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## The Maltese Presidency of the European Union 2017

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Dr Borg was elected in 1995 as a Member of the House of Representatives of Malta and he also served as Parliamentary Secretary within the Ministry of Foreign Affairs in 1998/99. He then became Minister of Foreign Affairs of Malta between 1999 and 2004, during which period he led negotiations for Malta's accession to the European Union. In 2004, he took up the post of Member of the European Commission with responsibility for fisheries and maritime affairs. His mandate as European Commissioner came to an end in February 2010.

He has resumed lecturing at the University of Malta since October 2010, and has been appointed Chairperson of the Board of Administrators of the Mediterranean Academy of Diplomatic Studies (MEDAC).

In December 2016 he was awarded a D.Litt *Honoris Causa* by the University of Malta in recognition of his work in connection with Malta's EU accession process and his role as Malta's first European Commissioner.

Extended version of the key note speech at the Final Ceremony of the ZEI Class of 2016, Bonn, 30 June 2017.

*Joe Borg*

## **The Maltese Presidency of the European Union 2017**

Every Presidency of the European Union seeks to leave its own mark in one way or another on one or more particular facets of the evolving process of the European Union. This becomes even more important for a Member State who, like my own country, Malta, has been at the helm for the first time.

In my view, the three most prominent aspects of the Maltese Presidency are the setting out of a joint vision for the European Union for the years to come; the formal commencement of the Brexit process; and the particular focus on the EU's Mediterranean Policy.

### ***The Future of the European Union***

I would like to begin by considering the fundamental question of the future of the European Union, and, more specifically, to ponder on the implications of the five different options put forward by the European Commission. I will also express my views on what I consider to be the way that guarantees an economically strong and a politically relevant Union within the context of the present-day realities.

The history of the development of the European Union has been marked, since day one sixty years ago<sup>1</sup>, by a progression in fits and starts. On the negative side, it suffices to recall the European Defence Community<sup>2</sup> that

*Internet resources, last date of access: 15 August 2017.*

- 1 The Treaty of Rome of 1957 which is the founding treaty establishing the European Economic Community (EEC) and the founding treaty establishing the European Atomic Energy Community (EAEC), were signed in Rome on the 25 March 1957 and they entered into force on 1 January 1958.
- 2 Online at: [aei.pitt.edu/5201/1/5201pdf](http://aei.pitt.edu/5201/1/5201pdf).

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never got off the ground in the early 1950s; the exchange rate shocks of the 1970s, with the short-lived European currency snake<sup>3</sup>, the unsuccessful attempts at linking the Member States' currencies together, the so called "Black Wednesday"<sup>4</sup>, and the collapse of the European Monetary System<sup>5</sup>. I can also mention the aborted accessions<sup>6</sup> and rejections in referenda that took place in recent decades<sup>7</sup>; the failed attempt at a Constitution for the European Union<sup>8</sup>; and the very recent UK decision to withdraw from the EU, which I will be returning to later on. On the positive side, one can recall the step by step strengthening of the institutional structure of the Union. The original institutions were the Special Council of Ministers (today, the Council of the European Union)<sup>9</sup>, the High Authority (today, the European Commission)<sup>10</sup>, the General Assembly of the European Coal and

3 The European currency *snake in the tunnel* was set up by virtue of the Basle Agreement which entered into force on the 24 April 1972. It allowed central banks of the then EEC Member States to buy and sell their respective currencies provided that the bilateral margins between their currencies did not exceed 2.25%.

4 The 16 September 1992, when the British Conservative Government was forced to withdraw the pound sterling from the Exchange Rate Mechanism.

5 It was an arrangement established in 1979 under the Jenkins European Commission where most Member States of the EEC linked their currencies to prevent large fluctuations relative to one another. By 1998 the European Monetary System no longer remained a functional arrangement.

6 One may recall the referendum held in Norway in 1972 which decided against the accession of Norway. The same thing happened in 1994 after that Norway attempted to accede to the EU for a second time. Greenland voted by referendum against remaining a member of the then European Communities in 1982. Switzerland voted against the opening of negotiations for EU membership in 2001 and Iceland withdrew her application for membership in 2015.

7 By way of example one may mention the following: (1) Denmark rejected the Maastricht Treaty by referendum in 1992 and then approved it by another referendum in 1993; (2) Ireland rejected the Nice Treaty by referendum in 2001 and then approved it by another referendum in 2002; (3) Ireland rejected the Treaty of Lisbon by referendum in 2008 and then approved it by another referendum in 2009; (4) Denmark and Sweden rejected the Euro by referendum in 2002 and 2003 respectively.

