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MALTA
A DECADE OF
EU MEMBERSHIP
2004 - 2014 
INSTITUTE FOR
EUROPEAN STUDIES
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Occasional Paper 09/2016

REFLECTIONS ON A DECADE OF EU MEMBERSHIP

EXPECTATIONS • ACHIEVEMENTS • DISAPPOINTMENTS • THE FUTURE

Changes in Malta's Migration and Asylum Policies After EU Membership

by Berta Fernandez



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Publisher: **Institute for European Studies**, Msida, Malta.

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Citation


Berta Fernandez (2016). *'Changes in Malta's Migration and Asylum Policies After EU Membership.'* *Reflections of a Decade of EU Membership: Expectations, Achievements, Disappointments and the Future Occasional Papers*, No. 9, Institute for European Studies (Malta).

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Abstract

This paper provides an overview of the main challenges and accomplishments of Malta since it joined the EU in 2004 in migration and asylum related issues. Initially, it discusses demographic changes and the Maltese sentiment vis-à-vis refugees and labor migrants, throughout the evolution of irregular migration flows and EU mobility patterns. Chronologically, it analyzes the main legal and policy achievements on the road to the accession negotiation process and beyond. Key developments in the Area of Freedom, Security and Justice that EU membership brought about, and the ‘solidarity and responsibility sharing’ issue are presented from the Maltese perspective. The successful bidding to host the European Asylum Support Office (EASO), and the Valletta Summit remain two of the most important Maltese milestones of the analyzed period.

Keywords:

Valletta Summit, solidarity, detention, irregular migration, search and rescue, relocation, resettlement, MIPEX, Schengen, trafficking, labour migration, free movement of people, EASO, ECHR, FRA, FRONTEX, V.18, MEUSAC.

Changes in Malta's Migration and Asylum Policies After EU Membership

by Berta Fernandez

1. Introduction

In 60 AD the Apostle St. Paul shipwrecked on Maltese shores, an event that marked the beginning of a new faith, and that it is still celebrated in Malta on February 10th. Before St. Paul, legend has it that Ulysses spent seven years in Gozo, detained by Calypso, after his boat suffered a similar fate.¹ Many more have used the islands either as a place of safety and refuge - Caravaggio being one of the most famous temporary guests - or as a country where to establish themselves permanently throughout the centuries². As islanders, Maltese people have been drawn to explore other lands in the Mediterranean³, and in the 20th century even emigrate to remote locations in Australia and the United States⁴.

In more recent times, the exponential numbers of irregular immigration flows and their chaotic nature after the Arab Spring and the Syrian conflict have put the country and the EU in the international spotlight⁵. Two elements are directly related to these increased flows. On the one hand, Malta's geographical location in the corridor between Libya and Italy appears to be a determining factor for unintended arrivals on their way to continental Europe. On the other hand, its political status of an EU member state with the corresponding legal framework (the so-called EU migration and asylum *acquis*) opens up a whole array of possibilities for asylum seekers and economic – regular or irregular - migrants.

¹ "The Maltese islands in the Odyssey", in Toni Cortis & Timothy Gambin (ed.), *De Triremibus*. Festschrift in Honour of Joseph Muscat, Malta, PEG, 2005: 11-20.

² Malta has been inhabited from around 5200 BC, and ruled by Phoenicians, Greeks, Carthaginians, Romans, Byzantines, Aghlabids, Spanish, Muslims, Normans, French, and British.

³ In 1900 there were 15,326 Maltese in Tunisia.

⁴ Maltese diaspora can be found in major cities such as Adelaide, Brisbane, Cardiff, Detroit, Mackay, Melbourne, New York, Perth, San Francisco, Sydney and Toronto. In 1969 the Malta Emigrants Commission (MEC) organised the first Maltese Migrants Convention. The II and III Conventions were organized in 2000 and 2010, respectively. The IV Convention for the Maltese Living Abroad was organised between 20 and 23 April 2015, the backdrop being the Centenary Celebrations commemorating the Gallipoli Conflict and ANZAC. More information available at : <https://foreignaffairs.gov.mt/en/Pages/DMLA-Convention.aspx>.

⁵ The Economist (April 25th-May 1st 2015), *Europe's boat people. A moral and political disgrace*, available at <http://www.economist.com/news/leaders/21649465-eus-policy-maritime-refugees-has-gone-disastrously-wrong-europes-boat-people?fsrc=scn/tw/tl/img/cover/europesboatpeople>.



This paper does not intend to be comprehensive coverage of every activity or action implemented by all the relevant organizations working in the field of migration and asylum in Malta. Rather, it aims to provide an overview of the past years. It will present the main challenges faced by Malta in a highly volatile and changing regional environment since it joined the EU in 2004. Chronologically, we will analyze the effect of events previous to that year on the migration flows and stocks. With this as a baseline we can ascertain the causality between EU accession and increased numbers of arrivals. Furthermore, the main legal and policy achievements on the road to the accession negotiation process will be briefly mentioned. In the initial years of membership rescue at sea and detention became two contentious aspects of the Maltese migration policy. An important milestone was the successful bidding by Malta to host the first European Agency (EASO) dedicated to support Member States and promote the correct implementation of the Common European Asylum System.

2. The migration phenomenon in the broader international context

Like most other socio-economic phenomenon, migration dynamics have changed as a result of improved communication technology and global social networks. In this context, traditional ‘push and pull’ models⁶ become outdated, while migrants’ decision-making process to start the journey (including its risk assessment) has become more complex to decipher.⁷ All over the world, policy makers, humanitarian and law enforcement agencies have a hard time ‘catching up’ with a fast paced environment with highly adaptable smuggling networks.

Even though there was a resurgence of migration and development optimism in the past decade, immigration policies are still restrictive and migration flows are mostly fluid within specific regional settings with free movement agreements. The economic crisis that started in 2008, along with the humanitarian crisis in Syria and the increased irregular flows in the Mediterranean seem to have tilted the migration-optimistic/pessimistic balance towards the latter side in Europe.


Undeniably, the public debate around migration has significantly intensified. In times of economic and political crisis, narratives of immigrants as ‘threatening others’⁸ invading countries and challenging national identities and traditions are fueled by the feelings of citizens of being ‘left behind’⁹ by the (welfare) system. This palpable globalized tension can be witnessed in social media

⁶ ‘Push factors’ usually include population growth and density, lack of economic opportunities and political repression, while ‘pull factors’ usually include demand for labour, availability of land, economic opportunities and political freedoms. Castles, Stephen; De Haas, Hein; and Miller, Mark J. (2014), *The Age of Migration: International Population Movements in the Modern World*, Fifth Edition.

⁷ MPI (2015), *Before the boat: Understanding the migrant journey*.

⁸ ‘Threatening Others: Nicaraguans and the Formation of National Identities in Costa Rica’, Carlos Sandoval Garcia, Athens: Ohio University Press, c2004.

⁹ ‘The jobless young left behind’ <http://www.economist.com/node/21528614>.



expressions of individualism and uniqueness alongside an enhanced need for a shared sense of national identity and belonging. The European Union - and Malta as one of the youngest Member States - is no exception. In fact, 'diversity has become the scapegoat of anxiety in Europe'.¹⁰

As part of the global community, Malta and its citizens are going through a deep transformation. After the official declaration of Valletta as European Capital of Culture (12th Oct. 2012)¹¹, a number of initiatives geared to improve intercultural relationships started. Most notably, the Valletta intercultural city strategy (2015-2018) was developed as a local effort with the support of the Council of Europe and the European Commission. Behind this initiative lies the hope of turning Malta's international emblem –Valletta – into a real intercultural, action-oriented city that capitalizes not only on its history but also on diversity. Unequivocally, this goal requires a national dialogue in the years to come on Malta's evolving identity as part of the European Union and the Mediterranean region.

3. Transitioning towards EU membership: first exposure to new migration and mobility patterns, demographic changes, and unemployment fears

From the mid-1970s onwards, Malta experienced a progressive return of Maltese citizens who had emigrated to Australia, United States, Canada and the UK after the war. Additionally, Malta saw increased migration flows from Indian, Filipino, Albanian, Kosovar, Serbian, Russian, and British nationals. Between 1985 and 2001 the total population of Malta increased by 50,000 people, reaching 394,641 persons.¹² During that period, the share of foreign residents increased from 1.4 per cent to 2.5 per cent, when in the rest of the world international migrants accounted for a relatively small share of the total population, comprising about 3.2 per cent of the world population in 2013, compared to 2.9 per cent in 1990.¹³


Maltese public opinion has evolved in the past decade, as the main EU-wide survey –the *Eurobarometer*- shows. In 2004 the general attitude towards the EU was positive: it meant freedom of travel, study and work, strengthening of democracy and peace, and more political influence in Europe. However, it also created increased concern over the interface between 'removal of cross-border controls and risk of increased international crime'. At that point in time, the state of the economy was perceived as the most important challenge for Malta, and immigration had only the

¹⁰ Presentation by Phil Woods, 'Building Trust in Diversity: Universities and Cities Joining Forces', Intercultural Cities Conference-Council of Europe (Oslo, 12-13 May 2015).

¹¹ <http://valletta2018.org>.

¹² Demographic Review 2002, National Statistics Office, Malta, 2002.

