CHALLENGES FACING MALTA AS A MICRO-STATE IN AN ENLARGED EU*

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Abstract. The purpose of this paper is to consider the challenges that Malta is likely to face in an enlarged European Union of twenty-five States – not only as a micro-state but also as a micro island state – a factor that distinguishes Malta from another micro-state in the EU, namely Luxembourg, as it adds insularity and peripherality to the disadvantage of small size. Malta managed to obtain a number of special arrangements in relation to existing Community legislation during negotiations that take into account its vulnerability as a small island economy and cushion the impact of accession. The paper argues that unless Malta is properly represented in the decision-making bodies and its micro-state concerns adequately considered and safeguarded by a fully representative Commission, post-accession decisions could wipe out the beneficial effects that the hard earned special arrangements obtained during negotiations were intended to achieve.

Introduction

The purpose of this paper is to consider the challenges that Malta is likely to face in an enlarged European Union of twenty-five States – not only as a micro-state but also as a micro island state – a factor that distinguishes Malta from another micro-state in the EU, namely Luxembourg, as it adds insularity and peripherality to the disadvantage of small size.

Many studies on small island states have identified a number of inherent and permanent economic features that are associated with economic vulnerability (see for example, Briguglio, 1995, Witter et al. 2002). The economies of such states are more likely to be damaged by external

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depended by external economic conditions than larger states while their small size, insularity and peripherality burdens their industries with added costs.

In some respects, membership in the EU reduces these handicaps but in other respects it will accentuate them unless proper consideration is given to these concerns at the decision and policy-making level.

Malta’s Peculiarities as a Small Island State

High Dependence on Exports

One source of economic vulnerability that is mentioned by these studies is that, because the domestic market in such states is very small, a relatively high proportion of the country’s output of goods and services must be sold on the export market. Since a high percentage of Malta’s exports goes to EU Member States, accession to the EU in this regard should be beneficial as it will facilitate market penetration of Maltese exports – indeed even into non-European markets as a result of the Community’s various trade agreements with non-EU countries. This wider market will provide local firms with the possibility to benefit from economies of scale if they are able to exploit their export opportunities.

Lack of Natural Resources

Of course the small size of the country also means that there is a lack of natural resources in most sectors so that in most industries local manufacturers depend heavily on imports of industrial supplies and raw material. This affects their competitiveness both on the domestic and the export market.

Transport Costs

An added cost to local manufacturers is the higher per unit cost of transport. Being an island, Malta has to transport its imports by air or by sea. This raises the cost of imports, and as a result the cost of production, and could lead to time delays. To minimise delays in deliver-
ies, enterprises in small islands stock their industrial supplies in larger quantities than would be the case with speedier deliveries, and this leads to additional costs of warehousing.

**Exposure to International Prices**

Since the volume of production and trade by local manufacturers in the domestic and export markets is negligible in relation to world markets, local manufacturers are always price-takers and can never influence market conditions and international prices. This phenomenon will now also be felt on the domestic market given that with the removal of the remaining forms of protectionism, manufacturers now face full competition in a fully liberalised market in Malta as well. The smallness of the market and limited resources had driven manufacturers in the past to forego diversification and focus on a very narrow range of products.

As a result of accession, local manufacturers will have to compete with European ones in the domestic as well as in the export markets and their survival will depend on efficient production. They will therefore face a sink or swim situation. This should result in better allocation of resources, but, undoubtedly there will be firms which will find it difficult to survive in such an intense competitive setting.

**Infrastructural Costs and Indivisibilities**

Competitiveness also depends on good infrastructure but in the case of a small state this is very costly per capita due to the problem of indivisibility. One benefit of joining the European Union is that the EU provides much-needed funds for infrastructural development, and this could in turn attract more foreign investment and enable local entrepreneurs to compete more effectively on the European markets.

**Positive and Negative Repercussions**

Thus membership will have both positive and negative repercussions on Maltese business – the challenge is that with the right strategies and restructuring, industry should try to maximise the benefits of membership so as to mitigate Malta’s inherent economic vulnerabilities associated with the small size and insularity.
**Special Arrangements**

Before accession to the EU there was a lively debate as to whether membership would intensify or conversely, neutralise the island’s economic vulnerability. During the accession negotiations Malta managed to obtain a number of special arrangements that address these concerns.

