interviews.

text in its entirety, the Hungarian Government did not wish to “endorse an EU development strategy that cites immigration as something positive”.²⁵³

This threat of a veto resulted in a flurry of political activity that involved the top levels of the EU institutions and the Presidency. According to sources, the HRVP Federica Mogherini, Commissioner Neven Mimica and the Foreign Minister of Malta, George Vella, held urgent talks with the Hungarian Foreign Minister Péter Szijjártó, to iron out a compromise. In order to keep the consensus and address the Hungarian concerns, the parties agreed to remove “unnecessary repetitive language on migration”, and insert a reference to the Lisbon Treaty’s language on migration (Article 79(5) TFEU).²⁵⁴ Agreement was reached in the Council on 19th May 2017.²⁵⁵

It is important to note that the negotiators also praised the EP for playing an exemplary role at this moment,²⁵⁶ that is, it swiftly gave its approval to the newly amended language. Although the EP and its co-rapporteurs “deplored” the last-minute changes by the Council, they considered that many of EP’s demands were taken up and there were many positive elements in the NCD. Thus, they recommended the EP to endorse the compromise,²⁵⁷ and allow it to be ready for signature. The NCD was signed during the EDD on 7th June 2017 by the Prime Minister of Malta, Joseph Muscat on behalf of the Council and EU MS, the President of the European Commission Jean-Claude Juncker, the HRVP Federica Mogherini, and the EP President, Antonio Tajani.

How Malta contributed to reaching the NCD

Analysing how Malta contributed to reaching the NCD provides an opportunity to verify the hypotheses on small state influence in EU decision making outlined earlier.²⁵⁸

Initially, the fact that Malta held the Presidency, gave it considerable influence on driving the process forward as the Chair of CODEV and penholder of the document. In line with hypothesis (1), “the EU decision making system”, in this case: the rotating nature of the Presidency, provided Malta with possibilities for representation and cooperation with other MS and EU institutions. What facilitated Malta’s work to an extent was that all three EU institutions were aligned in the large part on what they wanted to achieve. However, it was up to the Presidency to push the document through

²⁵³ Government of Hungary (2017).

²⁵⁴ Interviews.

²⁵⁵ Council of the EU (2017).

²⁵⁶ Interviews.

²⁵⁷ Interview with MEP Wenta.

²⁵⁸ *Supra*. p.2.

to completion in the specified time-frame. To do so, the Presidency increased the number of Council meetings from one, to a minimum of two per week.²⁵⁹

Secondly, although Malta did not have a history of development policy expertise, it did have a unique resource (2) in this case, it was the high quality and competence of its negotiators. Notably, Malta's experienced CODEV chair was also its delegate during the ECD discussions in 2005, which was helpful for the negotiations on the NCD as well. This was confirmed by all the persons interviewed for this research: they unanimously stressed that it was Malta's *human factor* that contributed to reaching the consensus. Apart from the high competence of Malta's representatives, the interviewees singled out their energy and dedication to concluding as many files as possible during Malta's Presidency. A good example of this is that during Malta's term, the Council came to around a dozen conclusions on development policy, while on average it is four or five.²⁶⁰

From the interviews, it was also clear that Maltese negotiators had a good understanding of the functioning of EU's institutions and the legislative processes, as well as of the text in question. According to a COM official, the decision by Malta at the outset of the negotiations to use the Community Method proved crucial; This saved time and allowed the negotiations to be held in a structured manner, which resulted in their ultimate success.

The quality of Malta's negotiators was also showcased in their understanding of the prevailing mood in the different institutions, on which the timeframe of the discussions was conditioned. For example, Maltese Presidency withheld discussing certain COM proposals until the timing was better and the likelihood of accepting them by the MS was higher. Likewise, the skill of Malta's negotiators was showcased during the discussions in CODEV on references to the OECD guidelines on the implementation of the SDGs.²⁶¹ Since there was no agreement between the states on the issue, Malta decided to drop the direct reference to the guidelines, while it included an indirect reference to cooperation with the OECD, in order to reach consensus.²⁶²

Malta also managed to keep the balance and build trust in the Council meetings, which was important given that the Presidency did not have a strict Council mandate for the talks. Namely, both the COM and the EP had their initial proposals, or "negotiating mandates" as one MS diplomat put it, while Malta had no such document in CODEV where it would hold the other MS to account on what they could negotiate. Malta's leadership in the Council on securing compromises at this moment was crucial and ensured that the

²⁵⁹ Interviews.

²⁶⁰ *Ibid.*

²⁶¹ OECD (2016).

²⁶² Interviews.

Council was on track during the deliberations and did not get mired in political deadlock. Malta's CODEV chair was apt in reaching agreements in the Council on the positions by using various negotiation techniques, such as regularly breaking off sessions or scheduling informal gatherings when it was clear that compromises could not be found in the official CODEV set-up.²⁶³

Thirdly, the interviews have showed that Malta was considered by all the parties as their main ally, while at the same time they praised its role as an "honest broker" (3) between the various institutional and MS interests. This shows that they did not perceive Malta as a threat or as having any hidden interests, and is in line with a Presidency's role as a "neutral broker". According to Maltese officials, building trust was essential for their work in this aspect as well, and they achieved it through open dialogue and transparent procedures. Moreover, Maltese negotiators fulfilled their duty in finding compromises between the different interests and putting forward realistic proposals, palatable to all the stakeholders. Also, Malta did not pressure the other parties to push through a specific agenda item. According to a MS official interviewed, the Presidency Chair of CODEV was continuously engaged in ensuring that neither side, nor institution, put forward proposals that would not be accepted by the others. A good example of this is the discussion on SRHR, where certain MS did not wish to include it in the NCD while the EP, the COM and other MS did. Here, the Presidency found a solution by proposing previously agreed language (such as from Council conclusions).²⁶⁴

Malta's crucial role as an "honest broker" can best be seen in the discussions in the Council on the issue of migration itself; according to Maltese officials, the Presidency worked tirelessly in CODEV to bridge the gap between MS who see migration as positive and those who wanted to introduce the notion of conditionality between readmission and development aid. The Chair continuously insisted that this was the "European Consensus on *Development*" and not the "European Consensus on *Migration*" in order to dissuade strong language on migration. This also shows that concluding the NCD was Malta's highest priority.²⁶⁵

Fourthly, the top levels of the Maltese Government were also ready to get involved in brokering the deal during the Hungarian veto. This proves that the small size of the administration (4) allowed Malta to promptly respond to unexpected challenges. Malta's Permanent Representative to the EU Marlene Bonnici got involved in the political discussions in COREPER, while the

²⁶³ *Ibid.*

²⁶⁴ Interviews.

²⁶⁵ *Ibid.*

Maltese Foreign Minister talked directly with the EU institutions to his Hungarian counterpart to broker the final deal.

Finally, the Maltese interests regarding migration have come to be shared by many other EU MS, so it is difficult to say if the NCD would have included language on the link between migration and development if this had not happened, especially when one considers that the COM proposal already included language on the topic. Nevertheless, this confirms that a small state needs alliances (5) to push through a desired outcome.

Conclusion

In the words of the Member of the EP, Norbert Neuser: “I am not sure that any other presidency would have managed, or willed, to do what Malta has done to conclude the NCD.”²⁶⁶

This sentiment aptly summarises Malta’s contribution and dedication to building consensus between the EU and its MS on the future of EU Development Policy. This chapter provided ample empirical evidence of how Malta helped reach the NCD, such as through its highly skilled representatives and its apt use of EU’s institutional set-up.

The EU’s institutional set-up itself gave Malta a leading role as the Presidency of the Council of the EU, which allowed it to push through its main goal of concluding the NCD within its term. However, looking at whether Malta pushed through any of its policy priorities in the NCD is more difficult since tackling migration, which has been Malta’s priority since accession, is not only an issue for Malta anymore, but for all EU MS.

Overall, it should not be undermined how Malta managed to harmonise the various approaches to development, diverging priorities and vested interests of the other states, many with a much longer history of overseas development assistance, all within a framework of unanimity at the Council and continuous pressure from the EP and COM for stronger commitments. Despite all of this, Malta managed to leave its footprint on EU Development Policy, and conclude a text that will guide EU development policy actions and budgets and those of its MS for years to come.

²⁶⁶ Interview with MEP Neuser.

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Chapter 9

Neptune's Turn: Maritime Policy during the Maltese Presidency

Roderick Pace

It was not surprising that Malta included initiatives in the maritime sector in its six-month presidency priorities. As an island state at the centre of the Mediterranean Sea, Malta could hardly sidestep the sector. The justification for its inclusion was couched in much broader political terms: that the EU was increasingly becoming dependant on the seas and hence the need to further strengthen the maritime sector under the EU Integrated Maritime Policy (IMP). In the words of the “Maltese Priorities”, the oceans offered “a diverse spectrum of innovative research and commercial activities that could be developed into high value-added job opportunities in line with the Blue Growth Initiative towards growth and competitiveness”.²⁶⁷ In this respect, the Maltese Priorities mentioned two concrete steps: international ocean governance aiming to secure “political endorsement on the way forward on a more coherent, comprehensive and effective EU policy to improve the international ocean governance framework and the sustainability of our oceans”; and the launching of the Western Mediterranean Initiative (Government of Malta, 2017).

In its appraisal of the performance of the Maltese presidency of the Council of the EU in the maritime sector, the newspaper *Politico* gave Malta a 10/10. The same source described as a “crowning achievement” a political agreement reached on technical measures to limit fishing (Politico, 2017). This agreement was reached on 11 May 2017, when according to a Council statement, “the Agriculture and Fisheries Council agreed on a common position on a proposal for new rules on the conservation of fishery resources and the protection of marine ecosystems, often referred to as ‘technical measures’.”²⁶⁸ The decision is intended to permit the modernization of existing rules on how and where fishermen fish and regulate the landing of fisheries resources, technical specifications of fishing gear and measures to protect depleted fish species.²⁶⁹

This chapter assess the work of the Maltese Presidency of the EU Council in the maritime sector. It will not dwell on the technical decisions reached, many of which became EU law after the Maltese presidency, but will focus instead on other achievements that strongly impact future EU policy

²⁶⁷ Government of Malta, 2017.