8 The *Treaty Establishing a Constitution for Europe* (OJC 310, 16.12.2004) was rejected by both France and the Netherlands by a referendum in each country. Both referenda were held in 2005.

9 The first Council was the *Special Council of Ministers* which was set up in 1952 by virtue of the Treaty of Paris of 1951. Two new Councils were set up in 1958 as the *Council of the European Economic Community* and the *Council of the European Atomic Energy Community* by virtue of the two treaties signed in Rome in 1957, one setting up the EEC and the other setting up the EAEC. In 1967 the three Councils were merged together as the *Council of the European Communities* by virtue of the Merger Treaty of 1965. It became known as the *Council of the European Union* in 1993 by virtue of the Maastricht Treaty of 1992.

10 The *High Authority* was set up in 1952 by virtue of the Treaty of Paris of 1951. In 1958 two new Commissions were set up for the EEC and the EAEC by virtue of the two treaties signed in Rome in 1957, one setting up the EEC and the other setting up the EAEC. The High Authority and the two Commissions were merged into one in 1967 by virtue of the Merger Treaty of 1965 and it became known as the *Commission of the European Communities*. It then became the *European Commission* in 2009 by virtue of the Lisbon Treaty of 2007.

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Steel Community (today, the European Parliament)<sup>11</sup>, the Court of Justice of the European Coal and Steel Community (today, the Court of Justice of the European Union)<sup>12</sup>, the European Economic and Social Committee<sup>13</sup> and the European Investment Bank<sup>14</sup>. One may trace the setting up of a number of other institutions since the inception of what is today the European Union. The principal ones, by order of date of introduction, are – the European Council as an formal setup in 1974 and later on as an EU Institution in 2009<sup>15</sup>; the European Court of Auditors in 1977<sup>16</sup>; the General Court (formerly known as the Court of First Instance) in 1988<sup>17</sup>; the European Committee of the Regions in 1994<sup>18</sup>; the European Ombudsman in 1995<sup>19</sup>; the Office of High Representative for Common Foreign and Security Policy in 1997 which became the Office of the High Representative of the Union for Foreign Affairs and Security Policy in 2009<sup>20</sup>; the European Central Bank in 1998<sup>21</sup>; and the Office of full-time President of the European Council in 2009<sup>22</sup>.

- 11 The *Common Assembly of the European Coal and Steel Community* was set up in 1952 by virtue of the Treaty of Paris of 1951. In 1958, it was renamed the *European Parliamentary Assembly* with the advent of the EEC and the EAEC by virtue of the two Treaties signed in Rome in 1957. In 1962, it started calling itself the *European Parliament*. This designation was made official by the Single European Act of 1986.
- 12 The *Court of Justice of the European Coal and Steel Community* was set up in 1952 by virtue of the Treaty of Paris of 1951. As of 1958 it was renamed the *Court of Justice of the European Communities* with the advent of the EEC and the EAEC by virtue of the two treaties signed in Rome in 1957, one setting up the EEC and the other setting up the EAEC. It became known as the *Court of Justice of the European Union* in 2009 by virtue of the Lisbon Treaty of 2007.
- 13 It was established in 1958 by virtue of the Treaty of Rome of 1957.
- 14 It was established in 1958 by virtue of the Treaty of Rome of 1957.
- 15 The first informal *Summit* of the EU (then EC) heads of state or government was held in February 1961. The summits were only formalised in 1974 by agreement reached in the December Summit of that year and the inaugural *European Council*, as it became known, took place in 1975. It gained treaty status with effect from 1987 since it was included in the Single European Act of 1986. Its role was then defined in the Maastricht Treaty of 1992. The European Council officially acquired the status of an EU Institution with effect from 2009, by virtue of the Treaty of Lisbon of 2007.
- 16 It was created by the Budgetary Treaty of 1975 and was formally established in 1977. It acquired the status of an Institution by virtue of the Treaty of Maastricht of 1992.
- 17 It was set up by a Council decision of 1988 and it began functioning in 1989. Prior to the coming into force of the Lisbon Treaty in 2009 it was known as the *Court of First Instance*.
- 18 It was set up in 1994 by virtue of the Maastricht Treaty of 1992.
- 19 The office was established by the Maastricht Treaty of 1992. The first Ombudsman was elected by the European Parliament in 1995.
- 20 The post was introduced by virtue of the Treaty of Amsterdam of 1997 as the *High Representative for Common Foreign and Security Policy*. It was changed to the *Office of the High Representative of the Union for Foreign Affairs and Security Policy* in 2009 by virtue of the Lisbon Treaty of 2007. The post is assisted by the *European External Action Service* set up in 2010.