¹³ 'International Migration Report 2013, UN Department of Economic and Social Affairs (Population Division), ST/ESA/SER.A/346.



fourth place on the list of worries due to the ‘influx of a relatively large number of illegal immigrants’.¹⁴ By the year 2007 immigration was already second after ‘rising prices and inflation’ among the top priorities for Maltese respondents.¹⁵ This order of priorities stayed the same in 2014, but the issue had become more prominent as a ‘national problem’ for Maltese public opinion (57%) than for the UK (38%), Germany (37%) or Denmark (34%).¹⁶ This generalized sentiment of discontent is confirmed by 73% of Maltese respondents referring to immigration from countries outside the EU as evocative of a very negative/fairly negative feeling in 2015.¹⁷ Immigration from other EU Member States ‘evokes positive feelings’ for only a little more than half of the surveyed people, presumably due to heightened labour competition, as is the case in the rest of the EU-28.

More recently (June 2015), the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (MSDC) commissioned a survey on ‘perceptions about third country nationals (TCNs) and immigration in Malta’. The majority of respondents (58%) have an accurate picture of the number of ‘foreigners’ currently living in the country. Still, the meaning of ‘integration’ is unknown for 47%, and the level of interaction with TCNs is lower than with EU citizens. The survey mentions that “a section of the population remains lukewarm or hostile to the presence of foreigners, although some make a distinction between asylum seekers and richer foreigners”. And it adds that “attitudes toward foreigners tend to be selective and utilitarian, with most respondents viewing foreigners either as a source of investment, especially in property, or as an invisible army of labour which takes jobs which are not wanted by Maltese”. These results mirror the main themes of the Maltese political debate during the years prior to accession, which revolved around such points as keeping the Maltese language as an official EU language, or the potential negative impacts of an increased influx of ‘foreign workers’ in the labour market via the free movement of workers.

4. Negotiations for accession: the national and EU legal and policy framework

EU membership negotiations with Malta included Chapter 2 on the freedom of movement of persons and Chapter 24 on justice and home affairs, which includes migration and asylum. A seven-year transitional arrangement providing Malta with the option of restricting the right of EU citizens to seek employment in Malta was secured by skilled Maltese negotiators.¹⁸ These had a clear


¹⁴ Eurobarometer 62, Public Opinion in the EU, National Report Malta, Autumn 2004.

¹⁵ Eurobarometer 68, Public Opinion in the EU, National Report Malta, Autumn 2007.

¹⁶ Eurobarometer 82, Public Opinion in the EU, National Report Malta, Autumn 2014.

¹⁷ The difference with the EU-28 Member States is of 16 points (57%), when it comes to negative feelings. Eurobarometer 83, Public Opinion in the EU, National Report Malta, July 2015.

¹⁸ Chapter 2 Free Movement of Persons: Safeguard I - Seven-year period during which Malta may apply safeguards on the right of EU workers to seek work in Malta. Restrictions may be imposed unilaterally by Malta in urgent and exceptional cases where the inflow of EU workers puts a strain on the local labour market or parts of it. Safeguard II - After the seven-year period, in the event of a disproportionate influx of EU workers, Malta may still seek a remedy through the EU



mandate to make the case that small states need special treatment due to their size, and in pointing out the low relevance for the rest of the EU of the key Maltese requests during the negotiations.¹⁹ Indeed, size (in relation to population density) was to be a constant feature of Maltese Government officials' and MEPs' statements in Brussels for the next ten years.

The Malta-EU Action and Steering Committee (MEUSAC)²⁰, created in 1999, played an important role by giving inputs to position papers. MEUSAC identified several key aspects of Chapter 24 that would have a direct impact on Malta²¹:

- Racism was to become a criminal offence in Malta for the first time, in line with Council Directive 2000/43/EC implementing the principles of equal treatment between persons irrespective of racial or ethnic origin.
- Malta would participate in the activities of the 'European Monitoring Centre on Racism and Xenophobia', which later became the Fundamental Rights Agency (FRA).
- The list of countries that needed travel visas affected the relations of Malta with some countries, in particular between the Maltese business community and Libya²².
- Upgraded passport security features and necessary infrastructure to meet Schengen related requirements in order to lift sea and air borders.
- Setting up the necessary structures relating to asylum.
- Strengthen the Malta Police Force to fight against organized crime.
- Access to funding programmes in the field of Justice and Home Affairs.²³

The Immigration Act²⁴, regulating residence requirements as well as the issuing of work permits, was adopted on 21 September 1970 and later amended to grant EU citizens the right to seek employment, work and reside in Malta.²⁵ The Emigration Committee was set up with the aim of

institutions.

¹⁹ Pace, Roderick. *Malta and the EU Membership: adaptation, change and modernization*. Agora Without Frontiers Volume 8, (4) 2003. Other key issues were abortion, fisheries and agriculture.

²⁰ Comprised by the Malta Federation of Industries, the Chamber of Commerce, the Employer's Association, the trade unions, and other organizations, MEUSAC served to oversee the overall accession, and it produced a number of information dissemination materials on the different chapters. Nowadays, MEUSAC falls under the responsibility of the Minister for Social Dialogue, Consumer Affairs and Civil Liberties. <http://www.meusac.gov.mt/>


²¹ *Aggornat*, Freedom, Security and Justice, Special Edition No. 9, June 2002, Malta-EU Information Centre.

²² Since the 2004 EU's decision to lift sanctions against Libya, the EU started cooperating with Libya on migration management and voluntary return of migrants. In 2008, the Commission got the Council mandate of start negotiations for a framework agreement that would cover political dialogue, trade, energy, migrations and environment. 'EU-Libya negotiations on future Framework Agreement start' (12 November 2008), available at: http://europa.eu/rapid/press-release_IP-08-1687_en.htm?locale=en

²³ Odysseus, Falcone, European Refugee Fund, Daphne, Stop, Oisin, Grotius, and Hippocrates.

²⁴ Chapter 217 of the Laws of Malta.

²⁵ It was last amended in 2009. <http://justiceservices.gov.mt/LOM.aspx?pageid=24>.



being proactive on the issue of overpopulation and then the Emigration Department was created to promote and control emigration.²⁶

Malta enacted its first-ever specific asylum-related legislation, the Refugees Act in 2000²⁷, establishing the Office of the Refugee Commissioner²⁸ and the Refugee Appeals Board. When the Refugee Act entered into force (1st October 2001), UNHCR Rome was responsible for refugee status determination (RSD), and subsequently, the Maltese Government implemented the decisions. Malta had acceded both to the 1951 UN Convention relating to the Status of Refugees and the 1967 Protocol in 1971, albeit lifting its geographical reservation only in 2002 and becoming independent from UNHCR for RSD. Still, Malta retained a number of reservations to articles 11 (refugee seamen), 23 (public relief) and 34 (naturalization) until the year of EU accession (2004).²⁹ The Refugee Act was amended in 2004 to introduce the right to review a person's detention under the Immigration Act whenever it was deemed unreasonable.³⁰ A year before (2003), Malta had joined the International Organization for Migration (IOM).

When Malta joined the EU in 2004, the 'Area of Freedom, Security and Justice' (AFSJ) was based on the Maastricht (1993)³¹ and Amsterdam Treaties (1999), and the Tampere Programme (1999-2004)³². The EU had competence on asylum and migration issues, which had been moved from the 'Third' to the 'First Pillar'³³. There were common EU rules on visas³⁴, a uniform format for residence

²⁶ The People for Change Foundation (2013). *Researching Migration and Asylum in Malta: A Guide*.

²⁷ Chapter 420 of the Laws of Malta.

²⁸ The Office's fundamental objective is 'to ensure a totally independent, fair, efficient and swift eligibility determination process while, at the same time, guaranteeing the best quality possible regarding the hearing, analysis and determination of applications'. The Office of the Refugee Commissioner may recommend two types of international protection: (a) Refugee Status and (b) Subsidiary protection. Temporary Humanitarian Protection (a national form of protection) can also be recommended. Article 14 of Legal Notice 243 of 2008 describes entitlements of refugees and persons enjoying subsidiary protection.

²⁹ The instrument of accession deposited by the Government of Malta was accompanied by the following reservation: "Article 7, paragraph 2, articles 14, 23, 27 and 28 shall not apply to Malta, and article 7, paragraphs 3, 4 and 5, articles 8, 9, 11, 17, 18, 31, 32 and 34 shall apply to Malta compatibly with its own special problems, its peculiar position and characteristics." On 17 January 2002, the Secretary-General received the following communication: "The Government of Malta hereby withdraws the reservations relating to article 7 (2), Articles 14, 27, 28, 7 (3)(4), (5), 8, 9, 17, 18, 31 and 32; and confirms that Article 23 shall not apply to Malta, and articles 11, and 34 shall apply to Malta compatibly and with its own special problems, its peculiar position and characteristics." Further, on 24 February 2004, the Secretary-General received the following communication: "The Government of Malta, having reviewed the remaining reservations and declaration, hereby withdraws the reservations relating to Article 23, and the reservations in respect of Articles 11 and 34 wherein these applied to Malta compatibly with its own special problems, its peculiar positions and characteristics." Accessed on 10th August 2015 https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtmsg_no=V-2&chapter=5&Temp=mtmsg2&lang=en#28.

³⁰ In July 2008 it was amended again by Legal Notice 243 of 2008 (Procedural Standards in Examining Applications for Refugee Status Regulations)

³¹ The 'Third Pillar'-intergovernmental cooperation on migration and home affairs- had its legal basis in this treaty.

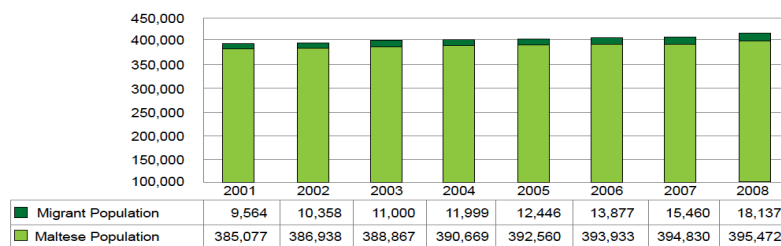
³² The European Council of Tampere set out policy guidelines for home affairs policy, which the European Commission developed in the first programme on asylum and migration.