²⁶⁸ Council of the EU, 2017b.

²⁶⁹ *Ibid.*

development such as Ocean Governance. Ocean Governance covers several activities such as the legal framework based on treaties, customary international law, general principles considered the norm by many states as well as decisions of international courts to mention a few. It includes policies pursued at global and regional levels, their implementation, governing institutions, environmental protection of the oceans, economic activity on the seas and much more.

As a small state with rather limited diplomatic and financial resources which it could dedicate to the Presidency, Malta managed to achieve significant results in coordinating the development of maritime policy during its Presidency, certainly more than just the conclusion of difficult technical dossiers which is also an achievement in its own right: it laid the ground work for far reaching maritime policy developments if the initiatives approved during the presidency are followed through. How can we explain this? My initial take is that Malta felt quite at home in maritime policy because its very existence depends so much on the maritime sector and over several decades it has gathered enough experience and knowledge to help it navigate this policy framework well. The second reason is that over the years, Malta has managed to accumulate a reservoir of expertise in the maritime sector which helped it in no small way in achieving its objectives during the presidency.

Ocean Governance

In March 2017, Malta's foreign minister, Dr George Vella, expanded further on the Maltese ambitions in the maritime sector during a speech he gave at the International Maritime Law Institute (IMLI) at the University of Malta. Minister Vella said that apart from Blue Growth, Malta was aiming to secure a political endorsement at the level of the EU, on how to proceed on international ocean governance "in ensuring the sustainable use of oceans and how best to develop a more coherent, comprehensive and effective EU policy to improve this framework".²⁷⁰ He also stressed the importance of the Western Mediterranean Initiative, progress on nautical tourism, the prioritisation of maritime transport in the EU agenda grounded in the accepted principle that the sector is a global industry regulated at world level. The Minister also said that Malta wanted to prioritise other objectives such as ship safety, the protection of life at sea, living and working conditions, health and safety standards of seafarers.²⁷¹

A few weeks later, on 24th March 2017, the Council of the EU adopted conclusions on "International ocean governance: an agenda for the future of our oceans."²⁷² It is important to highlight here, that a Joint communication

²⁷⁰ Vella, 2017.

²⁷¹ *Ibid.*

²⁷² Council of the EU, 2017a.

by the High Representative of the EU for Foreign Affairs and Security Policy and the European Commission on “International ocean governance: an agenda for the future of oceans” which was published on 10 November 2016, had paved the way for the Council declaration. This type of declaration is of a non-binding nature but gives policy directions and a framework to guide future EU action in this field. Hence, though the progress made during Malta’s EU presidency may be underrated because the groundwork was prepared before the Maltese presidency, it is nevertheless important that the dossier was successfully closed.

The 2017 Council declaration is significant because it identifies a number of fronts on which the EU and its member states need to take urgent action, beginning by stepping up their efforts to protect the oceans from adverse pressures. The declaration makes several major policy proposals which are already deeply rooted in the EU law, (the *acquis communautaire*) policies and practice. The declaration:

- upholds UNCLOS and all treaties and initiatives concluded at the multilateral level to protect the oceans;
- stresses the need for all EU member states to abide by them;
- highlights the importance of the social dimension, particularly support for jobs in the maritime sector;
- calls on the Commission to propose initiatives to the Council to develop Ocean Partnerships with key international partners, as a means of improving global governance and policy coherence vis-à-vis the oceans;
- encourages the EU and its member states to use development aid to strengthen global governance of the oceans in a sustainable and integrated approach;
- calls for more effort to strengthen maritime security; emphasizes the need to address climate change effects on the oceans and protect the ocean environment by controlling pollution. In this case, it emphasized the need to prevent marine litter, banning micro-plastics and stopping illegal or unregulated fishing;
- highlights the protection of biodiversity;
- proposes the boosting of marine and maritime research and innovation activities in Horizon 2020 and its successor programme.

The declaration opens a broad front that requires a lot of energy to implement and several policy initiatives in the different sectors mentioned in the coming years. But in the end, most of the policies and measures listed have to be implemented by governments who are notoriously dexterous for slipping their legal harness. This applies to the EU member states who have a very bad history when it comes to the unsustainable exploitation of fishery resources and to the non-member states over which the EU has no jurisdiction to compel them to adhere and implement agreed measures.

Strengthening research and innovation – and cooperation with civil society as the declaration proposes, can increase knowledge about the problems posed and help mobilise international public opinion to pressurize governments into action. The role of public opinion is itself complex with several ramifications as we find in a resolution on ocean governance approved by the European Parliament on the 16th January 2018 which stressed:

“that improving transparency, public accessibility of information, stakeholder involvement and the legitimacy of UN organisations, including public accountability of country representatives at international bodies such as the International Maritime Organisation (IMO) and the International Seabed Authority (ISA) is a matter of priority in addressing existing shortcomings in the governance framework.”²⁷³

Ocean governance has a special place in Malta’s history. In 1967, just three years after gaining independence from the United Kingdom, Malta’s Permanent Representative at the UN, Arvid Pardo, made a statement at the UN General Assembly calling for the resources of the oceans of the deep sea bed to be declared as the “common heritage of mankind”.

The proposal led to the start of the UN Conference on the Law of the Sea, culminating in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The common heritage was meant to prevent an anarchic scramble for the resources of the deep seabed, which could only benefit those states which had the power and technological capabilities to take advantage of the situation. Later, in the 1982 UN Convention on the Law of the Sea, the deep sea bed was defined as “the area” comprising the “seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction”.²⁷⁴ Pardo had passionately argued that declaring the natural resources of the deep seabed as Common Heritage of mankind would help bridge the economic gap separating the developing and developed States and thus reduce the propensity for international conflict. A 1970 UN General Assembly (UNGA) Resolution further elaborates the operational principles of “the area”, mainly: (i) “non-appropriation” meaning that no “states or persons, natural or juridical, and no “state shall claim or exercise sovereignty or sovereign rights” over it; (ii) all activities within it were to be governed by an international regime which was yet to be established; (iii) all exploitation of resources was to be carried out for the benefit of mankind as a whole; (iv) “the area” was to be reserved exclusively for peaceful purposes; (v) benefits were to be shared equitably by all states and (vi) states were to protect the marine environment and conserve the natural resources of the area.²⁷⁵

²⁷³ European Parliament, 2017.

²⁷⁴ UN Convention on Law of the Sea.

²⁷⁵ United Nations General Assembly, 1970.

Malta also participated in the 1975 UN Environmental Programme's (UNEP) Mediterranean Action Plan (MAP) for the Protection of the Mediterranean Sea against pollution which was based on the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution signed that same year. Concluded between the European Economic Community and sixteen Mediterranean littoral states, MAP grew out of UNEP's Regional Seas Programme and was intended to serve as a model for similar plans for the other oceans. In 1995, MAP was replaced by the Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II). Malta participated in this initiative from the start. A Regional Oil Combatting Centre (ROCC) was established in Malta in 1976 and in 1989 it was transformed into a Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC).

The EU has seen a steady and consistently growing interest in a holistic approach to the maritime sector since 2007 when the European Commission published the 'Blue Paper' setting out the parameters of an integrated maritime approach.²⁷⁶ The integrated approach is based on the notion that the EU can reap better results by coordinating its maritime policies in order to exploit the many and diverse resources of the oceans while at the same time safeguarding their long-term sustainability. This major step forward in the EU's maritime policy occurred under the guidance of European Commissioner Joseph Borg (2004–2010). Commissioner Borg had indicated two priorities at the start of his stint as Commissioner: setting the European Union on the path towards a European Maritime Policy which would increase the coherence and co-ordination between the EU's sea-related policies and activities, "extend and optimise the range of benefits that (are) derived from maritime activities without threatening the integrity of the resource base: the sea itself."²⁷⁷ The second objective which was closely linked to the first was to secure "the ecological, economic and social sustainability of the European fishing and aquaculture industry".²⁷⁸

The current EU Commissioner for the Environment, Maritime Affairs and Fisheries (2014–2019), Karmenu Vella, summarizes his priorities in an antonymic way which however show continuity with the efforts of his predecessors: protecting Europe's environment while maintaining competitiveness; creating sustainable jobs while safeguarding resources; implementing the new Common Fisheries Policy and "leading the task with the EU's global partners, of defining the management and governance of (our) planet's oceans."²⁷⁹ However, beyond this, there is a point to be made

²⁷⁶ European Commission, 2007.

²⁷⁷ Borg, 2009 Archives.

²⁷⁸ *Ibid.*

²⁷⁹ Commissioner Vella, 2017.

that physical geography can mould the political culture of a state in a certain way so that certain forms of behaviour tend to recur. The fact that Malta is an island explains its maritime “bent”. But it also shows that to a greater extent than is immediately apparent, that its political culture has been conditioned by this fact of its physical geography which may explain policy continuity in the maritime sector.

The Blue Economy

The Blue Economy has become the cornerstone of EU maritime policy and not surprisingly the concept has also been gaining interest in research and academic analysis, though it has not so far made perceptible inroads. The definitions of Blue Growth vary a lot, according to what they include and leave out, but a familial resemblance has already emerged that safeguards its integrity, namely that the diverse definitions have not rendered the concept vague, ambiguous and useless as an analytical tool. Peter Ehlers said that the Blue Economy covers “the traditional maritime industry: maritime transportation as the core of maritime industry, including port services and shipbuilding, as well as fisheries, and also the exploitation of oil and gas from the seas. These sectors are still gaining in importance.”²⁸⁰ However, he also highlights the European Commission’s identification of five newer areas of activities that hold a lot of promise for further growth of the Blue Economy, namely aquaculture, coastal and maritime tourism (blue tourism) marine biotechnology (blue biotechnology), ocean energy (blue energy) and Seabed mining. Many of these are already key important contributors to Malta’s economy, with tourism alone contributing just under 15% to Malta’s GDP in 2017, and 26% if the indirect and induced effects are taken into account.²⁸¹

The Blue Economy is predicted to continue expanding in the next 15 years. However, it should not be assumed that it will generate only positives. There are bound to be unintended consequences, as well as costs. Many of the sectors have reciprocal negative effects: the development of offshore activities affects maritime transport, coastal development restricts coastal fishing; aqua culture, coastal and marine tourism, marine renewable energy and recreational fisheries compete for limited coastal space. In a word, the development of the Blue Economy can further stress the Mediterranean ecosystem and the outcome of these developments cannot be predicted with precision.²⁸² With a rapidly expanding population around the Mediterranean coast and the effects of climate change the pressures can only increase. The other problem is that when confronting Mediterranean challenges, the EU cannot operate alone but must secure the active

²⁸⁰ Ehlers, 2016.