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One should also mention the introduction of direct elections to the European Parliament in 1979<sup>23</sup>, the Single European Act in 1986<sup>24</sup> which set in motion the creation of a single market by 1992, the Maastricht Treaty of 1992<sup>25</sup>, known as the Treaty on European Union (TEU)<sup>26</sup>, which created the European Union with its three pillars system consisting of a first pillar, made up of what used to be the three communities, and two other pillars being the Common Foreign and Security Policy and Justice and Home Affairs. The Maastricht Treaty also led to the creation of the single European currency – the Euro in 1999. Next came the Amsterdam Treaty in 1997<sup>27</sup> which introduced the office of High Representative for Common Foreign and Security Policy. The Nice Treaty of 2001<sup>28</sup> followed. It reformed the institutional structure of the European Union to be able to withstand the Eastward expansion. This was followed by the Lisbon Treaty of 2007<sup>29</sup>. It brought with it more qualified majority voting, a more powerful European Parliament, the setting up of the Office of full-time President of the European Council, and of the High Representative of the Union for Foreign Affairs and Security Policy as we know them today, and the Charter of Fundamental Rights as a legally binding instrument. The advancement of the European Union has had its fair share of ups and

21 The *European Central Bank* is the successor of the *European Monetary Institute* which in turn replaced the earlier *European Monetary Co-operation Fund*. It was introduced by virtue of the Maastricht Treaty of 1992 but was established in 1998 and started exercising its full powers with the introduction of the Euro on the 1 January 1999.

22 The first meeting of the EU (then EC) heads of state or government was held in 1961 as an informal *Summit*. It was formalised in 1974 (see ft. note 16). From 1975 to 2009 the head of the *European Council* was an unofficial position (often referred to as *President-in-Office*) held by the head of state or government of the Member State holding the rotating *Presidency of the Council of the European Union*. Since the Lisbon Treaty of 2007 a *full-time President of the European Council* is appointed for a two-and-a-half year term (extendable once for another term). The first such President took office on the 1 December 2009.

23 They were introduced by a Decision of the then *Council of the European Communities* of 1976 (OJL 278, 8.10.1976, p. 5) relating to the Act concerning the election of representatives of the Assembly (as the European Parliament was then still officially called) by direct universal suffrage. The first European direct elections were set for the 7-10 June 1979 by the Copenhagen European Council of April 1978.

24 OJL 169, 29.06.1987.

25 OJC 191, 29.07.1992.

26 The TEU (effective since 1993) is one of the two principal treaties on which the EU is based. The other is the Treaty on the Functioning of the European Union (TFEU), that is, the Treaty of Rome, effective since 1958.

27 OJC 340, 10.11.1997.

28 OJC 80, 10.03.2001.

29 OJC 306, 17.12.2007.

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downs but it has always managed to land on its feet. It comes as no surprise, therefore, that we are now at another such stage. What comes as a surprise is the feeling of urgency that pervades the whole atmosphere concerning the future of the EU. The Brexit referendum result has, in no small way, contributed to this sense of urgency.

Since the debacle of the Treaty Establishing a Constitution for Europe<sup>30</sup> any idea on the formulation of a Constitution for the EU has been all but abandoned. At the time, there was a realistic possibility that the Constitutional Treaty, which had been so painstakingly drawn up, would see the light of day since the Union was then passing through a period of significant economic performance and of unprecedented enlargement. The negative referendum results in France and the Netherlands, two of the original six, dashed all hopes. They were considered to be the death knell of any constitutional aspirations for the Union. It was manifestly clear that if a Constitution was not achievable in such favourable circumstances it would certainly be impossible to achieve later on.

After a period of reflection, a makeshift arrangement, retaining whatever could be salvaged from the aborted Nice Treaty, was worked out for the future Union, in the form of the Lisbon Treaty, which was not without its own hiccups.

The Lisbon Treaty was ushered in, with an atmosphere of gloom and doom prevailing within the European Union, because of the severe global financial and economic crises that hit Europe with full force at the time and that were wreaking havoc to our established way of life and to our well-being.