³³ The end of the First/Third Pillar divide happened as a reflection on the inefficiency of that legal duality, which was also non-transparent, and had low democratic accountability and judicial control. Title V TFEU, Art. 67-89.

³⁴ Regulations on a unified format for visas (1995), and Regulation listing the countries whose nationals are/are not exempt from the visa requirement (2001).

permits³⁵, an almost finalized EU asylum package (CEAS)³⁶, and the Schengen Agreement (1985) – the cornerstone of EU integration - had been integrated into the Treaties. Additionally, the EU Charter of Fundamental Rights³⁷ had been adopted in 2000 to include rights that were not in the European Convention on Human Rights (e.g. right to asylum). However, even though the Tampere Programme had the ambitious objective of creating a ‘common EU policy and approach on labour migration, integration, external borders controls and asylum, based on solidarity and fair responsibility sharing’, few legislative outputs³⁸ saw the light of day due to unanimity voting requirements and the already existing intergovernmental cooperation. The new member states were given no right to opt out of measures covering mobility, asylum and many aspects of migration.³⁹

Table 1: Population of Malta, Malta Demographic Reviews, 2001-2008.



Source: elaborated by Jean-Pierre Gauci for the Malta Chapter in ‘Migration and the Labor Markets in the EU 2000-2009’, IOM.

5. Malta as EU Member: the Area of Freedom, Security and Justice

From a migration and asylum policy perspective, Malta joined the EU when the AFSJ was about to start its most prolific years, which meant that Malta would have the opportunity to influence future

³⁵ Council Regulation on a uniform format for residence permits (1030/2002).

³⁶ The first generation of the Common European Asylum System (CEAS) introduced minimum standards on asylum to facilitate the harmonization of asylum reception conditions, procedures, and status determination outcomes across the EU. The asylum package was comprised by the Eurodac Regulation (2000), the Reception Conditions Directive (2003), the Dublin II Regulation (2003), the Qualification Directive (2004), and the Asylum Procedures Directive (2005).

³⁷ The EU decided to include all rights in a single document, updated to reflect changes in society, social progress and scientific and technological developments. The Charter contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. It entrenches the rights found in the case law of the Court of Justice of the EU; the rights and freedoms enshrined in the European Convention on Human Rights; other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments. It became legally binding on the EU with the entry into force of the Treaty of Lisbon (2009).

³⁸ EU Directives on the mutual recognition of decisions on the expulsion of third country nationals (2001/40/EC), on the status of third country nationals who are long-term residents (2011 extended scope to refugees) (2003/109/EC), and on the right to family reunification (2003/86/EC).

³⁹ The mobility core is indivisible, since the right of free movement is direct consequence of Member States’ accession to the EU; the Common European Asylum System (*asylum acquis*) is indivisible as well.

developments (especially after the Treaty of Lisbon). That same year, the European agency for the management of operational cooperation at the external borders of EU states (Frontex) was created in Warsaw, the Common Basic Principles (CBPs) on Integration were adopted⁴⁰ and the Hague Programme (2005-2009) was approved.⁴¹ The Maltese Ministry for Justice and Home Affairs and the Ministry for the Family and Social Affairs drafted a policy document entitled ‘Irregular Immigrants, Refugees and Integration’ (2005). The aims of the policy were to ensure ‘a fair, just and humane treatment of irregular immigrants; standard procedures and practices when dealing with asylum seekers; the social inclusion of asylum seekers; and the orderly removal of irregular immigrants who are ineligible for refugee or humanitarian protection status’. It emphasized that ‘while committing itself to express solidarity and to extend support and protection to all those who are officially certified to be genuinely fleeing from persecution, Malta shall adopt strict measures to repatriate those illegal immigrants who do not warrant such protection’.

From the moment of accession, the Office of the Refugee Commissioner would not only be bound by the obligations assumed by Malta under the 1951 Convention and the 1967 Protocol, but also by the Qualification Directive 2004/83/EC, the Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, and the Dublin Regulation on establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third country national or a stateless person.⁴² When the Office of the Refugee Commissioner went into operation in 2001, the average number of asylum-seekers in Malta was around 150 per year. The Office had to face many challenges with a small staff to handle them in the years after.

Table 2: Number of asylum applications from 1998 to 2007

1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
160	255	160	155	350	455	995	1165	1270	1380

Source: Eurostat 2015.

⁴⁰ The Common Basic Principles for Immigrant Integration Policy in the EU were adopted by the Justice and Home Affairs Council in November 2004 and form the foundations of EU initiatives in the field of integration, available at <https://ec.europa.eu/migrant-integration/the-eu-and-integration/eu-actions-to-make-integration-work>

⁴¹ The Hague Programme ‘Towards a Union of Freedom, Security and Justice in the EU’ (2004), contains policy guidelines and practical objectives for home affairs policy, including regulating migration flows, developing a common asylum system, and controlling the external borders, available at

http://ec.europa.eu/home-affairs/doc_centre/docs/hague_programme_en.pdf

⁴² <http://homeaffairs.gov.mt/en/MHAS-Departments/The%20Office%20of%20the%20Refugee%20Commissioner/Pages/Refugee.aspx#Background>

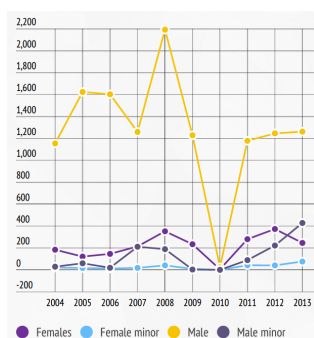
Table 3: Number of asylum applications from 2008 to 2014

2008	2009	2010	2011	2012	2013	2014
2,605	2,385	175	1,890	2,080	2,245	1,350

Source: Eurostat 2015.

Since 2002, the Office of the Refugee Commissioner received over 14,000 asylum applications, granting refugee status to 3% of asylum seekers, subsidiary protection⁴³ to 56%, other forms of protection to 5%, and rejecting 31%.⁴⁴ The top nationalities granted international protection (refugee status and subsidiary protection) were from Somalia (53%) and Eritrea (23%). In 2015 Libyan applications accounted for more than 60% of the total number of asylum applications in Malta. After reviewing the situation in Libya, the Maltese Office of the Refugee Commissioner decided that the armed conflict in the country justified a change of status for Libyan applicants from temporary humanitarian protection to subsidiary protection.⁴⁵

Table 4: Asylum seekers in Malta (2004-2013) by gender and age



Source: Ministry for Home Affairs and National Security, table made by the author

UNHCR⁴⁶ decided to open its Malta office in 2005, given the increased influx of boat arrivals on their way from Libya to Italy. The Emigrants' Commission⁴⁷, UNHCR's operational partner, opened some 10 homes to accommodate approximately 150 of the most vulnerable refugees free of charge.

In 2002 around 1,680 boat people arrived. 2003 was a quieter year with only 502 arriving by boat. However, that number went down and up in the following years: 2004 (1,388), 2005 (1,822), 2006

⁴³ The subsidiary protection status (Article 17. (1), Refugee Act) was introduced as a result of the transposition of Qualification Directive 2004/83 EC.

⁴⁴ <http://www.unhcr.org>

⁴⁵ ECRE/AIDA (Asylum Information Database), Country Report: Malta (November 2015), Aditus and Jesuit Refugee Service.

⁴⁶ The UNHCR Malta office falls under the regional office of Rome, which covers the Mediterranean region including those of Greece and Cyprus. <http://www.unhcr.org>

⁴⁷ The Emigrants' Commission is a non-governmental, non-profitable, voluntary organisation, which was established in 1950 to help and protect people in need by offering them free services, counseling and protection initially, created to help Maltese migrants leaving the island <http://www.mecmalta.com/emmcomm.html>

(1,780), 2007 (1,702), 2008 (2,775), 2009 (1,475), 2011 (1,579), 2012 (1,890), and 2013 (2,008); except for years 2010 (47), 2014 (568), and 2015 (104)⁴⁸.

Nowadays, immigration is under the portfolio of the Ministry of Justice and Home Affairs which is also in charge of the Armed Forces, Defence, Police, Airport Security, Correctional Services, Probation and Parole, Civil Protection, Citizenship and Expatriate Affairs, Central Visa Unit and National Identity Management.

5.1 EU funds for migration and asylum in Malta

With the aim of supporting and improving the management of migratory flows at EU level and strengthening solidarity between Member States, four EU funds were created for the period 2007-2013: External Borders Fund (EBF), European Refugee Fund (RF), European Integration Fund (IF), and European Return Fund (RTF)⁴⁹. Malta has benefited from these funds incrementally over the years – another form of solidarity-, thanks to the concerted efforts of the Government, a consolidated network of NGOs, and International Organizations. With a total of €86,252,155 millions for Malta, the allocations for this period were the following: EBF €70,441,716; RF €7,483,134; RTF €4,492,908; IF €3,834,397.⁵⁰

In relative terms, Malta benefited⁵¹ from:

Table 5: Official data on use of EU funds

External Borders Fund (2007-2011)	Return Fund (2008-2011)	Fund European Refugee Fund (2008-2011)	European Integration Fund (2007-2011)	Solidarity Programme (2007-2011)
€34,414,837	€2,847,680	€4,200,776	€2,669,576	€44,132,870
3,97%	0,92%	1,23%	0,60%	2,25%*

*percentages in this row are of the total allocated funds

Source: Information compiled by author from DG Home website.