²⁸¹ World Travel and Tourism Council, 2017.

²⁸² Piante and Ody, 2015.

cooperation of the non-EU Mediterranean states. Of itself, this produces additional political challenges that require time and effort to implement.

Much to its credit, the Maltese Presidency did not focus exclusively on the beneficial effects of Blue growth. During the Presidency, the European Commission organized a Ministerial Conference in Malta on sustainable fishing in the Mediterranean which took place on the 29th and 30th March. This conference managed to secure the participation of 22 ministers from the 23 littoral states. The conference endorsed the Malta MedFish4Ever Declaration, another piece of soft law which however, was the only possible accord that could be secured from this multilateral initiative. Again the importance of this declaration is that it establishes a set of political and policy objectives which need to be monitored for compliance in the years to come. Over 90% of Mediterranean fish stocks assessed are over-exploited, and despite recent efforts the situation is not improving. Managing fish stocks is complicated by the fact that many of them are shared with non-EU countries. The Declaration will be useful in the EU's diplomatic efforts towards the sustainable and balanced management of Mediterranean fish stocks to convince all the littoral states of the urgent need of its implementation. The Malta meeting followed other gatherings on the same problem which took place in Brussels (April) and Catania (February) the previous year, both of which were addressed by Commissioner Vella.

The European Ministers responsible for Blue growth met in Valletta on 20th April 2017. This was an Informal Ministerial meeting which did not focus exclusively on Blue Growth but also on ocean governance, innovation and nautical tourism. It was co-chaired by Commissioner Vella. The final Declaration adopted by the ministers dwelt mainly on the “positives” of the Blue Economy, but attention was also drawn to certain worrying aspects that required more work such as “the value of healthy and productive oceans for the blue economy”, the need to maintain sustainability and improve ocean governance.²⁸³ Sustainability was the key word of the declaration, appearing no fewer than 16 times in the document.

The ministers called on the EU Member States “to identify potential gaps and challenges, mainly those posed by climate change and insularity, to ensure that the outermost, peripheral, coastal and island regions are offered adequate growth opportunities and benefit from all the relevant funding streams without prejudice to any future discussions. Innovative actions in those regions should respond to those challenges and inefficiencies by facilitating access to markets and services such as e-health, water adequacy, energy efficiency, promotion of circular economy, as well as research to increase the

²⁸³ Valletta Declaration, 2017.

knowledge base on relevant strengths and weaknesses, including on coastal erosion, desertification and ocean acidification.”²⁸⁴

The declaration is useful because it is a springboard for the further development of the EU’s 2012 Blue Growth Strategy.²⁸⁵ It maps out a number of policy initiatives and further studies that the EU needs to embark on in the future to ensure that the conditions for blue growth are strengthened and the environment and ecosystem of the oceans, including the Mediterranean, are safeguarded. It encourages action to meet other serious challenges, some of them already known, such as the need for marine spatial planning and measures against the negative effects of climate change. It underlines the importance and role of innovation and research, skill improvement of the workforce, the circular economy, the role of regional authorities, the strengthening of business and trade links.

The Blue Economy in the Western Mediterranean Basin

On the 19th April 2017, the Commission published a Communication on the sustainable development of the blue economy in the Western Mediterranean (European Commission, 2017). This communication was the work of Commissioner Vella and Johannes Hahn, Commissioner for European Neighbourhood Policy and Enlargement Negotiations. For the proposed actions to be put into effect, the EU has to cooperate with non-member countries in the region. However, cooperation and dialogue between both shores of the Western Mediterranean is not a novelty.

The creation of the Arab Maghreb Union in 1989 and the start of the EU’s New Mediterranean Policy in 1990 led to the launching of the 5+4 Dialogue, the brain child of French President Francois Mitterrand, involving France, Italy, Portugal and Spain on the northern shore and Algeria, Libya, Mauritania, Morocco and Tunisia on the southern shore. Malta joined this informal dialogue from 1990 as an associate member but became a full member soon after, for which reason the dialogue became the 5+5.²⁸⁶ It is perhaps the informality of this dialogue and the tenacity with which it has been supported by all the participating states at various stages that has kept it alive. The dialogue’s progress has not been linear and it has withstood several storms and friction. For example, problems between Algeria and Morocco over the Western Sahara have often rocked it. The imposition of UN sanctions on Libya in 1992 which lasted until they were lifted in 2004 also raised serious obstacles as did the 2001 Gulf War. Regular ministerial meetings have more or less been the norm since the one held in Oran, Algeria in 2004.

²⁸⁴ *Ibid.*

²⁸⁵ European Commission, 2012.

²⁸⁶ Rome Declaration, 1990.

The first summit of the heads of state and of government of the 5+5 took place in Tunis in 2003 and the second in Malta in 2012. Over the years, the dialogue has evolved and expanded its remit to include other areas in addition to the foreign ministers' meetings, a process which began in 1995. Migration was added in 2002, an inter-parliamentary dialogue in 2003, defence in 2004 and tourism in 2006. In 2007 transport was also added, followed by education in 2009 and the environment in 2010.²⁸⁷ The last foreign ministers' conference met in Algiers in January 2018. At the meeting it was decided that Malta would succeed France in assuming, for the next two years, the northern co-presidency of the 5+5 Dialogue, a position it had held in 2005. It is also relevant to observe that the 5+5 work closely together within the ambit of the Union for the Mediterranean (UfM) to which all the ten countries belong and in collaboration with the UfM's secretariat.

This brief foray into the 5+5 or as it is increasingly referred to, the Western Mediterranean Forum, was needed to show as succinctly as possible the several links of cooperation that link the countries on the two shores of the Western Mediterranean and why this sub-region has all the necessary conditions to successfully complete the proposed initiatives included in the Communication on the sustainable development of the Blue Economy in that sub-region. However, it would be foolish to believe that these links of interdependence are sufficient for the success of the project. The devil is usually in the details and it is these that will make or break the initiative. One thing is certain that the EU and its member states will have to sweat a lot to make it work.

In the Communication the EU proposes several goals, actions and targets summarized in the diagram below. The targets are very ambitious and depend a lot on efficient implementation at national level.

After the Maltese Presidency of the Council of the EU, the Western Mediterranean states meeting in Naples in November 2017 approved the governance and management structure of the initiative. It was decided that the political direction would continue to be provided by the ministerial meetings and that a WestMed Steering Committee be established to act as the main decision-making body. The Steering Committee is composed of one or two national representatives (it is up to the state concerned to decide how many to appoint), the European Commission and the UfM Secretariat.²⁸⁸ The Steering Committee is co-chaired by a member from a Maghreb state and another from the EU (European Commission, 2017b).

²⁸⁷ Dialogue, 5+5.

²⁸⁸ Naples Declaration, 2017.

Conclusion

Six months are not a century and it places natural limitations and restraints on a small country presidency like Malta's. It is always difficult to assess the success or failure of a presidency in a particular policy area considering that many dossiers are initiated before the presidency begins and major political agreements achieved at Council level during the presidency may become hard law only after the presidency's term has ended. This is certainly Malta's experience in the maritime field. In our assessment Malta managed to do a lot and the "technical" agreement reached in limiting fishing in order to conserve fish species in the long-term merits a lot of attention because it managed to unblock a stalemate that had lasted for some years.

On 22nd March 2018, as a follow up on the MedFish4ever Declaration of 2017, the *General Fisheries Commission for the Mediterranean* (GFCM) on which 23 Mediterranean littoral states and the EU, including states of the Black Sea, are represented and which is authorized to adopt binding recommendations on the conservation and management of fishery resources in the region under its purview, issued a set of proposals whose objective is to restore and preserve healthy fishing stocks.²⁸⁹ According to a press statement issued by the European Commission, "The measures ... cover, *inter alia*, a joint inspection and surveillance scheme for the Strait of Sicily and management plans for Turbot in the Black sea, Red coral in the Mediterranean and Blackspot seabream in the Alboran Sea. The measures also set out new fishing restricted areas in the Adriatic Sea and the Strait of Sicily."²⁹⁰ Another objective of the proposals is to change and implement a number of EU legal instruments to implement the decision.

However, moving beyond the practical management of fisheries resources and their conservation for enjoyment of future generations of consumers and the fishing industry, the Maltese Presidency also chalked important achievements in completing key Council declarations which serve as a springboard for future policy developments particularly in global governance and the Western Mediterranean.

Approaches to the Blue Economy and blue growth – which lie at the heart of maritime policy – were also clarified further and boosted by the Maltese Presidency which was alert to the inherent challenges they posed. The traditional and newer forms of economic activities in the Blue Economy can

²⁸⁹ The *General Fisheries Commission for the Mediterranean* (GFCM) is established under the provisions of Article XIV of the FAO Constitution. Its parties – 24 in all – include 9 Mediterranean states, 3 Black Sea states, the European Union and Japan. Partners: the EU and the following member states Bulgaria, Croatia, Cyprus, France, Greece, Italy, Malta, Romania, Slovenia, Spain; the non-EU states: Albania, Algeria, Egypt, Israel, Lebanon, Libya. Monaco, Montenegro, Morocco, Syria, Tunisia and Turkey; and Japan.

²⁹⁰ European Commission, 2018.

lead to benefits, but these sectors also create externalities to each other which need to be mitigated. Hence, for example, a more intensive use of coastlines increases competition for space and calls for spatial management. Unmanaged growth in the Blue Economy can lead to negative consequences.

Lastly, the Western Mediterranean initiative was successfully launched which aims at creating a macro-region in that sub-region linking 10 countries from both shores of the Mediterranean Sea. This was another presidency milestone.