**Influx of Foreign Workers**

It was feared in some quarters that following accession, unemployment will increase as the small labour market will be flooded by an influx of EU nationals taking jobs away from Maltese workers. In order to minimize the possible impact that free movement of workers might have on its labour market, Malta managed to negotiate a transitional provision in the Accession Treaty to Article 39 of the EC Treaty. This provides that up to 2011 whenever Malta undergoes, or foresees that it will undergo, disturbances in its labour market that could seriously threaten the standard of living or level of employment in a given region or occupation, it may resort to a safeguard procedure that suspends in whole or in part the application of Regulation 1612/68 on the freedom of movement for workers, in order to restore to normal the situation in that region or occupation. On the other hand, Maltese nationals seeking work abroad would continue to enjoy the benefits of the Regulation. In order to be able to monitor the labour market and have advance warning of any such situation Malta has also been allowed to retain until 2011 its work permit system, although EU nationals seeking work in Malta will receive such permits automatically.

Furthermore, in a joint declaration attached to the Accession Treaty it is declared that should Malta’s accession, at any time even after 2011, give rise to difficulties relating to the free movement of workers, the matter may be brought before the Community institutions in order to obtain a solution to this problem.

**Acquisition of Property in Malta**

A matter of major concern in Malta relates to Malta’s very limited land area. In terms of the Community *acquis*, on accession, property in Malta

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would have had to be made available for purchase without any restrictions to all EU nationals—so that even though not resident in Malta, non-Maltese EU nationals would have been entitled to buy as much immovable property as they wished. This would certainly have led to a hefty increase in property prices. Fortunately, Malta managed to negotiate a derogation that is now Protocol No 6 to the Accession Treaty that states that given the very limited number of residences in Malta and the very limited land available for construction purposes, which can only cover the basic needs created by the demographic development of the present residents, Malta may, on a non-discriminatory basis maintain in force its current restrictive rules on the acquisition and holding of immovable property for secondary residence purposes by EU nationals who have not legally resided continuously in Malta for at least five years.

This means that non-resident EU nationals, Maltese or otherwise, may acquire their first residence or property for business purposes in Malta without the need to seek authorisation. However, anyone, irrespective of nationality, who has not been resident in Malta for a minimum of five years still needs to apply for authorisation to buy a second house or other property in Malta and to satisfy the relevant criteria which however must be published, objective, stable and transparent.

Agricultural and Fisheries Sectors

Two sectors where Malta’s size and limited resources could have turned membership into a disaster for industry were the agricultural and fisheries sectors. Small holdings on terraced strips of land, small scale

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2 The Protocol requires that the criteria for authorising acquisition of immovable property shall be applied in a non-discriminatory manner and shall not differentiate between nationals of Malta and of other Member States. Malta shall ensure that in no instance shall a national of a Member State be treated in a more restrictive way than a national of a third country.

3 Immovable Property (Acquisition by Non-Residents) Act (Chapter 246).

4 There are exceptions—property in special designated areas as well as particular circumstances—where these restrictions do not apply. Special rules also apply where the property is going to be acquired by legal persons.

5 As was the case prior to accession, authorisation for a second residence shall be granted (subject to conditions) where the value of one such property exceeds the thresholds provided for in Malta’s legislation, currently Lm30,000 for apartments and Lm50,000 for any type of property other than apartments and property of historical importance. Malta may revise the thresholds established by such legislation to reflect changes in prices in the property market in Malta.
machinery or manual tools and an ageing labour force mean that unless there is restructuring the local industry would not be able to compete effectively with imported products once the protective levies were removed.

Malta managed to negotiate the adoption of a Special Market Policy Programme for Maltese Agriculture (SMPPMA) that takes into account the realities of the local scenario and provides for special temporary state aid for farmers for a period of seven to eleven years after accession, depending on the type of produce, to enable them to adapt to the changes in the market environment resulting from the dismantlement of the levies.

Moreover, there is a general safeguard clause in the Accession Treaty (Article 37) applicable to all economic sectors that can be invoked by any new Member State. It provides that up to 2007, if difficulties arise, which are serious and liable to persist in any sector of the economy or which could bring about serious deterioration in the economic situation of a given area, a new Member State may apply for authorisation to the Commission to take protective measures in order to rectify the situation and adjust the sector concerned to the economy of the common market. Old Member States may also invoke this clause in the same circumstances.

In relation to agricultural products covered by the SMPPMA, Malta managed to negotiate an extension of this transitional period for the application of the safeguard clause to 2009. A few weeks after accession, local farmers were already calling on the government to immediately implement this clause because accession has forced them to reduce drastically the price of their produce to remain competitive and they claim that this is seriously threatening their livelihood.