⁴⁸ 'Yearly Arrivals of Illegal Immigrants (by boat)', Statistics made available by the Ministry for Home Affairs and National Security. The explanation to this decrease in arrivals can be found in this paper, under the heading 'Italy-Malta Entente'.

⁴⁹ Communication from the Commission to the Council and the European Parliament establishing a framework programme effective on solidarity and management of migration flows for the period 2007-2013 [COM(2005) 123 final - Not published in the Official Journal].

⁵⁰ <http://eufunds.gov.mt>

⁵¹ http://ec.europa.eu/dgs/home-affairs/financing/fundings/pdf/table_n1_v_200611_en.pdf

These percentages are not negligible, if we compare them with many other Member States with bigger populations who did not access these funds to the same degree.

5.2 Schengen and rescue at sea operations

On December 21, 2007 Malta joined Schengen at seaports, and one year later at air borders. On that occasion, Minister Tonio Borg stated “joining Schengen makes us more European. Maltese citizens are now on the same playing field as our European counterparts”.⁵² Schengen membership meant that an EU common visa regime had to be implemented, establishing visa requirements for countries with historical and trade relations with Malta, especially Libya.

As part of the Schengen obligations, the strait between Sicily-Malta-Libya was patrolled by four EU funded Frontex operations since 2006. The Armed Forces of Malta (AFM) hosted two of these operations (2008 and 2009)⁵³. In fact, AFM rescued the bigger proportion of persons arriving by boat during what turned out to be the absolute peak year of arrivals in the past decade, i.e. 2008. Maltese fishermen and trawlers from different countries also played a role in the rescuing efforts, not without controversy⁵⁴.

However, in 2010 Malta decided to pull out from the *Nautilus* mission, which forced Frontex to cancel it after its planning phase. After that, Malta decided to take a supportive role for other Member States’ border patrol obligations (e.g. Greece). The reason given by the Government for the change in policy was the low number of arrivals (47) that year, but there was another compelling reason for Malta to opt out. The EU Council adopted new guidelines for Frontex rescue at sea missions, whereby all people rescued on the high seas were to be taken to the mission’s host country instead of the closer safe port. The Maltese Government tried unsuccessfully to stop these guidelines from being adopted. The EP’s Civil Liberties (LIBE) Committee approved a resolution to reject them, which however did not garner sufficient votes to pass.⁵⁵ Consequently, Malta did not host any Frontex missions from 2011 onwards⁵⁶. The EP challenged the validity of the guidelines before the Court of Justice of the EU on procedural grounds. The decision to do this was taken jointly

⁵² Malta joins Schengen today, Times of Malta, 21 December 2007.

<http://www.timesofmalta.com/articles/view/20071221/local/malta-joins-schengen-today.189439>

⁵³ [‘Frontex patrols stopped as Malta quits ‘Italy, Libya patrols proving to be very effective’, available at: http://www.timesofmalta.com/articles/view/20100428/local/frontex-patrols-stopped-as-malta-quits.304761](http://www.timesofmalta.com/articles/view/20100428/local/frontex-patrols-stopped-as-malta-quits.304761)

⁵⁴ The events around the Maltese fishing boat *Simshar* –captured in a motion picture with the same name- exposed to the public eye the dilemma between the obligation to rescue and the potential complications derived from that rescue for the crew. <http://www.awardscircuit.com/2014/12/06/interview-rebecca-cremona-on-the-fascinating-true-story-of-simshar/>

⁵⁵ ‘Update 3: Attempt to reject new Frontex rules derailed by Socialists’

<http://www.timesofmalta.com/articles/view/20100325/local/new-frontex-proposals-rejected.299900>

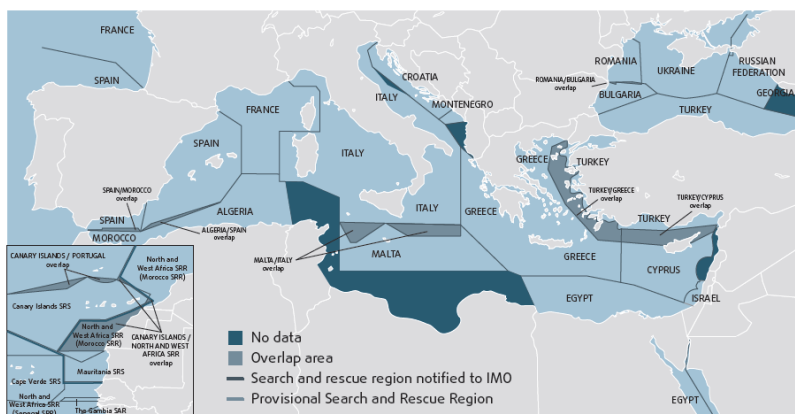
⁵⁶ ‘No Frontex mission planned this year’, available at;

<http://www.timesofmalta.com/articles/view/20110204/local/no-frontex-mission-planned-this-year.348536>

by the Legal Affairs Committee, following a recommendation by the Civil Liberties Committee, where Maltese MEP Simon Busutill was the rapporteur on the Frontex dossier. The EP claimed that the Commission acted beyond its powers, given that the Frontex rules had been presented under the comitology procedure instead of the ordinary legislative procedure, precluding the EP from scrutinizing them.⁵⁷ The European Court of Justice favored the Maltese position in its judgment stating that the provisions of the contested rule were not minor, non-essential provisions, but instead “constitute[d] a major [new] development in the [Schengen Borders Code] system” and which therefore required the consideration and approval of the EP. Among many other things, the Court stated that it “lays down rules on the disembarkation of the persons intercepted or rescued (...) priority should be given to disembarkation in the third country from where the ship carrying the persons departed”.⁵⁸

Meanwhile, Italy had signed a ‘Treaty of Friendship’ with Libya (June 2009), allowing Italian police to deport migrants intercepted on the high seas to Libyan shores without considering their asylum claims. The ECtHR argued that Italy had effective control over these migrants, and the ‘push back’ was in clear violation of Articles 3 (prohibition of inhuman or degrading treatment) ECHR, Art. 4 of Protocol No. 4 (prohibition of collective expulsions), and Art. 13 (right to an effective remedy) ECHR, as the ECtHR stated in his ruling *Hirsi Jamaa and Others v. Italy*⁵⁹.

Table 6: Search and Rescue areas in the Mediterranean Sea, FRA



Source: International Maritime Organisation, 2011

⁵⁷ <http://www.independent.com.mt/articles/2011-09-19/news/frontex-safeguarding-human-rights-while-curbing-abuse-298898/>

⁵⁸ Judgment of the Court (Grand Chamber) of 5 September 2012. *European Parliament v Council of the European Union. Schengen Borders Code - Decision 2010/252/EU - Surveillance of the sea external borders - Introduction of additional rules governing border surveillance - Commission’s implementing powers - Scope - Application for annulment.*

Case C-355/10, available at <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-355/10&td=ALL#>

⁵⁹ The case concerned Somali and Eritrean migrants travelling from Libya who had been intercepted at sea by the Italian authorities and sent back to Libya.

5.3 Trafficking in persons

Malta transposed Council Directive 2004/81/EC on the residence permit issued to TCNs victims of trafficking or who have been subject of an action to facilitate illegal immigration and who cooperate with the competent authorities.⁶⁰ Later on, in order to be able to implement Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, various legislative amendments were made.⁶¹ Furthermore, Malta adopted its Second National Action Plan against Human Trafficking (2013-2014) in line with the EU Strategy towards the Eradication of Trafficking in Human Beings. The biggest number of identified trafficking victims in Malta since 2003 happened in 2013. An increase in prosecuted cases of trafficking for sexual exploitation was probably the result of targeted training and awareness-raising of the police. Between January 2013 and December 2014, the MHS and IOM implemented the LIMES (Launching Initiatives Supporting Malta's Efforts to Suppress Trafficking).

5.4 Readmission Agreements, Assisted Voluntary Returns, and the Return Directive

Readmission Agreements have been a common aspect of dialogue with third countries. They can only be used after a return decision has been made in accordance with the procedural guarantees set by the Return Directive and the relevant EU asylum rules. Partner countries are granted visa facilitation and other incentives such as financial support for implementing the agreement or special trade conditions.⁶² Currently 17 EU readmission agreements of TCNs are in force with the following countries: Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey and Cape Verde. The EU has adopted the mandate for negotiations with Morocco (since 2000), Algeria (since 2002) and Tunisia (in 2014) but with little progress so far. The mandate for negotiating readmission agreements have also been approved for China and Belarus.⁶³

Another kind of readmission agreements linked to Mobility Partnerships were already included in the Barcelona Declaration (1995). The Declaration established a *quid pro quo* formula of cooperation in exchange for readmission of irregular migrants by the country from where they left (transit country) or their country of origin. This principle has been replicated ever since in Mobility


⁶⁰ Legal Notice 175 of 2007, Subsidiary Legislation 217/07.

⁶¹ Act XVIII (6 December 2013) amended provisions in the Criminal Code to address key developments in relevant law provisions. Additional amendments came as a result of proposals of the GRETA committee for improved compliance with the Council of Europe Convention against Human Trafficking. Other amendments were added by the Government in order to ensure a holistic legal framework. http://ec.europa.eu/anti-trafficking/content/nip/malta_en.

⁶² For additional information:

[http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2015\)554212](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2015)554212).

⁶³ For additional information: http://europa.eu/rapid/press-release_MEMO-15-5597_en.htm



Partnerships with the Southern Mediterranean countries⁶⁴. Apart from building capacities and cooperating on migration management, asylum, and trafficking, mobility partnerships focus on ‘maximizing the impact of migration on development through assisted voluntary returns’.⁶⁵

The Cotonou Agreement between the European Union and the African, Caribbean and Pacific states (ACP) (1995) dedicates article 13 to ‘migration’, stating the need to uphold a non-discriminatory treatment of EU and ACP nationals in the labour market, but also underlining that ‘each of the ACP states shall accept the return or and readmission of its nationals who are illegally present’ in the EU.