Ocean governance, maritime policy and maritime affairs are of growing importance for the present and future of the world. The maritime sector is a complex one which can only be fully understood – if at all – by a cross and inter-disciplinary approach on several fronts tackling economic, environmental and political problems. The marine environment is increasingly being placed under enormous pressure by man-made, human-induced problems stemming from misuse of resources and the negative impacts of climate change. As a maritime state, an island state, Malta was able to transmit clearly, diligently and successfully its sensitivities toward this sector and using its first-hand knowledge of the issue it was able to overcome the drawbacks of smallness and lead.

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DIAGRAM		
GOALS, PRIORITIES AND TARGETS BLUE ECONOMY WESTERN MEDITERRANEAN		
GOALS	PRIORITIES	TARGETS
A safer and more secure maritime space	Cooperation between coastguards	Full coverage of Automatic Identification System by 2018 aiming to share more maritime traffic monitoring data at regional level; Border surveillance strengthened by involving neighbourhood countries in the Seahorse Mediterranean Network by 2018.
	Maritime safety and response to marine pollution	
A smart and resilient blue economy	Strategic research and innovation	Western Mediterranean countries included in the BLUEMED Initiative and in its Strategic Research Agenda by 2017; - 25 % increase in certified eco-ports and marinas by 2022; - 20 % increase in sustainable aquaculture production value by 2022; - 20 % increase in off-season tourist arrivals by 2022.
	Maritime clusters development	
	Skills development and circulation	
	Sustainable consumption and production (maritime transport, ports, maritime and costal tourism, marine aquaculture)	
Better governance of the sea	Spatial planning and coastal management	100 % of the waters under national jurisdiction and 100 % of coastlines to be covered by Maritime Spatial Planning and Integrated Coastal Management and their implementing mechanisms by 2021; - At least 10 % of the coastal and marine areas to be covered by marine protected areas and other effective area-based conservation measures by 2020; - 20 % reduction in marine litter on beaches by 2024; - Southern Mediterranean countries to be included in EMODNET by 2020; - All States equipped with adequate legal framework and human and technical capabilities to meet their fisheries control and inspection responsibilities as flag, coastal and port States by 2020; - 100 % of key Mediterranean stocks ²⁴ to be subject to adequate data collection, scientifically assessed on a regular basis and managed through a multiannual fisheries plan by 2020.
	Marine and maritime knowledge	
	Biodiversity and marine habitat conservation	
	Sustainable fisheries and coastal community development	

Chapter 10

The Parliamentary Dimension of the Council Presidency

Kenneth Curmi

Context and Definition

Ask anyone about the European Union Presidency, and you are bound to be inundated with references to the executive. Indeed, at the very mention of the word “Presidency”, one imagines Ministers, cabinets and the Council of the European Union. Not surprisingly, given that the official name of the EU Presidency is the Presidency of the Council of the European Union.²⁹¹

One could say that the parliamentary dimension seeks to somewhat correct this by ensuring that the parliament of the Member State holding the Presidency plays an important role during this time. The parliamentary dimension also provides a chance for members of the executive and the European Commission to meet and discuss topics with parliamentarians.²⁹²

Given that the parliamentary institutions are the representatives of the people, the parliamentary dimension’s lack of exposure is an unfortunate reality, and is symptomatic of the strong emphasis generally afforded to the executive, and, in the European context, the Council, which contributes to an unhealthy shift of power towards the executive, effectively weakening the necessary democratic hinge of parliamentary oversight.²⁹³

The reality only adds to the irony, for the structure, process and objectives of the parliamentary dimension naturally overlap and reflect the executive

²⁹¹ A telling semantic that goes beyond mere semantics: there is a Parliamentary dimension to the Council Presidency, and not two distinct dimensions (Parliamentary and Council) to the EU Presidency. It also ties well with Czachór’s own third summarizing point of the history of European parliamentarism up to the Lisbon Treaty, which states that “the provisions of the treaties and political structure of the Community and European Union have minimized the role and significance of the national parliaments, emphasizing the legislative and decision-making positions of the Council of the European Union.” (Czachór (2013) p. 9) and shows that remnants of this phenomenon remain even post-Lisbon.

²⁹² As happened during the meetings organised by the Maltese Parliament, with a long list of high-profile speakers, including First Vice-President of the European Commission Frans Timmermans, Vice-President of the European Commission for the Euro and Social Dialogue Valdis Dombrovskis, President of the European Parliament Antonio Tajani, High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission Federica Mogherini and Michel Barnier, the Chief Negotiator for Brexit negotiations with the UK, amongst others.

²⁹³ Czachór addresses this issue in his paper, pointing out the late response by national parliaments and the European Parliament.

dimension: the two are not competing spheres by nature, but rather, as should be expected, complementary parts to a greater whole.

In many ways, the parliamentary dimension mirrors the Council Presidency. Just as the latter, for instance, employs a collaborative structure comprised of three succeeding presidencies – “Member states holding the presidency work together closely in groups of three, called ‘trios’”²⁹⁴ – the parliamentary dimension has its own trio.²⁹⁵ On 20th April 2015, the Speakers of the Houses of the Parliament of The Netherlands, Slovakia and Malta, signed a declaration of cooperation between the three Parliaments for the period starting from January 2016 to June 2017 (the period of 18 months during which the three Member States would successively hold the Presidency).²⁹⁶ In it, they pledged to (a) ensure effective communication and co-ordination at political and official levels across the three Parliaments with regard to the conferences, programmes and other relevant parliamentary activities related to the respective Presidencies; (b) ensure effective coordination with regard to co-operation with the European Parliament on issues that touch upon the Presidency Trio; and (c) ensure coordination regarding the effective communication of the outcome of conferences and other parliamentary activities to European citizens.²⁹⁷

Meetings held during the Parliamentary Dimension

The parliamentary dimension’s main objective is to provide a meeting place where Members of the parliaments of the EU, including the European Parliament, can meet and discuss subjects of relevance to the Presidency’s priorities.

Just like the Presidency of the Council, the parliamentary dimension lasts for six months, during which a number of meetings are held in the country holding the Presidency and in Brussels. There is indeed a difference between the parliamentary dimension held during the first six months of the year and the one held in the last six, since some meetings are specific to one and are annually and exclusively held at the same time of year.

²⁹⁴ European Council web-page.

²⁹⁵ “The Trio, based on the principle of rotation, ensures continuity and consistency in the work of the Council of the EU. The Trio defines a general agenda and implements a joint programme, while each of its members, in a predetermined order, presides over the Council of the EU for a period of six months.” Parliament of Malta (2017b).

²⁹⁶ The declaration was signed by Mrs Ankie Broekers-Knol, President of the Senate of the Netherlands, Mrs Anouchka Van Miltenburg, Speaker of the House of Representatives of the Netherlands, Mr Peter Pellegrini, Speaker of the National Council of the Slovak Republic and Dr Angelo Farrugia, Speaker of the House of Representatives, Parliament of Malta, meeting in the *Camera dei Deputati* in Rome before the start of the Conference of the Speakers of the European Union.

²⁹⁷ Staten-Generaal, Národná Rada, Parlament ta’ Malta (2015).

Beginning with the meetings which are held in common, we find, most notably, the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union, better known as COSAC,²⁹⁸ which is held bi-annually (together with a meeting reserved solely to the Chairpersons of the Committees, also held bi-annually). COSAC was established in May 1989 in Madrid by the Speakers of the Parliaments of the EU Member States, with the first ever meeting taking place later that year in Paris. It has its own website,²⁹⁹ rules of procedure,³⁰⁰ modus operandi and secretariat.³⁰¹

Next up is the Inter-parliamentary Conference on Stability, Economic Coordination and Governance in the European Union, which also meets bi-annually and “provides a framework for a debate and exchange of information and best practices in implementing the provisions of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union”.³⁰² Whereas the conference is held during each Presidency, the format differs slightly according to the period during which it is held: “In the first half of each calendar year, the Conference takes place in Brussels within the so-called European Parliamentary Week, and it is co-organized and co-chaired by the presiding national parliament and the European Parliament. In the second half of the calendar year, the Conference takes place in the Member State currently holding the Presidency of the Council of the EU and is chaired by the presiding parliament.”³⁰³

Another meeting which is held both in the first and second halves of the calendar year is the Inter-parliamentary Conference for the Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP), which provides “a framework for the exchange of information and best practices in the area of CFSP and CSDP, to enable national Parliaments and the European Parliament to be fully informed when carrying out their respective roles in this policy area.”³⁰⁴

The meeting of Secretaries-General of the European Union Parliaments and the Conference of Speakers of the European Union Parliaments, which bring together the Speakers of the national parliaments of the Member States,

²⁹⁸ The acronym stands for: *Conférence des Organes Parlementaires Spécialisés dans les Affaires de l'Union des Parlements de l'Union Européenne*.

²⁹⁹ <http://www.cosac.eu/>

³⁰⁰ European Parliament (2011).

³⁰¹ This is composed of one Permanent Member, together with a member representing the European Parliament and a member from each of the Parliaments making up the Presidential Troika (not to be confused with the Trio). Thus, I am currently a member of the COSAC Secretariat, and will remain till the end of the Estonian Presidency, when I will be replaced by an Austrian member.

More information at COSAC (2018).

³⁰² Národná rada Slovenskej republiky (2016).

³⁰³ *Ibid.*

³⁰⁴ European Union (2012).

including the President of the European Parliament, are both held annually. The Conference meets in the *first* half of the year, but is organised by the parliament of the Member State holding the Presidency of the Council of the European Union during the *second* half of previous the calendar year.³⁰⁵ It is a “forum for the exchange of opinions, information and experiences among the Speakers, on topics related to the role of parliaments and the organisation of parliamentary functions, as well as for the promotion of research activities and common action, also with respect to the forms and instruments of inter-parliamentary cooperation.”³⁰⁶

The Meeting of the Secretaries-General is “a preparatory stage to the Conference of Speakers of EU Parliaments. It elaborates the content and organization of the agenda of the Conference of Speakers and approves its underlying program framework.”³⁰⁷

To the above-mentioned meetings should be added a number of inter-parliamentary meetings and events, including bilateral visits, on topics chosen by the parliament of the Member State holding the Presidency.