Has Brexit now changed the way of looking at things, of looking at the way forward for the European Union? Is it possible that we ought now to consider, once again, the option of further deepening beyond Lisbon, of giving a constitutional framework to the Union? Immediately after the UK voted to leave the European Union on the 23 June 2016, a reflection on the

30 See ft. note 9.

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future of the EU with 27 Member States commenced<sup>31</sup>. In August and September, the President of the European Council, Donald Tusk, carried out consultations with all the EU Leaders on the main priorities for the EU. The process was then formally launched in Bratislava in September 2016<sup>32</sup>. It led to the constructive discussions held during the meeting of the Heads of State and Government in Malta on the 3 February of this year<sup>33</sup>, in preparation for the meeting held in Rome<sup>34</sup>, to celebrate the 60<sup>th</sup> anniversary of the Rome Treaties, which took place on the 25 March. It was within this scenario that the European Commission presented a White Paper on the Future of Europe<sup>35</sup> on the 1<sup>st</sup> March in which it set out the main challenges and opportunities for Europe in the coming decade and presented five alternative paths that the Union could follow by 2025.

I am sure you have already heard and read a lot about these five alternative scenarios but allow me to say a few words about each one of them before I say what, in my own view, may be the way forward if we believe in and want to have a *free and united Europe*, as acclaimed by Altiero Spinelli and Ernesto Rossi in their manifesto drawn up during the Second World War while they were being kept as political prisoners in the isle of Ventotene<sup>36</sup>.

The first alternative proposes the carrying on of business as usual. In other words, it means, in essence, that we ignore what is happening around us, that we close our eyes to the prevailing negative perception regarding the

31 Informal meeting of the 27 EU Heads of State or Government, Brussels, 29 June 2016, on the way forward after the referendum in the UK. Online at: <http://www.consilium.europa.eu/en/press/press-releases/2016/06/29-27ms-informal-meeting-statement/>.

32 Bratislava Informal meeting of the 27 EU Heads of State or Government, 16 September 2016, which launched a political reflection on further development of an EU with 27 Member States. Online at: <http://www.consilium.europa.eu/en/meetings/european-council/2016/09/16-informal-meeting/>.

33 Informal meeting of EU Heads of State or Government in Malta, 3 February 2017, which built upon the political reflection on the future of the EU with 27 Member States. Online at: [www.consilium.europa.eu/en/meetings/european-council/2017/02/03-informal-meeting](http://www.consilium.europa.eu/en/meetings/european-council/2017/02/03-informal-meeting).

34 Rome, 25/03/2017, Meeting of the EU Heads of State or Government held on the occasion of the 60th anniversary of the Rome Treaty. Online at: [www.consilium.europa.eu/en/meetings/european-council/2017/02/25](http://www.consilium.europa.eu/en/meetings/european-council/2017/02/25). At the end of the celebrations the Leaders adopted and signed the Rome Declaration setting out a joint vision for the years to come. Online at: [www.consilium.europa.eu/en/press/press-releases/2017/03/25](http://www.consilium.europa.eu/en/press/press-releases/2017/03/25).

35 *White Paper on the Future of Europe – Reflections and scenarios for the EU 27 by 2025* [COM 2017(2025) final]. Online at: [http://europa.eu/rapid/press-release\\_IP-17-385\\_en.html](http://europa.eu/rapid/press-release_IP-17-385_en.html) ([eur-lex.europa.eu/content/news/white\\_paper.html](http://eur-lex.europa.eu/content/news/white_paper.html)).

36 Taken from the opening words of the introduction of the *White Paper on the Future of Europe* – ft. note 36, pg. 2.

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European Union and its institutions and that we seek to move ahead by focusing on delivering the positive reform agenda in the spirit of the Commission's *New Start for Europe* of 2014<sup>37</sup>, hoping that finally everyone will see the light. This sounds very much like having more of the same. I must admit I am not one who would opt for such a way forward since I consider the European Union as being still in an evolving phase.

The second offers as a possible solution setting the clock back. This would entail that all that has been achieved, which does not fall within the parameters of the Single Market, is swept aside and we refocus our attention fully and exclusively on achieving and maintaining the Single Market, hoping that the European citizen would be happy with this and no more. This, to me, is a case of sounding the retreat. I would certainly not favour seeking a solution by moving backwards.

Scenario three envisages a situation where those who would like to do more would be able to do more. This would, in effect, mean that the European Union would proceed along the same lines it is following today but Member States who are willing could do more together in specific areas such as defence, internal security or social matters, thereby countenancing one or more "coalitions of the willing". Within this third scenario such coalitions would be given a formal framework. Allow me to say that I do not consider it to be the ideal way ahead for the European Union, albeit it may be the offspring of necessity.