The Ministry of Home Affairs and Security (MHS) organized assisted voluntary returns of irregular migrants and rejected asylum-seekers (2006 and 2007 - 1 person each year; 2008 – 52 persons)⁶⁶. In 2008 the coming into effect of the Return Directive (2008/115/EC), which established common standards and procedures for returning illegally staying TCNs, created controversy among third countries and human rights advocates all over Europe in spite of the fundamental rights and guarantees it foresees.⁶⁷ From 2009 to the present, the Ministry has been partnering with IOM Malta to access the EU Return Fund for assisting individuals who would like to voluntarily return (as opposed to being deported) and obtain support for their reintegration in their country of origin.⁶⁸ The total number of voluntary returned individuals between 2006 and 2014 is 444. In addition, the MHS and IOM partnered in the project *Cooperation between Malta and African Countries to Enhance Migration Dialogue and Development – CoMAM (2014)*.

5.5 Relocation, Resettlement, and Solidarity from the Maltese perspective

The European Pact on Migration and Asylum (2008)⁶⁹ sought to integrate and complement efforts by the EU institutions to shape a common approach to both legal and irregular immigration, while making resettlement on a voluntary basis. According to UNHCR estimates, “less than 30%, of the around 17,000 individuals who arrived by boat since 2005, remain in Malta”. This fact is due to the

⁶⁴ Until now, the EU has finalized three dialogues on migration, mobility, and security with Morocco, Tunisia and Jordan. Dialogue is taking place at different levels with Algeria, Egypt and Lebanon. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/southern-mediterranean/index_en.htm

⁶⁵ *Ibid.*

⁶⁶ Statistical information provided by the Ministry of Home Affairs and National Security (MHS).

⁶⁷ The European Council on Refugees and Exiles (ECRE) denounced the provision of an extremely short period for a person to prepare to return, ranging between 7 and 30 days; the obligation to include entry bans as long as 5 years in certain return decisions; and the possibility to detain third country nationals, including families, unaccompanied children as well as other vulnerable persons, for up to 18 months for reasons beyond their control. Information Note available at <http://www.ecre.org/component/downloads/downloads/158.html>.

⁶⁸ The project Assisted Voluntary Return and Reintegration in the Country of Origin - RESTART is currently in phase V, according to IOM Malta (www.iom.int.mt). Under the four completed phases of the RESTART project, a total of 235 AVRR returnees have been assisted to return from Malta to over 15 countries of origin, mostly in sub-Saharan Africa and Asia.

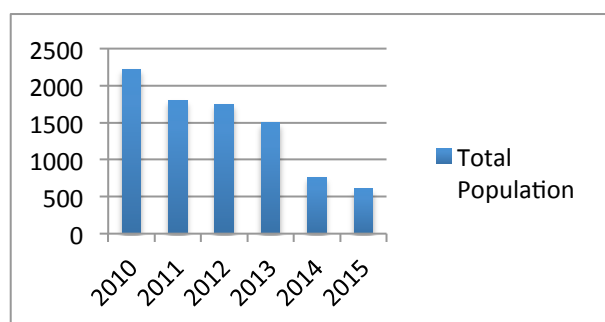
⁶⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:j10038>

relocation and resettlement efforts, along with the inevitable irregular secondary movements of refugees, removals, and (assisted voluntary) returns.⁷⁰

In total, 696 persons have been relocated to other Member States and other countries (such as Switzerland and Norway) up to 2014. This includes both relocation conducted on a bilateral basis, and those relocated under the Pilot Project for the *Intra-EU Relocation of beneficiaries of international protection from Malta* (EUREMA I and II). IOM was in charge of the overall management of both phases (2011 and 2012) of EUREMA while UNHCR led the pre-selection screening process, counseling and submission of files of suitable candidates. At the time, the Maltese *Ministry for Home and Parliamentary Affairs* had a leading role in consultations with other Member States to obtain their support for relocation from Malta. A fact-finding report on intra-EU relocation activities from Malta identified several key challenges: funding and administrative requirements in the project, legislative obstacles to relocation, lack of migrants' knowledge of 'new' participating States, administrative procedures for the transfer of protection, longer implementation time needed, lack of central coordinating entity, and selection criteria.⁷¹

Between 2008 and 2014, Malta did not participate in the (voluntary) resettlement from third countries. On the contrary, the United States Refugee Resettlement Programme, resettled 2,403 beneficiaries of international protection to the US since 2007.⁷² Consequently, the number of beneficiaries of protection and migrants living in open centres dropped from around 2,000 in 2010 to around 500 in 2014.

Table 7: Individuals living in open centres



Source: UNHCR Malta 2016

⁷⁰ 2004/573/EC: Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders

⁷¹ EASO (2012), EASO fact-finding report on intra-EU relocation activities from Malta, available <https://easo.europa.eu/wp-content/uploads/EUREMA-fact-finding-report-EASO1.pdf>

⁷² For additional information: <http://www.state.gov/j/prm/releases/factsheets/2013/203578.htm>

5.6 The increased relevance of integrating Third Country Nationals

The Ministry for Education and Culture, Youth and Sports published a multi-annual programme (MAP) of the European Fund for the Integration of TCNs for the period 2007-2013, thus partly address the lack of a comprehensive national integration policy with coordination mechanisms that would cater for TCNs, in the spirit of the Common Basic Principles on integration.

The road towards a national integration policy has been a long one. In addition to the MAP, several stakeholders have highlighted the urgent need of developing a formal policy on the integration of immigrants, given the increasing numbers of regular and irregular TCNs and the lost opportunities that arose as a result of that gap.⁷³ In fact, in 2007 Malta ranked 23rd out of 28 countries⁷⁴ (just above Slovakia, Greece, Austria, Cyprus, and Latvia) in the Migrant Integration Policy Index (MIPEX)⁷⁵. Family reunion and long-term residence were two of the best performing policy areas (both around 65%) while the other 4 (anti-discrimination 38%, labor market access 30%, access to nationality 29%, and political participation 19%) performed less spectacularly. EU citizens were more than double the legally resident TCNs.

Malta was described by MIPEX as ‘the EU’s smallest and most densely populated country’, albeit with fewer foreigners (4.4%) than the EU average (6.4%), and ‘behind most countries of immigration in improving integration policy’ given its 28th position in the ranking (out of 31 countries). The reason being that the improvements on the anti-discrimination/equality front via the ‘Equal Treatment of Persons Order’ and the ‘Public Administration Act’ did not compensate sufficiently for a number of weak policy areas (i.e. education, access to nationality, political participation, family reunion, and labor market mobility).

Since 2013, the Ministry for Social Dialogue, Civil Liberties and Consumer Affairs is responsible for the integration of migrants. It has worked with key stakeholders (most notably Aditus Foundation, Foundation for Shelter and Support to Migrants, Integra Foundation, Jesuit Refugee Service, Kopin, Organization for Friendship in Diversity, People for Change Foundation, and SOS Malta, among others), on the first *National Migrant Integration Strategy 2015-2020*. Clearly, MIPEX has been an important reference point for the drafting of this strategy.

⁷³ ‘Managing the challenges of irregular migration in Malta’, Stephen Calleya and Derek Lutterberk, TPPI, 2008.

⁷⁴ The 2007 edition of MIPEX included the 25 EU Member States, plus 3 non-EU Members: Canada, Norway, and Switzerland, in order to favor information exchange on integration policies beyond the EU.

⁷⁵ MIPEX was initially conceived in 2004 as the ‘European Civic Citizenship and Inclusion Index’ under the leadership of the British Council and the Migration Policy Group. Its aim was to fill a knowledge gap given the existence of 13 million non-naturalized immigrants (3.4% of EU residents) in fifteen Member States, in an effort to ‘keep up with the rapidly emerging EU Common Space of Justice, Freedom and Security’. Back then, 140 policy indicators benchmarked countries’ laws and policies against EU Directives, as the expression of the highest standards.

5.7 Changes following the Treaty of Lisbon for the Area of Freedom Security and Justice

Malta became the third EU member state to ratify the Treaty of Lisbon. The 'Treaty of the Functioning of the EU' (TFEU), which emerged as a result of the Lisbon Treaty, dedicated a title to the AFSJ (Arts. 67-89), whose guiding light is the principle of solidarity and fair sharing of responsibility including its financial implications (Art. 80, Chapter 1)⁷⁶. The Treaty also established a more efficient and democratic decision-making procedure,⁷⁷ national parliaments can examine legislative proposals for subsidiarity,⁷⁸ the Court of Justice of the EU (CJEU) can give preliminary rulings on all aspects of AFSJ, the Commission monitors the application of legislation and can start infringement procedures,⁷⁹ while the Member States can be involved in evaluating migration and asylum policy.

5.8 Malta hosts the European Asylum Support Office (EASO)

The European Asylum Support Office (EASO) was created in order to 'play a crucial role in ensuring practical cooperation between member states on matters related to asylum'⁸⁰. EASO is a regulatory agency of the European Union established to support, coordinate and further develop practical cooperation among Member States on asylum matters thereby supporting the coherent and full implementation of the Common European Asylum System (CEAS). As a centre of expertise on asylum, EASO helps Member States fulfill their European and international obligations to protect people in need and also provide support to Member States whose asylum and reception systems are under pressure, when they face an extraordinary influx of persons seeking international protection on their territory⁸¹.