Overview of Inter-parliamentary meetings held during the Parliamentary Dimension of the Maltese Presidency

During Malta’s six-month presidency of the Council of the European Union, five inter-parliamentary meetings were held under the parliamentary dimension. It is important to stress that objectives, results and achievements are harder to quantify when discussing the parliamentary dimension since it exists principally to provide a forum for debate and the exchange of best practices and ideas with the hope of influencing the executive. In the end, however, it is the latter which implements the priorities set by the Presidency.

Meeting of the Chairpersons of COSAC

The first inter-parliamentary meeting, inaugurating the parliamentary dimension of the presidency, was the Meeting of the Chairpersons of COSAC, held on 22nd–23rd January 2017 in Malta. It started with a meeting of COSAC’s Presidential Troika made up of the Chairpersons of the European Affairs Committee of the Maltese, Slovak and Estonian Parliaments, as well as the Chair of the Committee on Constitutional Affairs of the European Parliament.

The agenda of these Troika meetings usually consists of the adoption of the agenda of the meeting of the Presidential Troika; the approval of the draft

³⁰⁵ Conference of Speakers of EU Parliaments (2010).

³⁰⁶ *Ibid.*

³⁰⁷ Národná rada Slovenskej republiky (2017).

programme of the meeting of the Chairpersons of COSAC; the debate on the draft programme for the LVII COSAC; the approval of the outline of the Bi-annual Report of COSAC; as well as the presentation of the letters received by the Presidency and other business to be discussed.

The Troika meeting is in effect a limited and usually fairly brief meeting that presents the opportunity for the Chairs to discuss the meeting to be held the following day and ensure that any disputes are settled beforehand, especially with regard to certain procedural issues or special requests arising from letters previously sent to the Presidency or the Troika by other parliaments.

The meeting is also used to voice or lobby certain interests: during the debate on the draft programme for the LVII COSAC, for instance, the European Parliament Chair Ms Danuta HÜBNER suggested that a speaker from the European Parliament be invited to the debate on migration.³⁰⁸ More importantly, the Troika discusses the draft Conclusions and Contributions, as drafted by the Presidency, and agrees on a compromise text in response to any amendments received by Parliaments/Chambers which is then presented during the meeting the following day.

Letters received mostly consist of parliaments from non-EU Member States requesting participation at COSAC meetings, and parliamentarians of EU Member States requesting items to be put on the agenda. One particular letter, from Mr Vannino CHITI, former Vice President of the Italian *Senato della Repubblica*, asked for the organization of a visit for COSAC members to so-called hot-spots: places seriously affected by and struggling to cope with the effects of migration. This was the first of its kind, and a visit to Pozallo, Sicily, organised by the Italian Senate, eventually took place during the Maltese Presidency on 5th–6th May 2017. It is an example of concrete action arising from the parliamentary dimension of the Maltese presidency.

The following day saw the Chairpersons from all the European Affairs Committees of the participating parliaments get together for a whole day of discussions. The meeting was addressed by the Speaker of the House of Representatives, Hon. Angelo Farrugia, and the Chairman of the Parliament's Foreign and European Affairs Committee, the Hon. Luciano Busuttil. The meeting was divided in two sessions: the first session focussed on the priorities of the Maltese Presidency, and was addressed by the Deputy Prime Minister and Minister for European Affairs and Implementation of the Electoral Manifesto, Hon. Louis Grech, who referred to the challenges that the EU faced and the current times of uncertainty and noted that the Presidency theme was “rEUnion” with sustainability and restoring belief to the European project at its core; and the Minister for Tourism, Hon. Edward Zammit Lewis, who, inter alia, noted that the Maltese Presidency would

³⁰⁸ COSAC (2017a) p. 2.

contribute further to the Digital Single Market Strategy, making a specific reference to the creation of a Digital Tourism Network while also striving to manage the Union's external border better. This was met favourably by participants, who appreciated the fact that the Maltese Presidency had set migration high on its agenda.

The second session focussed on the European Commission Work Programme 2017,³⁰⁹ and was addressed by the First Vice-President of the European Commission, Mr Frans Timmermans. As is usual at these meetings, the sessions closed with a debate, whereas the Chair of the European Affairs Committee of the Presiding Parliament gave the closing remarks. The discussion here centred around the issue of institutional cooperation when setting the EU's priorities, as well as the role national Parliaments had to play in this process. The EU's legislative priorities in 2017, as agreed to by the Presidents of the three institutions, focused on: tackling inequalities; providing security and addressing internal and external threats; supporting the digital single market; making the EU economy sustainable; and implementing the Energy Union Strategy. The benefits of identifying priorities listed in the CWP early on were noted by Mr Bastiaan VAN APELDOORN, Chairman of the Standing Committee on European Affairs of the Dutch Senate. Notwithstanding some reservations expressed by a few speakers, a number of Members welcomed the CWP's focus and ambition. Mr TIMMERMANS was critical with regard to the "green card" mechanism, and argued that this would go against existing treaty provisions and the respective institutional roles and competences assigned therein.

Inter-parliamentary Conference on Stability, Coordination and Governance in the Economic and Monetary Union

The Inter-parliamentary Conference on Stability, Economic Coordination and Governance in the European Union under Article 13 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), is organised jointly by the Presidency Parliament and the European Parliament, and is co-chaired by both. It was held in the European Parliament in Brussels within the framework of the European Parliamentary Week that took place between the 30th January–1st February 2017.

The Conference began with a plenary session on the Fiscal Compact, with the President of the European Parliament, Mr Antonio Tajani, and the Speaker of the House, Hon. Angelo Farrugia delivering opening statements. This was followed by another session dealing with the social dimension in the Economic and Monetary Union. An exchange of views took place in each session.

³⁰⁹ European Commission (2017).

The following day saw a further two plenary sessions, the first dealing with national reforms fostering sustainable growth and chaired by Hon. Silvio Schembri, Chair of the Economic and Financial Affairs Committee of the Maltese Parliament.

The last session focussed on the role of financial assistance programmes and the European Stability Mechanism (ESM) in safeguarding the stability of the euro, and was co-chaired by Hon. Schembri and Mr Gualtieri, with keynote addresses delivered by Hon. Edward Scicluna, President of the Economic and Financial Affairs Council and Mr Klaus Regling, Managing Director of the ESM. Here it was argued that the project of the Euro had no recourse to institutional elements normally found in other federal currency structures, like the dollar, and the ESM therefore was vital in contributing to stability especially in its role in the broader European response to the financial crisis. It was also posited that structural reforms lead to growth and jobs, although within certain spheres, such as social policy, these were best pursued at a national level.

Meeting of the Chairpersons of the Committees on Social Affairs

The Meeting of the Chairpersons of the Committees on Social Affairs was held on 23rd–24th March 2017, though debating sessions were only held on the second day. The meeting was opened by the Speaker of the Maltese House of Representatives, and was followed by introductory remarks from the then Chairman of the Social Affairs Committee, Hon. Anthony Agius Decelis, and a speech by Ms Marianne Thyssen, European Commissioner for Employment, Social Affairs, Skills and Labour Mobility.³¹⁰

The meeting itself was split into three sessions. The first session dealt with poverty and social exclusion and the way towards a more inclusive Europe. This item tied in with the second pillar of the Trio’s work programme: “A Union that empowers and protects all its citizens”.³¹¹

The second session was dedicated to an exchange of best practices on how to tackle social exclusion, whereas the third session focussed on the Europe 2020 policies and the way forward.

Meeting of the Chairpersons of Economic and Environmental Affairs Committees

The Meeting of the Chairpersons of Economic and Environmental Affairs Committees was held on 6th–7th April 2017. This meeting was also inaugurated by the Speaker of the House, followed by introductory remarks

³¹⁰ In the end, Commissioner Thyssen could not make it to the meeting, so a video message was played instead.

³¹¹ Council of the European Union (2015) p. 12.

from the Chairman of the Economic and Financial Affairs Committee, Hon. Silvio Schembri.

The meeting was once again split into three sessions, with the first session tackling the economic and social impact of climate change, thus tying in with the third pillar of the Presidential Trio programme.³¹² During this session, a suggestion was floated by Professor Simone Borg to establish an online forum bringing MPs and experts together, in order to share information, advice and best practices.

The second session addressed the financial aspects of climate change, and focussed on the financial and non-financial costs of addressing the phenomenon, while investigating the cost of inaction (i.e. doing nothing) as opposed to the financial investment necessary to finance climate action. There was general consensus that, despite the current financial environment, it was preferable to ensure that climate action be financed properly, as not doing so would result in future, and possibly significantly higher, costs.

The third session focused on non-state actors, and saw a Maltese company presenting their energy-efficient work related to design and engineering in the construction industry as a model of best practice. What is interesting to note is the academic involvement in this meeting, with most of the speakers hailing from university or industry, and NGOs. The inter-parliamentary meetings of the parliamentary dimension enable politicians to meet and discuss topical subjects with the people who are directly active and involved.

Inter-parliamentary Conference for the CFSP and CSDP

A more intense meeting was the Inter-parliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), held on 26th–28th April 2017 in Malta, which saw three days of discussion on the state of play of the European Neighbourhood Policy, the European response to the instability and threats in the Southern Mediterranean and the Middle East and migration, amongst other topics.

The Deputy Speaker of the House, Hon. Ċensu Galea addressed the meeting followed by the Chairperson of the Foreign Affairs Committee of the Maltese House of Representatives, Hon. Luciano Busuttill, and the Chair of the Committee on Foreign Affairs of the European Parliament, Mr David McAllister. The Maltese Minister for Foreign Affairs, Hon. George Vella, briefed participants on the state of play of the Neighbourhood Policy during the first session.

The second session dealt with instability and threats in Europe's neighbourhood.

³¹² *Ibid.* p. 15.

The third session was an eagerly awaited exchange of views on the priorities and strategies of the EU in the area of CFSP and CSDP with the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, Ms Federica Mogherini, following opening remarks by the Minister for Home Affairs and National Security of Malta, Hon. Carmelo Abela.