To some extent, what is being proposed in this scenario has already happened and is happening. It suffices to recall here the, so called, *EU opt-outs*<sup>38</sup>, the foremost of which being the Euro Area (made up of nineteen of the Member States)<sup>39</sup> and Schengen (made up of twenty-two of the

37 *A new start for Europe – My agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission.* Opening Statement made by Jean-Claude Juncker, candidate for President of the European Commission, in the European Parliament plenary session, Strasbourg, 15 July 2014.

38 Online at: [eur-lex.europa.eu/summary/glossary/opting\\_out.html](http://eur-lex.europa.eu/summary/glossary/opting_out.html).

39 *What is the Euro Area?* Online at: [https://ec.europa.eu/info/business-economy-euro/euro-area/what-euro-area\\_en](https://ec.europa.eu/info/business-economy-euro/euro-area/what-euro-area_en). The UK and Denmark negotiated an opt-out under the Maastricht Treaty of 1992. The 19 Member States are: Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain.

Member States but also of the four EFTA States)<sup>40</sup>. Mention should also be made of the possibility of the *enhanced cooperation* procedure introduced in 1999 by means of the Amsterdam Treaty, simplified in 2003 by means of the Nice Treaty and then extended to include defence in 2009 by means of the Lisbon Treaty<sup>41</sup>. This procedure has been resorted to in the areas of patents (with 26 Member States)<sup>42</sup>, divorce law (with 17 Member States)<sup>43</sup> and most recently in that of Property Regime Rules (with 18 Member States)<sup>44</sup>. It is in the pipeline in two other areas, which are that of Financial Transaction Tax (with 10 Member States)<sup>45</sup>, and the European Public Prosecutor's Office which was given the green light by the European Council of the 9 March of this year (with 17 Member States)<sup>46</sup>. The Lisbon Treaty also envisages the possibility of the establishment of *Permanent Structured Cooperation* (PESCO)<sup>47</sup> between willing Member States in the defence field. The purpose is for such States to strengthen their cooperation in military matters. Up to now, PESCO has not been activated.

- 40 *Schengen Area – European Commission*. Online at: [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en). *Schengen Area Countries List*. Online at: <https://www.schengenvisa.info.com/schengen-visa-countries-list/>. The Schengen Agreement was signed on the 14 June 1985 by 5 of the then 10 EEC Member States. In 1990 the Agreement was supplemented by the Schengen Convention. They were incorporated into EU Law by the Amsterdam Treaty of 1997. The 22 E.U. Member States are: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. The 4 E.F.T.A. States are: Iceland, Norway, Switzerland and Liechtenstein.
- 41 Online at: [en.euabc.com/word/332](http://en.euabc.com/word/332); [eur-lex.europa.eu/summary/glossary/enhanced\\_cooperation.htm](http://eur-lex.europa.eu/summary/glossary/enhanced_cooperation.htm); [https://en.wikipedia.org/wiki/Enhanced\\_cooperation](https://en.wikipedia.org/wiki/Enhanced_cooperation).
- 42 Online at: [https://en.wikipedia.org/wiki/Unitary\\_patent](https://en.wikipedia.org/wiki/Unitary_patent). The participating Member States are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and the United Kingdom.
- 43 Online at: [https://en.wikipedia.org/wiki/Applicable\\_divorce\\_law\\_regulation](https://en.wikipedia.org/wiki/Applicable_divorce_law_regulation). The participating Member States are: Austria, Belgium, Bulgaria, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovenia and Spain.
- 44 Online at: [www.consilium.europa.eu/en/press/press-releases/2016/06/09-property-regimes-for-international-couples/](http://www.consilium.europa.eu/en/press/press-releases/2016/06/09-property-regimes-for-international-couples/). The 18 Member States are Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden.
- 45 Online at: [https://en.wikipedia.org/wiki/European\\_Union\\_financial\\_transaction\\_tax](https://en.wikipedia.org/wiki/European_Union_financial_transaction_tax). The 10 Member States are Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain.
- 46 Online at: [www.consilium.europa.eu/en/press/press-releases/2017/06/08-epo/](http://www.consilium.europa.eu/en/press/press-releases/2017/06/08-epo/). The 18 Member States are Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain.
- 47 Online at: [eur-lex.europa.eu/summary/glossary/permanent\\_structured\\_cooperation.html](http://eur-lex.europa.eu/summary/glossary/permanent_structured_cooperation.html).