On 30th November 2009, and four years since The Hague Programme, the JHA Council chose Malta to host the EU Agency on asylum, EASO⁸². Cyprus and Bulgaria, the two other bidders, decided to withdraw their bid when it became clear that Malta had the support of 22 Member States. According to Times of Malta,⁸³ the country had lost to Poland the bid to host Frontex. Nevertheless, it was a remarkable diplomatic and technical achievement for Malta considering its 'young' Member State

⁷⁶ All in all, the principle has a prominent position in Title V, since already in its first article (Art. 67.2) establishes that the EU '(...) shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. (...)'

⁷⁷ The Council acts by qualified majority voting (QMV), and the European Parliament as co-legislator delivers its opinion by the co-decision procedure.

⁷⁸ Art. 12 TEU - subsidiarity principle.


⁷⁹ Art. 258 TFEU

⁸⁰ EASO's history, available at <https://easo.europa.eu/about-us/easo-history/>

⁸¹ EASO (2015). Five years of EASO: results and perspectives.

⁸² '(...) After a common asylum procedure has been established, these structures should be transformed, on the basis of an evaluation, into a European support office for all forms of cooperation between Member States relating to the Common European Asylum System.'

⁸³ <http://www.timesofmalta.com/articles/view/20091130/local/malta-wins-right-to-host-eu-asylum-office.283906>



status. The EASO Regulation⁸⁴ came into force on 19 June 2010, and the first Executive Director started the process of building up the Agency eight months later.⁸⁵ The first EASO operating plan (1 April 2011) was designed to support the construction of the Greek asylum system, given its long-standing challenges. Between 2012 and 2014, other MS (Luxembourg, Sweden, Italy, Bulgaria, and Cyprus)⁸⁶ requested EASO's support. Since 2015 EASO became heavily involved in the joint interagency response to the refugee crisis, and a new Regulation is being drafted.

⁸⁴ Regulation (EU) No 439/2010 of the European Parliament and of the Council of May 2010 establishing a European Asylum Support Office.

⁸⁵ On 1 February 2011, EASO became operational as an EU agency.

⁸⁶ Further information available at <https://easo.europa.eu/about-us/tasks-of-easo/operational-support/>


5.9 The Stockholm Programme in Malta's peak years

Recently, the *Demographic Review* published by the Maltese National Statistics Office (NSO)⁸⁷ shows immigration flows have increased from 3,889 to 7,111 between 2006 and 2012. In 2012 alone 7.4% of the population increase was due to immigration.

Table 8: Annual estimates of migration flows (2006-2012)			
Year	Total	Males	Females
Immigration			
2006	3,889	2,755	1,134
2007	5,292	3,295	1,997
2008	6,043	3,852	2,191
2009	6,161	3,654	2,507
2010	4,275	2,339	1,936
2011	5,465	3,106	2,359
2012	7,111	4,136	2,975
Emigration			
2006	3,835	2,390	1,445
2007	3,730	2,450	1,280
2008	3,719	2,403	1,316
2009	3,868	2,473	1,395
2010	4,201	2,648	1,553
2011	3,806	2,268	1,538
2012	4,005	2,346	1,659
Source: National Statistics Office Malta (2015)			

Indeed, the percentage of foreign residents in Malta grew dramatically between 2009 and 2013, going from 3.8 per cent (15,000) to 9.4% (34,500). By 2010, new key data were available from the years 2007-2009, which saw a peak in asylum-seeker arrivals, mostly from Somalia (40%), Eritrea (16%), Nigeria (6%), Egypt (6%), and Sudan (5%). Libyan asylum seekers are the group that has been on the increase in 2015.

⁸⁷ Demographic Review 2005-2012, Post-Census Revisions, National Statistics Office, Malta, 2015.



In this period, the Council approved the Stockholm Programme, establishing the new priorities for the AJFS (common migration policy, sustainable asylum systems, and strengthening of the Schengen area), and the Commission developed an ambitious action plan to implement that programme. The action plan included the consolidation of legislation on legal immigration in the form of an Immigration Code (by 2013), the mutual recognition of asylum decisions (by 2014), and an external dimension of migration policy focused on Africa (instead of Eastern Europe, as was the case in previous programmes). The first two objectives have not been achieved yet, though they were discussed on several occasions. Another novelty of this programme was that its results would eventually be closely monitored and evaluated.

5.10 The Common European Asylum System enhancement and detention

Between 2011 and 2013 the EU asylum package (CEAS)⁸⁸ was improved to better harmonize asylum procedures, reception conditions and status determination outcomes across the EU. The impact of Directive 2013/33/EU laying down standards for the reception of applicants for international protection is of particular relevance to Malta. Asylum-seekers arriving in Malta without a visa and valid passport (irregularly) are termed as “prohibited migrants”, and are routinely detained for a period between 12 (for asylum seekers) and 18 months.⁸⁹ The Agency for the Welfare of Asylum Seekers (AWAS)⁹⁰ assesses vulnerability of new arrivals, allowing for an earlier release. If an asylum seeker is granted international protection he/she is released from detention and free to live in the community or in one of the open centres.

The EP’s Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) paid an official visit to Malta in 2006 to visit administrative detention centres. Even though the delegation recognized the challenges Malta was facing in managing the influx of migrants and asylum seekers “considering its surface area and population”, delegates were “struck by the hardship in the detention centres and the de facto denial of the right of asylum.” However, it made a call for help from the EU in light of the fact that Malta is situated on the EU’s southern border.⁹¹


Civil society organizations and UNHCR criticized the policy and practice, since ‘there is no empirical evidence that the prospect of being detained deters irregular migration or discourages persons from

⁸⁸ The recast Directives are: Qualification Directive (2011), Reception Conditions Directive (2013), Dublin III Regulation (2013), Asylum Procedures Directive (2013), and Eurodac Regulation (2013).

⁸⁹ Criminal Code (Chapter 9 of the Laws of Malta).

⁹⁰ <https://homeaffairs.gov.mt/en/MHAS-Departments/awas/Pages/AWAS.aspx>

⁹¹ Report by the LIBE Committee delegation on its visit to the administrative detention centres in Malta (30 March 2006), available at: <http://www.europarl.europa.eu/document/activities/cont/200801/20080104ATT17406/20080104ATT17406EN.pdf>



seeking asylum’.⁹² The European Court of Human Rights (ECtHR) delivered judgments on three cases concerning detention conditions of individuals awaiting immigration proceedings in Malta, finding a violation of Art. 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights⁹³.

In 2014 the Refugees Act was amended to transpose the recast Qualification Directive, which will have a minimal impact on the Refugees Act given the minor changes it went through in the recasting process⁹⁴. That year, Malta was fourth in the Member States ranking (after Sweden, Hungary, and Austria) in terms of number of asylum applications per one million inhabitants. It was also fourth (after Bulgaria, Sweden, and Cyprus) in terms of recognition rate of asylum seekers (72%) that qualify either for refugee status, subsidiary protection or humanitarian protection⁹⁵.

Malta identified the need to receive technical assistance in the area of reunification of asylum seeking children with close family members⁹⁶. The amendments which entered into force with the Dublin III Regulation, allow for more reunification possibilities for a greater number of unaccompanied minors.

At the end of 2015, the Ministry for Home Affairs and National Security approved a new *strategy for the reception of asylum seekers and irregular migrants*⁹⁷, with the aim of enhancing and reorganizing Malta’s reception system thereby safeguarding human rights. The new strategy ends the long-standing practice of automatic detention. The re-cast Reception Conditions Directive 2013/33 was transposed into Maltese legislation by the amended Reception of Asylum Seekers (minimum standards) Regulations (SL 420.06). In order to accomplish this, the Government had to specify the reasons as to why an asylum seeker may be detained, an obligation to inform each asylum seeker of those reasons, inclusion of remedies available in her/his language, alternatives to detention, a regular review of detention decision, and free legal aid for the review process. In addition, article 25A (10) of the Immigration Act had to be amended to enable detainees to challenge the reasons for

⁹² UNHCR’s position paper on Detention in Malta, 18 September 2013.

⁹³ The three cases were Aden Ahmed v. Malta (23.07.2013), Suso Musa v. Malta (23.07.2013), and Louled Massoud v. Malta (27.07.2010). Available at http://www.echr.coe.int/Documents/CP_Malta_ENG.pdf


⁹⁴ ‘Refugees (Amendment) Act, 2014’, *Comments on the exercise transposing the EU Recast Qualification Directive*, available at:

http://aditus.org.mt/Publications/aditusjrsrefugeesactchanges_122014.pdf

⁹⁵ EASO Annual Report 2014 (July 2015).

⁹⁶ IOM and UNHCR (2014), *Unaccompanied Migrant and Refugee Children: Alternatives to Detention in Malta*.

⁹⁷ Available at <https://homeaffairs.gov.mt/en/MHASInformation/Documents/Migration%20Policy%20181215.docx>



their detention. As a result of the implementation of this new strategy, and given the current boat arrivals numbers, detention centers are almost empty.⁹⁸

5.11 Italy-Malta Entente

When it comes to the rescue of migrants at sea, Italo-Maltese relations have fluctuated over the years. Both countries signed an agreement to solve the dispute over the rescue of migrants at sea, by setting up a mixed commission and technical teams from both sides to develop a mutual understanding.