Three workshops were held in parallel on the final day: one on the EU's Migration Policy in 2017 and beyond; the second on fighting propaganda and information warfare; and the third on the European Defence Action Plan and EU-NATO relations.

The results of the workshop were presented in the last session, also adopting a set of conclusions which in its preamble regretted but respected the decision of the United Kingdom to leave the European Union.

Amongst other things, the conclusions supported the establishment of a coordinated annual review on defence (CARD), as well as the strengthening of the EU's hard power, and suggested that the EU should significantly step up its cooperation with the Eastern Partnership countries while also supporting the EU's stance vis-a-vis the "illegal annexation of the Crimean peninsula" by Russia.³¹³ In its conclusions, the inter-parliamentary conference also condemned Russia for "vetoing numerous UN Security Council Resolutions on the conflict of Syria".³¹⁴

The IPC invited the United Nations to authorise the start of the third phase of operation EUNAVFOR MED – SOPHIA, though by November 2017 it was still reported that this was proving impossible.³¹⁵

With regard to migration, the IPC called for the establishment of a common European migration policy, and also welcomed the Malta Declaration,³¹⁶ as well as the intention of the Maltese Presidency to present concrete plans to the Council for its implementation.

Finally, with regard to the CSDP, both the intention to setup a Military Planning and Conduct Capability (MPCC)³¹⁷ and the publication of the European Defence Action Plan³¹⁸ were welcomed by the conference.

One notable fact about this meeting was the mix of civil servants and Members of Parliament during the workshops, which was intended to

³¹³ European Union (2017) pp. 3-4.

³¹⁴ *Ibid.*, p. 4.

³¹⁵ Tardy, T. (2017).

³¹⁶ Council of the European Union (2017).

³¹⁷ European Council (2017).

³¹⁸ European Commission (2016).

facilitate an exchange of views and bridge the gap between policy and decision makers, and officials working on the ground.

Meeting of the LVII COSAC

The last meeting held during the parliamentary dimension of the Maltese presidency was the LVII COSAC Plenary, which was held on 28th–30th May 2017, and which brought together “chairpersons and members of the European affairs committees of national Parliaments of the European Union and observer countries, and members of the European Parliament”³¹⁹ to discuss various topics, including, amongst others, a rundown of the achievements of the Maltese presidency and the future of the European Union in the context of Brexit.

The Presidential Troika met on the first day to approve the agenda of the meeting, the programme of the Plenary, the presentation of the 27th Bi-annual Report, and the draft conclusions of the LVII COSAC, and discuss any other business. The Presidency also briefed the Troika on the correspondence received.

After a meeting of political groups, the COSAC meeting started on the second day with a welcome address from Speaker Farrugia, after which the agenda was adopted. The 27th Bi-annual Report of COSAC was presented by the Permanent Member of the COSAC Secretariat. Later, the Minister for Foreign Affairs of Malta, Hon. Vella, briefed participants on the work done and results achieved by the Maltese Presidency of the Council of the European Union. He noted that a Migration Media Award had been established to recognize and reward journalistic pieces reporting on migration. The Presidency had also steered the EU toward considering the future of western Balkan countries, something which the Bulgarian Presidency subsequently followed up on. The Maltese Presidency had also prioritised the single market, and great progress in the involvement of consumers and the establishment of key consumer protections laws had been made.

The second session addressed the role of national parliaments in the future of the EU. The keynote speaker for this session was, once again, Mr Timmermans, together with the Vice-President of the European Parliament, Ms Mairead McGuinness, who called for deeper engagement between national Parliaments and national governments but also between the European Parliament and national Parliaments.

During the debate that followed, many speakers emphasised the importance of involving national Parliaments in the EU decision-making process. The rapport with the citizen was also a recurring subject. Support for the “green”

³¹⁹ Parliament of Malta (2017).

card was also expressed by some participants, and several others expressed their dissatisfaction with what they deemed to be an early deadline set for feedback on the Commission's White Paper on the Future of the EU, to which Mr TIMMERMANS replied by assuring participants that the State of the Union address in autumn would not mark an end to the debate. Several speakers also addressed the "yellow" card raised in regard of the legislative proposal on the posting of workers.³²⁰

Brexit was discussed in the third session. The main speaker was Mr Michel Barnier, the Chief Negotiator for the Preparation and Conduct of the Negotiations with the United Kingdom, who reiterated the key role national Parliaments would play in forging unity of the EU 27 and, given that the new partnership would be a mixed agreement, referred to its ratification by national Parliaments. During the debate that followed, it transpired that transparency of negotiations was the biggest issue when it came to Brexit.

The Blue Economy and the EU Integrated Maritime Policy was the subject of the fourth session, which was addressed by Mr Karmenu Vella, the EU Commissioner for the Environment, Maritime Affairs and Fisheries.

As is usual at these conferences, a meeting of the Chairpersons of COSAC was held at the end of the day.

Migration was the main topic on the second day and the assembly was addressed by Minister George Vella who welcomed the Malta Declaration, adopted at the Informal summit of EU heads of states or governments on 3rd February 2017, as a step toward disrupting the business models of smugglers and human traffickers. This was followed by an address from Ms Maite Pagazaurtundúa Ruiz, Member of the European Parliament, as well as by Mr Lucio Romano, Vice-Chair of the Committee on EU policies of the Italian Senate, who reported on the visit to the hotspot in Pozzallo, Sicily. Twenty-eight COSAC parliamentarians from 18 Member States had participated, in addition to 11 Italian MPs, a number of MEPS and representatives of four regional councils, while two other Parliaments were represented by their staff. The goal of the visit was to raise awareness and it also included a meeting with representatives of civil society held in Ragusa.

Many speakers welcomed the Malta Declaration and the general consensus was that the migratory and humanitarian crisis called for a European response based on solidarity. In this regard, Ms Katarina CSEFALVAYOVA, from the Slovak *Národná rada*, thanked Malta for having picked up on the notion of "effective solidarity" put forward by the Slovak Presidency. A number of speakers called for actions to disrupt business models of smugglers and traffickers in migrants, while several

³²⁰ European Commission (2016).

others stressed the need to differentiate between economic migrants and refugees.

The Presidency Encounters Turbulence

As the Presidency was coming to an end, a general election was announced and parliament was dissolved. This obviously had its implications on the running of the presidency, not least its parliamentary dimension: here, a peculiar situation cropped up just before the last meeting – the LVII COSAC – for the Maltese Parliament no longer had a European Affairs Committee Chairman.

This meant two things: firstly, there was no Chairman to preside over the meeting, and secondly, and as a result of not having a Maltese delegation present at the meeting, there could be no Contribution presented by the Presidency for adoption. As the Speaker of the House, who retains his position till the reconvening of Parliament, explained during the COSAC meeting itself, despite these exceptional circumstances, “the Maltese Parliament remained committed to its obligations arising from Malta’s EU Presidency”, and it was decided that the Speaker would chair the LVII COSAC, and, instead of a political contribution, following consultation with the Troika, the Presidency proposed the adoption of brief conclusions free from political statements.

Challenges faced during the Parliamentary Dimension of the Maltese Presidency

It should come as no surprise that a small Member State holding the EU Presidency for the first time faces particular challenges, mostly logistical in nature.

Finding a suitable venue for some of the meetings, proved to be a daunting task. Malta’s own Parliamentary chamber is understandably small, and whereas its infrastructure is adequate for day to day business, extraordinary meetings like the ones held during the Presidency need sizeable venues. In larger EU member states this is not an issue, as the meetings can be held in the national parliaments’ plenary hall. A meeting like the COSAC plenary involves upward of 250 participants, without counting auxiliary officials, caterers and interpreters.

Providing interpretation may also prove problematic. The COSAC rules of procedure, for instance, dictate that interpretation in all of the EU’s official languages be provided during the plenary meetings.

Size constraints proved particularly troublesome during the Meeting of the Chairpersons of Economic and Environmental Affairs Committees, as this basically incorporated two different committees (often with two different Chairpersons) but only two MPs per Parliament were invited. In the case of

bi-cameral chambers, the attendance was split (that is to say, an MP per chamber), and this could lead to problems since a chamber may have two different Chairpersons for the two Committees.³²¹ Indeed, in a few cases chambers insisted on and sought a special arrangement so that two members from the same chamber could attend. This can be seen in the final list of participants³²² where, for instance, the Belgian Senate had two Chairpersons attending, in addition to another Member from the Belgian House of Representatives.

Ironically however, there were far less challenges of a political nature³²³, as the realities of a small country were surprisingly perceived as an advantage, rather than a weakness. This is attested by a number of interventions. Ms Danielle Auroi, a Member of the French *Assemblée nationale* had “underlined that Malta as a Mediterranean multicultural country could bring EU Member States together and be a bridge with Africa and the Middle East”.³²⁴ This sentiment was echoed by Ms Gabriela CREȚU, a Member of the Romanian *Senat* who also “expressed [her] trust towards small Member States holding the Presidency”.³²⁵ Even the Conclusions of the LVII COSAC noted “the fruitful discussions held during the LVII COSAC and [thanked] the Maltese Presidency for putting on the agenda issues that are most relevant to the European Union at this critical juncture.”³²⁶

Indeed, given the relative freedom of choice of topics, which is after all the point behind the concept of a 6-month rotating presidency, even small countries (and small parliaments) can make a difference by choosing topics in which they have an intellectual or experiential advantage, a point eloquently surmised by Hon. Zammit Lewis during the COSAC Chairpersons meeting, who stressed that “the Maltese Presidency was well positioned to understand the real issues on migration.”³²⁷

Results of the Parliamentary Dimension of the Maltese Presidency

From the above overview of the inter-parliamentary meetings held within the parliamentary dimension, the observer can quickly gather that, despite the lack of PR, the parliamentary dimension is an important side of the Presidency that enables heavyweights in the policy and decision-making sphere, including and indeed most often from the executive, to meet and

³²¹ Indeed, this is usually the case, given that these two committees are usually at logger heads.

³²² Parliament of Malta (2017).

³²³ Apart from the special context in which the COSAC Plenary was held; see above on page 12.

³²⁴ COSAC (2017d) p. 5

³²⁵ *Ibid.* p. 4.