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The fourth alternative sees the Union doing less but more efficiently. The focus would be on delivering more, and faster, in selected policy areas, while doing less in those areas which are perceived not to have an added value. I consider this to be a variant of the second scenario which focuses exclusively on the Single Market. I would think that the Single Market would be an area where more is done and faster, whereas other areas considered as less relevant from a European perspective or where progress is extremely difficult to achieve would be left aside. The advantage of this alternative over the second is that it is not restricted to the Single Market so that other policy areas could be selected for placement on the fast track. Having said this, I still consider it as falling far short of the political aspirations of the European Union.

The last scenario is that of doing much more together. According to this scenario all Member States together will “share more power, resources and decision-making across the board”<sup>48</sup>. Decisions would be agreed and taken faster at European level and would be rapidly enforced. In my view, it is this option that would seek to fulfil the aspirations of the founding fathers of the European Union and that would seek to achieve a political Union.

The option to be selected very much depends on what the objectives of the Member States today are. Has the time come to revisit the failed attempt at a Constitution for the European Union or has it become an impossible task? I would like to express my own personal views here, and what I hope my country would do. Because I firmly believe in a strong Union on all fronts – the political, economic, social and environmental front; because I also believe that a more cohesive Union means a stronger Union; I am convinced that it is preferable for all component Members to move forward together. I therefore consider the fifth scenario as the one that is the best suited to achieve this.

Member States, together with the EU Institutions, should leave no stone unturned in their quest to attain such a result. It is regrettable that certain Member States who believe in a strong Union appear to have already given up. I would expect those who are more intent to have a loose form of Union

48 Ft. note 36 [Com 2017 (2025) final] pg. 15.

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not to show much interest, but it is disappointing that those who are not, appear to have thrown-in the towel.

I would opt for the third scenario (that is, those who want more do more) if, and only if, the last scenario proves impossible to achieve. In such an eventuality, I would hope that within the resulting matrix, or “concentric circles”, or “variable geometric set-up”, my own country would exhibit the necessary determination to place itself at the very core since it is only in this way that Member States, and the smaller ones, in particular, would be able to maintain their relevance on the international front.

A strong Union, a political Union, a Union that would be in a position to match the political and economic strengths of the key players in the global scene, needs to be more united not less united. It needs to demonstrate that it is more efficient and more effective and not that it is just a loose entity capable of deciding only on certain matters and of taking a position on limited aspects and, more often than not, when it is already somewhat late in the day.

To achieve this, the Union must revisit its institutional structures with a view to putting an end to the inadequacies, the bottlenecks that exist and with the aim of making them leaner and more efficient; and also with a view to addressing any remaining democratic deficit within the EU. If the European Commission ought to be strengthened further to make it resemble a national government more closely in the way it functions then let's do it. If this would necessitate a change in the manner of selection of the Commissioners – if electing Commissioners gives more democratic legitimacy to the Commission – then let us consider how we can bring this about; if it also means a reduction in the number of Commissioners then so be it. After all, any further expansion of the European Union cannot countenance a further equivalent increase of Commissioners without a dilution of their individual powers such as to render them, or at least a good number of them, nonentities, or almost. I am certain that solutions can be found on the lines of the formula worked out in the draft Constitution for Europe of 2004<sup>49</sup> or that some other formulation based on egalitarian

49 See ft. note 9.

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representation of Member States can be hammered out in a manner that would ensure acceptance by all Member States.

If the European Parliament, which is the direct representative of the European citizen, should have more legislative power, if the requirement of unanimity within the Council of Ministers on matters which require a decision at European level needs to be done away with, then let us do it, for, after all, the strength of the Union should not continue to be held hostage to the inward-looking considerations of individual Member States.

Allow me to also say that we have too many Presidents of the EU – The President of the European Commission, the President of the European Parliament, The President of the European Council and the President of the Council of the European Union. My perception is that very often they end up, gracefully or not so gracefully, tripping on one another or stepping on each other's toes. We need to address this. If we do not we will keep portraying the image, and in many cases the reality, of a ship with many captains which, consequently, sometimes floats along without proper compass bearings.