In the summer of 2013 Malta had to negotiate with Italy a complicated case of rescue at sea,⁹⁹ when the shipmaster of the MV *Salamis* ignored the instructions of the Maritime Rescue Coordination Centre (MRCC) Rome to disembark 102 African migrants and asylum seekers in Libya. The MRCC and Malta argued that Libya constituted the nearest ‘port of safety’ whereas the shipmaster considered Malta to be more suitable. AFM provided the necessary support, but no permission to disembark was given. The short crisis was resolved when Italy accepted to allow the disembarkation to take place in Sicily. In the end, the MV *Salamis* incident marked a turning point in Italo-Maltese relations, closing the policy gap between both countries in terms of adopting a joint position vis-à-vis Brussels. In fact, even though there is no formal agreement signed between both countries, there seems to be an understanding that Italy will implement the search and rescue operations in Maltese waters and bring rescued people to Sicily.¹⁰⁰ The rationale behind this is Malta’s size and population density. In 2014 migrant flows in the Central Mediterranean region increased sharply (around 170,000 people),¹⁰¹ but that did not affect Malta as much as in previous years. The Italy-led Mare Nostrum operation had an impact on this development because all the rescued migrants were disembarked in Italy. In 2015 only 99 persons reached Malta by boat. Additionally, under the general programme of ‘solidarity and management of migration flows’, financed by the European Return Fund, the Malta Police Force collaborated with Italy to organize joint flights for removals.¹⁰²

⁹⁸ Malta Today, *165 detention officials watching over only 12 migrants* (February 16, 2016), available at http://www.maltatoday.com.mt/news/national/62297/165_detention_officials_watching_over_only_12_migrants#.VsXnlBHF_wy

⁹⁹ The Search and Rescue regime is not sufficiently clear when it comes to specifying the default State of disembarkation or a mechanism for effectively determining such State. ‘The MV *Salamis* and the State of Disembarkation at International Law: The Undefinable Goal’, Patricia Mallia, 15 May 2014, American Society of International Law (ASIL). <http://www.asil.org/insights/volume/18/issue/11/mv-salamis-and-state-disembarkation-international-law-undefinable-goal>

¹⁰⁰ This impression was brought to the public attention by Il Giornale, 17 September 2015, ‘Adesso L’Italia si prende anche I profughi che Malta non vuol’, available at <http://www.ilgiornale.it/news/politica/adesso-litalia-si-prende-anche-i-profughi-che-malta-non-vuol-1172070.html>

¹⁰¹ Frontex Annual Report (2015).

¹⁰² <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-0581&language=IT>

5.12 Humanitarian activism at sea: the MOAS effect

The Malta-based Migrant Offshore Aid Station (MOAS), was the first privately-funded mission to assist migrants at sea. Its main aim is to save lives. Shortly after its setting up it joined forces with Mediciens Sans Frontiers, in the hope that the humanitarian initiative would inspire other entrepreneurs globally, and help dispel what Pope Francis calls “the globalisation of indifference”¹⁰³. MOAS operates search and rescue missions with the ‘Phoenix’ vessel (40 metres), with a crew of 20 (paramedics, SAR staff, operators for two remote piloted aircraft, and two rigid-hulled inflatable boats). The initiative has been quite successful, cooperating effortlessly with the Maltese and Italian authorities, and capturing the European public imagination for heroism and good will. Rescued asylum seekers are landed in Italy, not Malta. In the summer of 2015 MOAS raised one million euros in two days after the photograph of the 3-year-old Aylan Kurdi appeared in the news. It is now an international NGO supported by donors and private individuals operating to the highest standards of maritime law, humanitarian ethics, primary medical care and search and rescue technology.¹⁰⁴

5.13 Access to Maltese Citizenship

As a result of the Dual-Nationality Act,¹⁰⁵ the highest number ever recorded of people (1,190) were naturalized/registered as Maltese citizens in 2001.

The Maltese Citizenship Act¹⁰⁶ was amended in 2013 to legally grant EU ‘citizenship by investment’ via the *Malta Individual Investor Program (IIP)*. Initially, the program was conceived for 1,800 people, who would be required to invest €650,000 without the need to live in the country. The rules had to be changed (1.15 million euros, and one year residence) after the controversy, which the program created in Brussels.¹⁰⁷ According to the EU Justice Commissioner, the criterion to be applied should not just be the ability to pay but that applicants had ‘a genuine link to the country’.

¹⁰³ https://w2.vatican.va/content/francesco/en/messages/lent/documents/papa-francesco_20141004_messaggio-quaresima2015.html

¹⁰⁴ For additional information: www.moas.eu

¹⁰⁵ Citizenship and Immigration laws were amended on 10th February 2000, so that dual or multiple citizenship would ‘become the rule rather than the exception’. This meant, in effect, that those former citizens of Malta who had acquired Maltese citizenship on the 21st September 1964 or at birth but who had not resided abroad for at least six years and those persons who were citizens of Malta by registration or naturalisation and lost their citizenship, would be entitled to be registered as citizens of Malta. That is, these persons, without having to satisfy any residence conditions and irrespective of where they were residing (whether in Malta or abroad), could submit an application to be registered as citizens of Malta.

¹⁰⁶ Chapter 188 of the Laws of Malta; Legal Notice LN47 (2014). More information available at: <http://www.maltaimmigration.com>

¹⁰⁷ ‘Joint Press Statement by the European Commission and the Maltese Authorities on Malta’s Individual Investor Programme (IIP) http://europa.eu/rapid/press-release_MEMO-14-70_en.htm ‘Malta tightens passport sale terms under EU pressure’ (30 January 2014), available at <http://www.bbc.com/news/world-europe-25959458>

5.14 Legal labor migration channels to Malta

With accession to the EU, Malta had to transpose two Directives geared towards legal migrants such as the Family reunification (2003/86/EC) and Long-term residents TCN (2003/109/EC)¹⁰⁸. Later on, other Directives were approved: Blue Card (2009/50/EC), Employers sanctions (2009/52/EC), and Single Permit (2011/98/EU). In 2014, the package was finalized with another two Directives on Seasonal workers (2014/36/EU) and Intra-corporate transferees (2014/66/EU).

In 2013, Malta's total population was 425,384. EU nationals' immigration was 1/3 higher than emigration, while TCN immigration was double its emigration.

Table 9: Total Population Estimates 2013			
	Males	Females	Total
Population end 2012	209,880	211,484	421,364
Births	2,109	1,923	4,032
Deaths	1,636	1,600	3,236
Adoptions	27	16	43
Migration –Maltese Nationals			
Immigration	938	886	1,824
Emigration	704	629	1,333
Migration Other EU Nationals			
Immigration	1,951	1,192	3,143
Emigration	1,247	898	2,145
Migration – Third Country Nationals			
Immigration	2,216	1,202	3,418
Emigration	1,110	616	1,726
Population end 2013	212,424	212,960	425,384
Source: News Release 11 July 2014, NSO, Malta			

In 2014 the total stock of immigrants was 23,643, of which more than half (12,078) were from the EU, EEA and Swiss nationals. In addition, there were 11,565 TCNs (non-naturalized) residing in

¹⁰⁸ In 2011 its scope was extended to include refugees.

Malta, coming from: Libya (1988), Somalia (1206), Russia (1029), Serbia (790), the Philippines (720), Eritrea (662) and China (602).¹⁰⁹

The Department of Citizenship and Expatriate Affairs¹¹⁰ receives and processes residence applications of non-Maltese citizens wishing to reside legally in Malta for more than three months in line with the Blue Card and Single Permit Directives. The share of EU citizens compared to TCNs working in Malta increased exponentially between 2008 and 2014. The amount of Blue Cards issued by Malta is quite low, as is the case for the whole of the EU. In 2012 Malta had not issued one single Blue Card (the total for the EU28 was 3,664), but in 2013 the number quadrupled for the EU28 reaching 15,261.¹¹¹ The total residence permits issued by Malta also increased over the years:

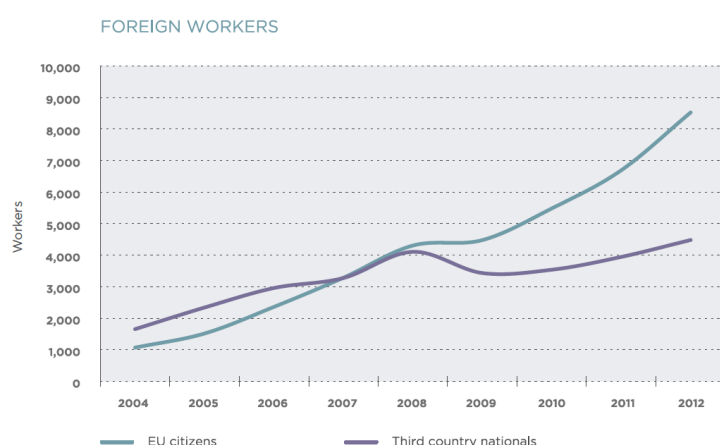
Table 10: Residence permits for Malta

2008	2009	2010	2011	2012	2013	2014
4,836	3,547	2,763	3,484	4,526	10,187	9,895

Source: Eurostat 2015

According to the National Employment Policy (2014), the share of foreign workers as a ratio of the total workforce of Malta grew from 1.7% in 2004 to 7% in 2012. The sectors in which they tend to concentrate are entertainment and recreation (33.8% of workforce), construction (7.2% of workforce), accommodation and food service activities (14.8%). Between 2009 and 2012 the Labor Force Survey (LFS), the EU official unemployment indicator, shows little variation (12,200 persons).

Table 11: Foreign workers employed in Malta.




Source: National Employment Policy (May 2014)

¹⁰⁹ Assess – National Report for Malta. People for Change Foundation, 2014.

¹¹⁰ <https://identitymalta.com/citizenships-expatriates/>

¹¹¹ COM(2014) 287final, available at <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-287-EN-F1-1.Pdf>



According to Malta's Employment and Training Corporation (ETC) unemployment figures increased from 2011 to 2012, even though the demand for labour was rising. One of the explanations given is that the registered unemployed are unwilling to take up existing job vacancies¹¹². So, are migrants a detriment to Malta's economic and social development?