The situation in the fisheries sector is similar to the agricultural sector with production methods that are mostly artisinal and on a small scale. To mitigate the effects of adverse competition, Malta obtained concessions that allow Malta to retain the 25-mile conservation zone around Malta where only small-scale coastal fishing will be allowed with some exceptions for a limited number of small trawlers, an exemption for Maltese boats from certain regulations for eligibility for
financial assistance and certain species of fish which are of interest to Maltese fishermen have been inserted in the EU regulations on conservation measures.

**Gozo – A Case of Double Insularity**

Malta is actually an archipelago of three islands – Malta, the largest of the three, Gozo to the north of Malta that is separated by a stretch of 8 km of sea and Comino that is a very small and largely uninhabited island. The main means of transport available between Malta and Gozo is a ferry service. The combined effects of this double insularity, environmental fragility and small population size with a high population density as well as its inherent limited resources adds to the micro-state handicaps that Gozo is faced with. Thus, Gozo has economic and social specificities that are peculiar to it and require particular attention (see Briguglio, 2000).

In order to address these structural handicaps, special arrangements were negotiated with the EU to enable Malta to use structural and cohesion funds as well as to subsidize inter-island transport of passengers and agricultural produce to reduce the disparities in the level of economic and social development between the two islands.

Moreover, a joint declaration is attached to the Accession Treaty that recognizes Gozo as a separate island region (in terms of the Declaration on Island Regions (No 30) annexed to the Amsterdam Treaty) with particular specificities and additional permanent structural handicaps and a significantly lower GDP per capita than that of Malta as a whole and declares that before the end of each Community budgetary period, the Commission would be asked to propose appropriate measures, as required, in the framework of the Community regional policy or other relevant Community policies, to ensure the continuation of the reduction of disparities between Gozo and Malta as well as the further integration of Gozo into the internal market on fair conditions.

In particular, in the event that Malta, as a whole, would no longer be eligible to certain measures of the regional policy, the report would assess whether the specific economic situation of Gozo justifies a continued eligibility of Gozo on its own to those measures.
Legislative and Administrative Burdens of Membership

The House of Representatives

Notwithstanding its size, except for the derogations and transitional periods that were obtained during the negotiations, Malta is obliged to take on board the entire acquis and to set up appropriate mechanisms for its enforcement. Thus, although the national parliament is very limited in its resources, it must discuss and transpose the same number of Community measures as the legislatures of larger states.

Malta’s House of Representatives generally meets only three times a week for three-hour sessions in the evening enacting an average of thirty laws annually. Moreover, there are only sixty-five members of parliament and excluding the ministers and parliamentary secretaries (junior ministers) they all practise a profession or are employed on a full-time basis, so that they are in effect part-time parliamentarians. Yet this parliament must now debate and enact all the necessary legislation to align the local regime to the changing Community acquis and to transpose the same number of directives as the legislative bodies of larger EU countries. Equipped with scarce human resources the local legislator has to carry the same burden as its counterpart in larger countries.

This has been remedied through the enactment of the European Union Act that modelled on UK’s European Communities Act (Sections 2(2) and 2(4) in particular) empowers the government ministers to transpose Community directives and generally to implement any obligation arising under Community law via subordinate legislation (by order) in lieu of Acts of Parliament. Moreover, it has been announced that a sub-committee to the Standing Committee on Foreign and European Affairs shall shortly be set up on the same lines as the European Scrutiny Committee of the House of Commons in order to discuss with the aid of a number of research analysts proposed Community legislation.

The Civil Service

Accession will also overburden the civil and diplomatic service as again just like their counterparts in the larger states the civil servants and

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6 Act 5 of 2003.
diplomats must strive to participate in all the relevant working groups and committees in Brussels. This has meant a restructuring of all the ministries and the embassy in Brussels to ensure a set-up that permits proper representation in all these fora with Malta’s permanent representative shuttling between Malta and Brussels every week to maintain the necessary coordination. Limited human resources also mean that a Maltese expert might have to be deployed on various committees so that he/she would be unable to benefit from the specialisation enjoyed by his/her counterparts from the larger Member States.

However, the public administration proved itself very competent during the accession negotiations and this augurs well that by time it would be able to adapt – indeed with the help of the new structures being set up it might be able to turn its smaller administrative capacity to its advantage as this might after all enable it to be more efficient than larger unwieldy bureaucracies.