It is becoming much more of a regular feature to see the German Chancellor and the French President take common stands even on matters that are of EU relevance. Does this convey the right message with regard to unity of action at EU level? Is it the result of necessity because the EU is too slow moving? Would it continue to happen if, instead of having different EU Presidents each vying to gain more strength or to steal the show, the EU were to be led by one executive President who would have the power to act on behalf of all, without needing to plod through a whole labyrinth of procedures and red tape. Today, on many issues the smaller States are left out of the picture and only the very large feature. With such a figure, all Member States, both large and small, would be properly represented.

Does the European Union need its own Security and Defence setup as distinct from the individual security and defence components of the individual constituent members? My reply is a firm yes. Although more is

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being done today than what was considered possible up to a few years ago, we are still weak, on both counts.

The European Council of the 22 and 23 June of this year agreed on the need to launch the PESCO<sup>50</sup> in an inclusive and ambitious way so as to strengthen European Security and Defence. Is this enough? I think not; although it is a step in the right direction. With the rise in terrorism; with the increase in tensions and with the regional instability that abounds around us; with the threats being posed to international peace and security with the likes of North Korea; it is imperative that the European Union formulates and builds its own security and defence mechanisms. I would here like to refer to my country's position. Malta has a neutrality provision enshrined within her Constitution. Apart from the question concerning the continued relevance of neutrality in today's world, it is not acceptable that because of a position on the matter that is found within one Member State, the whole of the European Union is held back from progressing further on security and defence, or, for that matter, in other area where it can and is very often expected to be active. Our neutrality is our concern and if we want to be a core part of the European Union as it continues to further evolve we have to address it, and not the other way around.

Is the time ripe to consider a common finance minister for the Euro area and a European budget for the currency union? On the 20 June of this year, Chancellor Merkel said she was open to the idea of a common finance minister and that “one can indeed consider a European budget if it is clear that structures are really strengthened and this is used to sensible ends.”<sup>51</sup>

In what I have been saying on the need for institutional reform and on a stronger Union, I have purposely avoided the use of the word “Federal” since a federal construction for the European Union raises concerns about loss of identity, the relinquishment of sovereignty and so on. The realities

50 Ibid ft. note 48; European Council meeting (22 and 23 June 2017) – Conclusions, Title I – Security and Defence – paragraph 8. Online at: <http://www.consilium.europa.eu/en/press/press-releases/2017/06/23-euco-conclusions/>.

51 Reuters report of the 20 June 2017 entitled “Merkel urges EU to stick together after Brexit talks launched”, reproduced in the *Times of Malta* online issue of the 22 June 2017. Online at: <https://www.timesofmalta.com/articles/view/20170620/world/merkel-urges-eu-to-stick-together-after-brexit-talks-launched.651231>.

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of the European Union are such that a solution should be sought, to achieve a further deepening and to bring about further integration, by skirting around the term “Federal” and opting for so called *sui generis* or home-grown ways forward, albeit they may closely resemble and at times be modelled on federal structures elsewhere.

With the exception of the UK, which has opted out, the biggest Member States are giving clear messages in favour of further integration, of a deeper Union. They are willing to share their individual sovereignty to attain the larger picture. Certain smaller Member States are more cautious and are afraid that more integration would translate to a loss of their individual sovereignty and independence. They fear they would be engulfed by the larger ones, that for the larger Members sharing sovereignty in effect means further strengthening of sovereignty by the sheer force of added numbers, whereas for them it would mean a weakening, a dilution of their strength and their relevance. Our experience within the Union has been quite the opposite. We have managed to punch, as they say, far above our weight – and we are the smallest of the lot.

### **BREXIT**

Having expressed my thoughts on the future of the European Union, I would now like to consider the BREXIT saga as it has unfolded so far.

In the referendum that was held in the UK on the 23 June of last year, the people of the United Kingdom voted to leave the European Union<sup>52</sup>. This result was quite unexpected, or was it? When one factors in the years on years of negative, and at times destructive, propaganda against the European Union, thrown at the British public by the so-called tabloids, it should not have been so unexpected.

This phenomenon which, up to some time ago, was almost exclusive to the UK is now quite a regular feature in many other parts of the European

52 The electorate was 46,501,241; the turnout was 72.2 %; the rejected ballots were 0.056 %. Over the whole of the United Kingdom those who voted to leave were 51.9 %. Those who voted to leave in England were 53.4 %, in Northern Ireland they were 44.2 %, in Scotland they were 38.0 % and in Wales they were 52.2 %. Online at: [http://www.bbc.com/news/politics/eu\\_referendum/results](http://www.bbc.com/news/politics/eu_referendum/results).