Recently, the Central Bank of Malta made the macroeconomic case for migration in Malta¹¹³. In a policy note three main research questions are addressed: 1) the increase of economic migration to Malta, 2) the characteristics of foreign workers in the Maltese economy, and 3) the contribution of those workers to the Maltese economy. The results are quite positive as there is evidence that the fact that the number of EU nationals and TCNs working in Malta has trebled (15,500 people) and quadrupled (6,200 people) respectively, is directly related to the development of new industries and a more diversified economy. In practical terms, this means that Maltese workers have not been displaced from the labor market, but that job creation was equally divided between local and foreign workforce between 2010 and 2014. All in all, the Central Bank states that 'foreigners have contributed to boost economic growth', contributing to 10% of the total revenue from personal income tax and national insurance contributions.

6. Policy responses by Malta and the EU: some ideas about the way forward


Independently from the many achievements made since the Stockholm Programme, the Commission recognized in March 2014 that 'much remains to be done to ensure the full implementation and enforcement of existing instruments. Asylum legislation must be transposed coherently. The legal framework for a common migration policy is still to be completed and further efforts are needed in the area of integration'¹¹⁴. Furthermore, it reminded Member States that solidarity (support other Member States facing high temporary pressure on their asylum systems) and responsibility (comply with rules of the Union *acquis*) 'must go hand in hand'. The Maltese pilot project EUREMA is specifically mentioned as one example of practical solidarity, which should be the norm. Other forms of solidarity and responsibility sharing proposed in the COM (2014) 154 final include joint processing of asylum applications, pooling reception places in times of emergency.

¹¹² National Employment Policy 2014, available at:

<http://education.gov.mt/employment/Documents/EMPLOYMENT%20POLICY%20DOC%20sml.pdf>

¹¹³ Dr. Aaron G. Grech, Central Bank of Malta (2015), 'Understanding the macroeconomic impact of migration in Malta'.

¹¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An open and secure Europe: making it happen, COM(2014)154 final.




Undoubtedly, the ‘solidarity card’ has been effectively played by Malta since joining the European Union. Given its *small state* nature, ‘solidarity and burden sharing’ has been a consistent mantra of the different Maltese administrations. Creative ways of presenting statistics in comparative ways (e.g. 2,000 people are for Malta the equivalent to 1 million for Country X) certainly left an indelible imprint in the minds of fellow Member States’ representatives, which might have facilitated an increase in EU funds.

However, for many years the solidarity *mantra* did not always resonate in Brussels, due to differing political realities and interests of the other Member States. An example of this was the discussion around the relocation distribution keys, which took place in May 2015. During negotiations on the formula to calculate the amount of persons in need of international protection that needed to be relocated in the EU,¹¹⁵ Malta tried to argue that ‘population density’ should be one of the factors taken into account for ‘justice-based criteria’. In the end, four distribution keys (‘based on objective, quantifiable and verifiable criteria that reflect the capacity of the Member States to absorb and integrate refugees’), each of them with a concrete percentage weight, were chosen: a) the size of the population (40%) as it reflects the capacity to absorb a certain number of refugees; b) total GDP (40%) as it reflects the absolute wealth of a country and is thus indicative for the capacity of an economy to absorb and integrate refugees; c) average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010-2014 (10%) as it reflects the efforts made by Member States in the recent past; and d) unemployment rate (10%) as an indicator reflecting the capacity to integrate refugees.

Under this temporary distribution scheme, Malta would receive 276 of the 40,000 migrants to be relocated from Greece and Italy, which seems a better deal than receiving boat arrivals at the same rate in the years previous to 2013. In addition, the Commission invited Malta to resettle 121 people from the total allocation based on 20,000 persons, which would reverse the trend for Malta given it was mainly a user of such international refugee resettlement schemes. The proposed relocation numbers were not accepted by many Member States, including Malta, which started a bargaining process to lower the proposed number applying a different formula, based on the distribution keys ‘GDP’ and ‘population’. Minister Carmelo Abela announced that Malta would take 74 migrants, almost double the number (40) agreed according to the Member States formula. In his opinion, this formula would be fair for Malta, since the country’s low unemployment rate affected the result of

¹¹⁵Triggering the emergency response system envisaged under Article 78(3) TFEU, the Commission proposed a temporary distribution scheme for persons in clear need of international protection to ensure a fair and balanced participation of all Member States.



the Commission's formula. However, he added that he did not have a problem with the number suggested by the latter.¹¹⁶

Malta had been advocating for a long time that Mediterranean migration needed to be placed higher on the agenda, and to dedicate EU funds to development in third countries. In the wake of increased irregular crossings in unseaworthy boats (and the consequent deaths) of migrants and asylum-seekers in the Mediterranean in April 2015, the European Commission launched a *European Agenda on Migration with four pillars to better manage migration*.¹¹⁷ Its fourth pillar (*A new policy on legal migration*) referred to migration and development ('maximizing the development impacts for countries of origin'). This comes as no surprise, since it is in line with the EU *Global Approach on Migration and Development* (GAMM).¹¹⁸ The Agenda has received wide criticism for its excessive focus on fighting migrant smugglers and border control.


On 30 June 2015, Valletta was proposed to be the venue of a Summit on Migration (11-12 November 2015) that would build on existing cooperation processes between Europe and Africa. Drawing on elements of the external dimension of the migration agenda identified in the Global Approach on Migration and Mobility and the European Agenda on Migration, the clusters the Summit focused on were:

1. Cooperation with third countries on legal migration and mobility at continental, regional and bilateral level;
2. International protection and asylum to ensure protection of migrants and asylum seekers along the entire migratory route, with particular attention to vulnerable groups, such as unaccompanied minors and women;
3. Prevention of and fight against migrant smuggling and trafficking of human beings;
4. Making progress on return and readmission agreements;
5. Maximising development benefits of migration and tackling the root causes of forced displacement and irregular migration;
 - 5.1. Investing in development
 - 5.2. Addressing instability and crises

¹¹⁶ <http://www.independent.com.mt/articles/2015-07-21/local-news/EU-giving-more-importance-to-Mediterranean-migration-now-than-seven-months-ago-Carmelo-Abela-6736139259>

¹¹⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions – a European Agenda on Migration, COM(2015) 240 final, from 13th May 2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/backgroundinformation/docs/communication_on_the_european_agenda_on_migration_en.pdf

¹¹⁸ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/index_en.htm



Countries which are members of the Rabat and Khartoum processes on migration, representatives of the African Union and the Economic Community of West African States (ECOWAS), UNHCR (and other UN Agencies) and IOM were invited to join the summit.¹¹⁹ The Summit resulted in a Political Declaration, a 16-point Action Plan, and the creation of a two billion euros Trust Fund.

The agenda was criticized for being heavily focused on pushing forward European interests, such as swift forced return and readmission of irregular migrants to Africa. African countries opposed this approach in favour of voluntary returns. Another contentious point was the lack of more varied channels for legal migration (e.g. increased resettlement places, humanitarian visas, extended family reunifications, sponsorship programmes, etc.).

7. Conclusion


The negotiation of Chapter 24 (freedom, security and justice) as part of the accession package was of crucial importance. EU membership has given Malta access to a flexible and highly qualified workforce for a fast paced and specialized labour market (e.g. iGaming industry) thanks to the free movement of workers. However, the discussion is still pending around increasing the number of applications and recognition for non-EU qualifications and experience. Malta has the opportunity to voice its needs with the Commission with a view to attract highly qualified third country nationals via the Blue Card Directive as part of the EU Labour Mobility Package.

But Malta is geographically in an irregular migration corridor between Libya and Italy. Studies show (and practitioners in Malta know it) that migrants and asylum seekers who arrived in Malta did not intend to stay in the country.¹²⁰ Its proximity to Libya and interest in seeing an end to the conflict, makes Malta a potential broker for future solutions (including prevention of smuggling and trafficking). Malta used detention as a deterring tool to discourage irregular migrant flows, a policy which damaged its image at EU level and had little success in achieving its objectives, since at the same time recognition rates were high (hence attractive for asylum seekers).

Given the existing obligation for the country of first entry to the European Union to process asylum claims (Dublin II), Malta's size/population density and the fact that it is an island (with no land connections with mainland Europe) have been successfully used as negotiation points with other Member States to secure financial solidarity and some responsibility sharing. In that sense, Malta has played its cards extremely well in a strategic and coherent way over the past years, not only in

¹¹⁹ <http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/>

¹²⁰ 'Assessing the presence of persons having experienced human trafficking before their arrival in Malta or vulnerable to trafficking in the future, among the population of undocumented immigrants arriving in Malta by sea'. 2013



the EP, the Council, and the European Commission. The fact that in a year of record flows for Europe, Malta's inflows had decreased constitutes a clear proof of that. Creating an alliance with Italy has been a clever move in that direction. The challenge will be to keep that alliance alive if and when the Italian Government changes.

Integration has become a more prominent topic in the national agenda. The Malta Integration Network has been instrumental in moving the agenda forward in coordination with the Government. Still, more awareness needs to be done to reduce racism and xenophobia.

The Valletta summit crystalized Malta's efforts within the EU to move towards workable solutions with Africa on the issue of migration and asylum in the Mediterranean. At the same time, it strengthened its leadership position in issues such as intra-EU and external dimension solidarity, paving the way for Malta's upcoming EU Presidency in 2017. Migration is one of the topics identified as a priority for the Maltese EU Presidency. Judging from the mass inflows of asylum seekers and migrants to the European Union and the subsequent closing of some borders, plus the absence of a diplomatic solution to Libya and Syria conflict, it remains a wise choice.

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