Unfortunately this problem related to scarce human resources has manifested itself also in the recruitment of Maltese translators and interpreters as the number of those who applied successfully to join the Community institutions was insufficient to meet the demand with the result that in several meetings delegates have been unable to speak in Maltese due to the absence of interpreters for the Maltese language, although Maltese is one of the official Community languages. Moreover, Council Regulation 930/2004 grants a derogation to all the institutions from the obligation to draft all acts in Maltese and from publishing them in Maltese in the Official Journal for a period of three years, i.e. up to May 2007, with a possibility of a further extension of one year. In the meantime, since English is also an official language in Malta, although the working language in the courts is Maltese, Maltese courts will have to resort to the English text of the Community acts. It is claimed that this problem is merely temporary and will not endanger the status of the Maltese language as an official Community language.

8 The only exception that is made is to Regulations adopted jointly by the European Parliament and the Council.
9 Not later than October 2006 the Council shall review the situation and determine whether or not to extend the derogation for a further year.
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On the other hand, theoretically, there is also the fear of a brain drain in certain professions such as the medical profession as members of such a profession might be enticed to take advantage of better career and income opportunities that might be available in other Member States. In a micro-state the departure of a few prominent members of the profession would be immediately felt.

Representation in the European Parliament

However, apart from these inherent disadvantages linked to the country’s small work force, these disadvantages were further compounded by the decision of the Member States in Nice to distinguish Malta from the other micro-states, Luxembourg and Cyprus, and reserve for Malta the lowest number of European Parliamentary seats – 5 instead of 6.\textsuperscript{10} Likewise the same distinction was made in relation to the Economic and Social Committee and the Committee of Regions. Yet this will mean of course that especially in the case of the European Parliament, the Maltese euro-parliamentarians will find it very difficult to participate effectively in the parliament’s committees. The small states in the EU are actually disproportionately represented in Parliament, but this representation is still very small in order for their national interests to be adequately and effectively represented in the European Parliament. The minimum threshold should guarantee this adequate representation.

Further disadvantages faced by Malta’s euro-parliamentarians relate to the fact that their salary is very low compared to that earned by their counterparts in most of the other Member States. This is because the salary of the euro-parliamentarians is based on that of the local parliamentarians, which in Malta is low, given that local parliamentarians are part-timers. As a result the salaries of Malta’s MEPs will be among the lowest and this might possibly hamper them from fully expending their efforts on their parliamentary duties.

\textsuperscript{10} During the intergovernmental conference that led to the adoption of the EU Constitution in June 2004, it was agreed that as from 2009, the minimum number of seats will be 6 per member state. However, this constitution will enter into force only if and when it is ratified by all the 25 member states.
Representation in Council and Commission

Although in the new Commission and the Community courts Malta will have the same number of appointees as the other Member States, in the Council Malta has the lowest number of votes – three as opposed to Luxembourg’s and Cyprus’s four – and that will mean that for Malta’s voice to be heard it has to rely even more on forging alliances with other States than larger States that require fewer allies for a blocking minority.

It has been shown (Greaves, 2002) that small Member States are not a homogenous lot with common interests but their alliances shift according to the issues in discussion. So even though in terms of numbers there are now many more small States in the EU than large ones Malta will not have any natural allies in the Council but must seek to win support from small and larger States alike on the various issues that are of particular interest to it.

The newly adopted Constitution stipulates that in future the Commission would no longer be made up of one commissioner from every Member State but would comprise of a smaller number of commissioners selected on the basis of equal rotation between the Member States. This would mean that Malta would no longer have an appointee on every Commission.

Thus while at the moment equal representation in the Commission compensates to some degree for the very low number of votes that Malta enjoys in the Council and Parliament, this is set to be lost as well. As John Temple Lang (2002) remarks “it is naive and wrong to imagine that a large State with no Commissioner is in a position equal to that of a small State with no Commissioner”.

Temple Lang has argued that, with qualified majority voting in Council now being the rule, small Member States need a strong and effective Commission to defend their interests and to prevent the agenda of the European Union from being driven by the larger States. It acts as a mediator by reconciling the interests of the majority with the interests of

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11 While the draft constitution had proposed that this new system would enter into force from 2009, the adopted constitution postpones this new arrangement till 2014.
whoever is in a minority on any particular issue. In this way the interests of all the Member States in an enlarged and more heterogeneous European Union would be safeguarded. Micro-states need a strong Commission also to ensure that large states abide by the law as the law is their only safeguard given that due to their weak political and economic strength they cannot protect themselves in other ways.