³²⁶ COSAC (2017e).

³²⁷ COSAC (2017b) p. 5.

engage in discussion in an open-forum environment enriched with input from experts and academia. That in itself is a remarkable achievement.

But despite the difficult if not impossible task of quantifying results from such inter-parliamentary fora, one can indeed find concrete results of the parliamentary dimension. The visit to the Hotspot of Pozzallo in Sicily, which happened on 5–6 May, and therefore during the Maltese Presidency, is one such example, for despite being mostly organised by the Italian Senate on the initiative of Senator Vannino Chiti, the idea was brought up at the COSAC meeting in Malta, and then formulated during a side meeting with the Chairperson of the Foreign and European Affairs Committee of Maltese House of Representatives, which supported the initiative in its capacity of Presidency Parliament, and indeed encouraged national parliaments and the European Parliament to participate.

One cannot fail to mention, of course, the conclusions drawn up following the meetings themselves, and whereas it is true that, given the nature of inter-parliamentary meetings, and the different realities that govern the oversight of the executive in different Member States, with the resultant different powers and mandates that parliaments have *vis-a-vis* the latter, these conclusions are not binding, they nevertheless serve two very important functions: (1) they steer local debates to ensure they reflect the European mood and what was agreed at European level; and (2) they serve as milestones enabling discussions to proceed smoothly from one Presidency to another, and ensure continuation by enabling Parliaments, especially those holding the Presidency, to pick up from where others have left off.

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Chapter 11

The EU and Relocation

Petra Bishtawi

Introduction

The recent arrival of a large number of persons seeking international protection placed the matter of migration amongst the priority issues on the EU's political agenda. The influx was, however, distributed very unevenly among member states as some of them took in a disproportionate number of asylum seekers³²⁸ as a consequence of a number of factors, including their geographical location or the state of their economies.

The European Union advocates responsibility, solidarity and partnership. As stated in Article 80 of the Lisbon Treaty; *“The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.”*³²⁹ Responsibility-sharing is therefore one of the key principles on which a common migration and asylum policy should be built in order to address the unequal distribution of asylum seekers.

The EU experienced several important events in the migration and asylum area which significantly shaped the development thereof. One of them was the adoption of the Lisbon treaty, which entered into force in 2009 and introduced Qualified Majority Voting in the decisions taken in this field. Since then there has been no need for unanimous decision making, which led to another important event: the European Agenda on Migration of May 2015, which is the commission's document addressing migration, based on four pillars (reducing the incentives for irregular migration, border management – saving lives and securing external borders, Europe's duty to protect: a strong common asylum policy, and a new policy on legal migration). This document included a proposal (later adopted by the Council) on the relocation of refugees from some member states across the whole EU in the name of solidarity and responsibility-sharing, which contained a relocation key, based on four variables, aiming at reflecting the capacity of each member state.³³⁰

This chapter discusses the impacts of the relocation scheme of the European Union, both theoretical and practical. Theoretically, the contributions of

³²⁸ Disproportionate in relation to the relative size of some member states.

³²⁹ *Treaty on the Functioning of the European Union.*

³³⁰ European Commission (2015).

individual member states in the field of protecting refugees and asylum seekers should be based on their respective protective capacity. Therefore, in order to improve the uneven distribution of responsibilities among the member states, the relocation scheme should apply the principle of protective capacity while assigning shares of responsibility to the member states. Thus, we assess the criteria used for allocation of quotas by the EU against factors reflecting the protective capacity and against responsibility-sharing models proposed by various researchers.

The practical impact is demonstrated by the changes in shares of responsibility assumed by member states. We will illustrate how the EU relocation scheme affects the numbers of refugees and asylum seekers in individual member states and to what extent it improves the situations of states facing a high degree of asylum pressure, such as Malta.

Protective Capacity of States

In order to address responsibility-sharing in the area of migration, we need to apply the concept of protective capacity of states. This can be regarded as the ability of a certain region or country to receive and care for people in need of protection. It is expected to reflect not only the degree to which there is space for people requiring international protection, but also whether economic conditions are adequate to provide for them and whether the entity is able to absorb them into the native population.

Determination of the protective capacity of each member state is the key element because responsibility-sharing models allocate quotas to every entity taking part in collective care for people under international protection.³³¹ Such quotas are derived from protective capacity because the aim of any mechanism is not to put excess pressure on countries or regions, but to improve the distribution of responsibility.

We consider an equitable protective capacity to be one built on three premises. These are the ability to care for, the ability to absorb and the ability to receive further refugees and asylum seekers. Each of these abilities needs to be reflected in the choice of variables that are to influence the protective capacity. Ability to care for is related to the economic strength of each country, which allows it to provide for the material needs of the refugees and asylum seekers. Regarding the ability to absorb, there are more options as to how one could integrate this into the model. This can be achieved by including population size (reflecting society), which can be complemented by size of territory (reflecting space). Alternatively, both these factors can be combined in the population density measure, although it is a relative indicator rather than one reflecting the actual size of each state. Furthermore, the unemployment rate variable relates to the ability to absorb, as it is concerned with the integration of refugees and asylum seekers in the labour

³³¹ Quotas can be allocated both in monetary terms and in terms of numbers of persons under international protection.

market of the receiving country. The last of the three conditions is the ability to receive asylum seekers in terms of asylum reception systems. This is partly an economic issue, but it also relates to capacity and procedures associated with asylum and refugee status determination. In the event that a member state faced a large number of arrivals of asylum seekers in previous years, there may be a strain on the asylum system and a possible backlog of cases. The ability to receive is therefore negatively impacted by the previous numbers of refugees and asylum seekers in each state.³³²

The relationships between protective capacity, the three abilities of states and individual variables are illustrated in Figure 1. The arrows signify the flow of influence.³³³

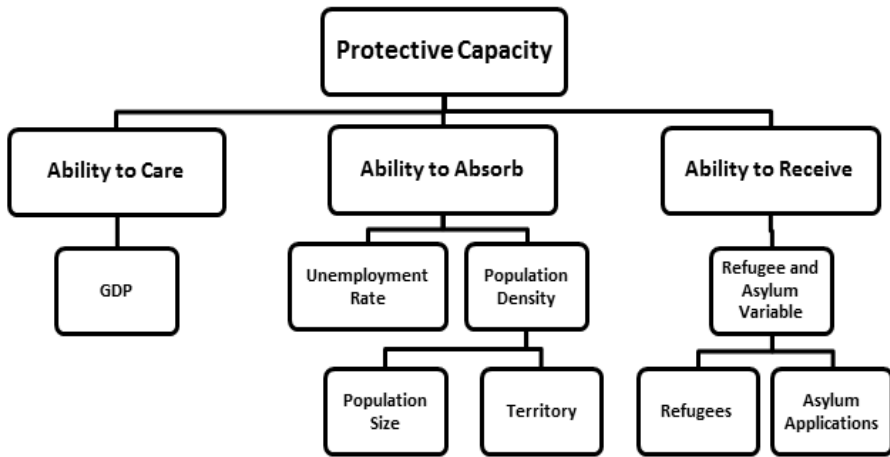


Figure 1: Relationships between Individual Variables, Abilities, and Protective Capacity of a State.

A number of responsibility-sharing models, which contained a determination of protective capacity of states, were introduced by various researchers. In this chapter we will work with four such models in order to access the distribution of refugees and asylum seekers proposed by the European Commission. Firstly, the model proposed by Schuck will be used. He determines protective capacity solely by national wealth, represented by the absolute level of GDP of each country. This way, both economic strength and the size of a country are reflected.³³⁴

The second model introduced by Czaika employs a set of five indices, which affect protective capacity in the same manner (all of them have equal weights). The first is based on GDP per capita and the second on population

³³² Bishtawi, P. and Carammia, M. (2014) p. 9.

³³³ The individual variables are very likely to be correlated to each other (positively in most cases). This correlation is not a problem for protective capacity determination, but it does diminish the importance of relative weights assigned to each variable.

³³⁴ Schuck, P.H. (1997) pp. 279–282.

density of states. The third index is a reflection of ethnic, linguistic and religious fractions in states' societies. The next factor in this model is political freedom, which is composed of the measure of civil liberties and political rights, and the last variable assesses political stability.³³⁵

Thielemann, Williams and Boswell, in their model, apply three criteria which are GDP per capita, population size and population density. These are used to determine three different versions of protective capacity, depending on different relative weights of each variable. The first one has the ratio of weights 50:25:25%, the second one 50:50:0% (excluding population density from the calculation), and the third 50:0:50% (eliminating population size from the formula).³³⁶

The last model is the one offered by Angenendt, Engler and Schneider. The protective capacity is based on the five year averages of absolute levels of GDP, population size, national territory, and unemployment rate of the EU countries, with the ratio of their relative weights 40:40:10:10%. This is done to correct for short-term fluctuations and the fact that not all the variables have the same importance when determining the protective capacity of individual states.³³⁷

Relocation Criteria of the EU Commission

Protective capacity is, according to the EU Commission, calculated with the combination of four variables. These include GDP, population size, unemployment rate, and a five-year average of the number of asylum applications and resettled refugees per 1 million inhabitants. The ratio of relative weights of these variables is 40:40:10:10%.³³⁸

The first dimension, concerned with the ability to care for refugees and asylum seekers, is reflected by member states' GDP. It is given high importance, as it allocates 40% of the responsibility. This is exactly the same as what was proposed by Angenendt, Engler and Schneider. Thielemann, Williams and Boswell, and Schuck assign larger weights to economic strength. The former model assigns 50% and the latter 100%, since it is entirely based on this factor. Czaika, on the other hand, calculates protective capacity in such a way that GDP affects only 20% of it.

In terms of the ability to absorb persons under international protection, the EU uses two variables. Firstly, population size with the relative weight of 40%, and secondly unemployment rate, which determines 10% of member states' capacity. This means that absorption carries a weight of 50%. In

³³⁵ Czaika, M. (2005) pp. 108–112.

³³⁶ Thielemann, E.R., Williams, R. and Boswell, C. (2010) p. 57.

³³⁷ Angenendt, S.; Engler, M. and Schneider, J. (2013) p. 5.

³³⁸ European Commission (2015) p. 19.

relation to the theoretical models, this approach once again resembles that of Angenendt, Engler and Schneider, as it includes these two variables with exactly the same relative weights. However, Angenendt, Engler and Schneider also add the size of national territory, leading to an even higher importance of the ability to absorb refugees and asylum seekers. Thielemann, Williams and Boswell use population size and population density, however the relative weight of variables accounting for absorption is the same as that allocated by the Commission. Czaika's model reflects this dimension by 80%.

The last of the three abilities is that which measures member state capacity in terms of receiving further refugees and asylum seekers. The EU reflects this by the "*average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010–2014*", with a weight of 10%.³³⁹ Such an ability is not accounted for by any of the above-mentioned researchers.

It is commendable that the EU takes into account the numbers of refugees and asylum seekers that arrived in the past, since none of the existing theoretical models considered those. However, there are three points we would like to raise in relation to this part of the Commission's formula. Firstly, it uses the numbers of asylum applications filed in member states and resettled refugees. Those asylum seekers who were previously granted refugee status and stayed in the country are disregarded. This means that only the flows of asylum are included.

Secondly, the proposal puts little emphasis on the ability to receive further persons under international protection. The variable representing this determines only 10% of protective capacity. Furthermore, it is expressed in terms of numbers of refugees and asylum seekers per number of inhabitants. This means that the population size is reflected again through this factor, leading to enhanced absorption ability and an even further reduced ability to receive new refugees and asylum seekers.

Finally, the use of a simple five-year average of the numbers of refugees and asylum seekers means that the incoming flow from five years ago has the same importance as that which took place a year ago. We can, however, assume that the asylum system does not have a backlog over such a long period of time, therefore, the strains brought about by these two flows are not entirely comparable. We believe that if an average value over a certain period of time is considered, it should be discounted accordingly so that more recent events have greater impact on the outcome.

³³⁹ *Ibid.*

To understand the motives behind the responsibility-sharing mechanism of the European Agenda on Migration, it is important to look at the explanations provided for the inclusion of each variable. In its proposal, the EU commission mentions two capacities of member states that need to be reflected in the distribution key: “*the capacity to absorb and integrate refugees*”.³⁴⁰ According to this document, population size reflects the capacity to absorb refugees, unemployment rate is associated with the capacity to integrate refugees, and GDP applies to both of them. The last variable is included to take into account “*the efforts made by Member States in the recent past*”,³⁴¹ rather than relating to a certain ability. Therefore, it seems that the purpose of using this variable is to reward states’ contributions in previous years and to discourage them from underinvesting in their asylum systems, instead of focusing on their asylum systems being overloaded.

From the Maltese point of view, the distribution proposed by the EU Commission is challenging. On the one hand, the relocation key applies the economic and population criteria, which leads to a smaller share of responsibility assigned to Malta due to its very small relative size. However, the unemployment rate variable increases the Maltese quota, because the country is doing relatively very well in this respect.

In terms of the effect on Malta, the most important variable included in the formula is the number of refugees and asylum seekers in the past. This third dimension, concerned with the asylum reception systems of member states and their ability to process new applications, is especially significant for the state, which has faced large inflows of asylum seekers over the last several years and is still coping with high numbers of refugees and asylum seekers present on its territory. Unfortunately, the emphasis of the EU does not lie on this dimension.

Relocation in Numbers

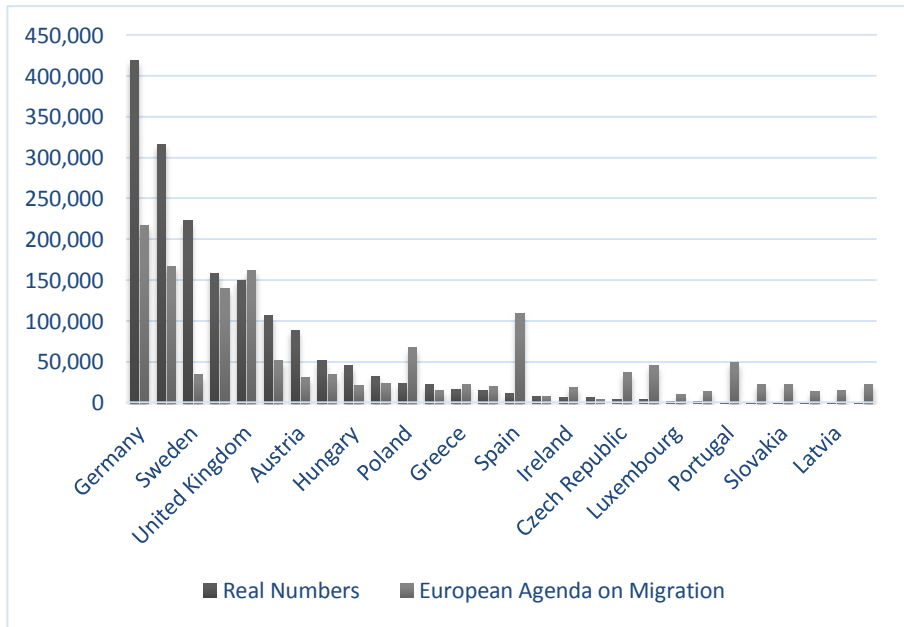
The impact of relocation in practical terms is demonstrated by the numbers of refugees and asylum seekers and by the change in their distribution among the member states. Figure 2 provides the actual numbers of refugees and asylum seekers in EU member states in 2014, together with the numbers potentially allocated by the European Commission. The latter illustrates the hypothetical situation that would take place if the relocation key from the European Agenda on Migration was applied to the total number of refugees and asylum seekers present in the EU in 2014.

Figure 2: *Refugees and asylum seekers in EU Member States (2014).*

³⁴⁰ *Ibid.*

³⁴¹ *Ibid.*

Source: Own calculations based on data available from EUROSTAT, UNHCR and the European Agenda on Migration.



The data shows that the EU Commission assigned significantly smaller shares of responsibility to Germany (by more than 200,000 refugees and asylum seekers), Sweden (by almost 190,000 refugees and asylum seekers) and France (by nearly 150,000 refugees and asylum seekers).

Member states that would in these circumstances be allocated higher numbers of refugees and asylum seekers than they provided for in reality include Greece (by close to 6,000 persons) and Malta (by a little more than 1,000 persons), even though these two countries were considered as bearing disproportionate pressure. This means that if the European Commission applied its key to the total number of refugees and asylum seekers, relocation would take place in the opposite direction than it does in reality, for example from Germany to Greece.

The most important practical aspect of relocation is the actual number of relocated refugees and asylum seekers. Under the EU arrangement, 26 countries made relocation pledges. There have been 23 EU member states and 3 partner countries (Norway, Switzerland and Lichtenstein) which volunteered to take this commitment upon themselves, established bilateral agreements and joined the relocation scheme.³⁴² All these countries together

³⁴² The group of EU countries which did not take part includes Denmark, Greece, Hungary, Italy and the United Kingdom.

committed to accept 44,374 refugees and asylum seekers from Greece and Italy.

The part of the process that took place in Italy has so far relocated 6,928 refugees and asylum seekers to another 17 EU member states and 1,593 refugees and asylum seekers to two of the partner countries. Another group of refugees and asylum seekers relocated from Greece consisted of 18,651 persons moving to 21 different member states and 1,047 persons to the partner countries. Overall, this means that there were 28,219 relocated refugees and asylum seekers in total.^{343, 344}

Since there were over 600,000 asylum applications filed across the EU in 2014,³⁴⁵ the relocation of about 28,000 refugees and asylum seekers only represents around 4.7% of the incoming number (let alone the refugees and asylum seekers arriving in the previous years). Therefore, in relative terms, only a very small portion of the total responsibility for protection of refugees and asylum seekers is being redistributed. This can hardly sufficiently alleviate the strain on some member states.

When it comes to Malta, the country took part in the relocation process and pledged 164 places. So far it has accepted 47 refugees and asylum seekers from Italy and another 101 from Greece. Considering its small relative size and the high number of refugees and asylum seekers already present on its territory, Malta contributed significantly to EU responsibility-sharing.³⁴⁶

Conclusion

Migration and the international protection of persons seeking asylum is a topic of growing importance, and cooperation between EU member states is vital in order for them to adequately manage these large inflows. The European Agenda on Migration is both a recognition of and a response to this.

In general, the relocation scheme successfully relates to each of the three abilities of states constituting protective capacity. However, a number of issues remain. Firstly, the relative weights of the three theoretical criteria do not reflect proportionally the abilities of states to assume responsibility for persons under international protection. The distribution key puts too much emphasis on the ability to absorb refugees and asylum seekers into member states' societies, while not sufficiently considering the strain on their asylum

³⁴³ The numbers of relocated refugees and asylum seekers correspond to data from 14. 9. 2017.

³⁴⁴ European Commission (2017).

³⁴⁵ The number of asylum applications grew significantly to about 1,300,000 in 2015 and 2016. However, this number was not known at the time of the creation of the European Agenda on Migration.

³⁴⁶ Apart from the European responsibility-sharing mechanism, Malta also benefits from the US resettlement programme, through which 500 refugees leave the country every year.

systems and all the other matters linked to the reception of refugees and asylum seekers in previous years. Secondly, although the allocation of responsibility is “*based on objective, quantifiable and verifiable criteria*”,³⁴⁷ the reasoning behind them, among other things, shows that previous efforts are being acknowledged and rewarded. Instead, protective capacity should, in theory, be a reflection of the protection member states are able to provide, rather than what remains for them to do. Finally, the numbers of refugees and asylum seekers, to which the distribution key is applied and that were up until now relocated, are relatively very low.

Malta has been an active member state in terms of responsibility-sharing in the area of migration. It has been both promoting the idea of relocation of refugees and asylum seekers and also participating in the process by providing protection for refugees and asylum seekers relocated from Italy and Greece.

Responsibility-sharing is a step in the right direction. Nevertheless, should these first phases prove successful, higher numbers of relocated persons should follow in the future so that the uneven distribution of responsibility is substantially improved. This, however, will be a question of political discourse, solidarity among member states, and their willingness to participate in responsibility-sharing.

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