Moreover, to have the confidence of all States and of the small States in particular it is essential that on the Commission small Member States are equally represented as the larger Member States – only in that way could the Commission be seen to be representative of the interests of all Member States.

Rosa Greaves in a recent paper (Greaves, 2002) makes an interesting proposition – she argues in favour a specific constitutional safeguard to be introduced into the Treaties to ensure that the decision-making process includes a legal duty on the Commission as the initiator of legislative measures to consider whether any proposed legislative measure has a significant or disproportionate impact on the national vital interests of a micro-state – a kind of impact assessment test. In a way something akin to this has already been obtained by Malta during the negotiations in relation to the free movement of workers where as shown above the Commission may be requested by Malta to suspend the application of the free movement provisions if a negative impact is perceived.

Greaves suggests a general constitutional requirement on all the decision-making institutions to consider actively the impact of their proposals or decisions on micro-states. Accordingly, micro-states would each provide a list of areas of major concern to them and when the Commission proposes legislation in these areas it would have to undertake an assessment of the impact of the legislation on the particular micro-state that expressed a concern in that area and this report would be attached to the proposal for consideration by the Council and Parliament.

**Competition Rules**

Apart from this legislative role, the Commission, in one particular area – that of competition policy – also applies and enforces Community law.
Even in the application and enforcement of Community competition rules the peculiarities of the small market should be borne in mind.

The competition provisions of the EC Treaty are now applicable to collusive practices and abusive conduct by Maltese undertakings that may have an effect on trade between Member States. Some commentators (Gal, 2003; Briguglio and Buttigieg, 2004) have argued that in small market economies it is natural given the size and vulnerability of the market for several economic sectors to develop monopolistic or oligopolistic structures. Investment is feasible and forthcoming only if the investor is guaranteed a monopolistic return or limited competition.

Such markets might require a different application of the concepts that have informed EC competition policy by taking into account the peculiarities of the markets in which such undertakings operate. For instance, doctrines such as the essential facilities doctrine might have to be applied more rigorously in such markets as the size and limited resources of the State might turn several facilities that are owned and controlled by incumbents that were the first to enter the market into essential facilities. On the other hand, certain types of exclusionary conduct might have to be analysed differently—for example, price discrimination should be allowed when it serves as a method for breaking oligopolistic coordination.

Following the Volvo/Scania case\(^\text{12}\) it has also been argued that the EC Merger Regulation is discriminatory against large domestic companies in small Member States in that a merger between large firms in a small market is more likely to be found to lead to dominance and is consequently prohibited than a merger between firms of the same magnitude in a larger Member State (Bernitz and Gutu, 2003). This would occur where the relevant geographic market is drawn narrowly along the borders of a small Member State and is still deemed to be ‘a substantial part of the common market’. This remains a controversial view not shared by all commentators and it has been rebutted by Commission officials (Sjoblom, 2000). However, if this view is correct, one effect could be that large companies in a small Member State wishing to merge would prefer to relocate to a larger Member State with the consequent

negative effect on employment and consumer interests in the small Member State.

Horn and Stennek (2002), while not empirically proving this theory, suggest various ways in which this problem could be resolved. The one that they consider most feasible is that an efficiency defence that explicitly weighs consumer interests is introduced in the Community’s merger control policy.

With the reform of the Community’s merger control regime such a defence has indeed now been explicitly acknowledged and, if this defence is given due consideration, such a problem, if it did ever exist, would be minimized in future.

**Multi-Speed Europe**

With an enlarged EU of 25 States there is the fear that the European Union might turn into a multi-tier or multi-speed Europe with an inner and outer circle of integrated states. Such an eventuality might be disastrous for a micro-state because unless the criteria for acceptance of Member States on the outside to join the inner core are objective and transparent and unless these Member States are enabled by the inner core states through a constitutional principle of solidarity to attain these criteria, small Member States which therefore lack political clout risk remaining on the periphery (Busuttil, 1996).

**Conclusion**

Malta managed to obtain a number of special arrangements in relation to existing Community legislation during negotiations that take into account its vulnerability as a small island economy and cushion the impact of accession. However, Community decision and policy making is on-going and unless Malta is properly represented in the decision-making bodies and its micro-state concerns adequately considered and safeguarded by a fully representative Commission, post-accession decisions could wipe out the beneficial effects that the hard earned special arrangements obtained during negotiations were intended to achieve.
References