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Union. It is, in my view, imperative that this malaise is addressed with full force so as to curb it before more harm is done. The habit of blaming *Brussels* for all that goes wrong while taking credit for all successes at home has already proved damaging. All this needs to change and it must be done sooner rather than later.

Going back to Brexit, the United Kingdom handed over the letter which set in motion the negotiations envisaging her exit from the European Union on the 29 March of this year<sup>53</sup>. It was made very clear that the UK would like to seek a new “deep and special partnership”<sup>54</sup> and that the terms of such a partnership should be agreed alongside those of the UK’s withdrawal from the European Union. This so called “deep and special partnership” was explained as being one “that takes in both economic and security cooperation”<sup>55</sup>. The UK spelled out that it “does not seek membership of the single market”<sup>56</sup>, but that it is after “a bold and ambitious Free Trade Agreement”<sup>57</sup> which “covers sectors crucial to our linked economies such as financial services and network industries”<sup>58</sup>.

It is abundantly clear that the UK does not want to have anything to do with any part of the freedom of movement of persons and of workers, in particular. It would like to be able to pick and choose what it may of the other three freedoms, especially those aspects that suit its economy best. While saying that: “we understand and respect your position that the four freedoms of the single market are indivisible and there can be no ‘cherry picking’”<sup>59</sup>, they proceed to propose just that. The UK also wants to maintain cooperation in the field of security. It considers that “Europe’s security is more fragile today than at any time since the end of the Cold War.”<sup>60</sup> The UK is offering such security cooperation since “weakening our cooperation for the prosperity and protection of our citizens would be a

53 Online at: [news.bbc.co.uk/1/shared/bsp/hi/pdfs/29\\_03\\_17\\_article50.pdf](https://www.bbc.com/news/health-50).

54 Ibid ft. note 54 at page 2.

55 Ibid ft. note 54 at page 3.

56 Ibid ft. note 54 at page 4.

57 Ibid ft. note 54 at page 5.

58 Ibid ft. note 54 at page 5.

59 Ibid ft. note 54 at page 4.

60 Ibid ft. note 54 at page 6.

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costly mistake”<sup>61</sup>, knowing full well that, with the terrorist attacks in France, Belgium, Germany and Sweden, this is the foremost concern of the European Union. If security cooperation is being offered as the *quid pro quo* for the economic partnership being sought, it has to be said that the UK is itself not, however, free from security concerns, as the latest string of terrorist attacks in UK amply show.

Reaching agreement on the economic partnership is an extremely difficult nut to crack and the offer for security cooperation between the EU and the UK may not be a compelling enough reason for the EU to bend over backwards to accommodate the UK since, after all, security cooperation is in the interests of both parties and both will stand to gain considerably from it. One may safely assume that both would seek to maintain such cooperation for reasons of mutual interest independently of any other consideration.

Reaching such an agreement within the time frame of two years, that is within the same time frame set out in the Treaty on European Union for withdrawal discussions<sup>62</sup>, is very ambitious indeed. If agreement is not reached by the end of March 2019<sup>63</sup>, the default position would be that trade between the UK and the EU would be on World Trade Organisation terms and nothing more. This would be a severe blow to both sides but, allow me to foretell that it would be a more severe blow to the UK even if simply because of the sheer difference in size between the UK’s internal market and that of the EU.

The United Kingdom is one of the four largest Member States within the Union. Yet, it is quite small in its dimensions and its population when placed side by side with the likes of China, India, the United States, and why not Brazil and Russia. Will the UK retain the relevance on the world stage that it enjoys today if it tries to go it alone? Will its economic strength continue unabated if it proceeds on its own? Or will it suffer for it?

61 Ibid ft. note 54 at page 6.

62 Article 50 (3) TEU.

63 That is, two years from the 29 March 2017 being the date of the UK’s letter triggering article 50 TEU (the article regulating the withdrawal of a Member State from the European Union).

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I am not so convinced that any hand-holding by the United States and that any trade and other economic arrangements that it might work out with the EU; that any pious aspirations of breathing a new life into the so called “Commonwealth of Nations”<sup>64</sup>, formerly known as “The British Commonwealth”; will give to the UK what it will lose by opting out of the European Union.

In the light of the Opinion delivered by the Court of Justice of the European Union on the 16 May of this year<sup>65</sup> that the free trade agreement with Singapore cannot, in its current form, be concluded by the EU alone, and that it cannot take full effect until ratified by 38 national and regional parliaments across the EU,<sup>66</sup> the prospects of a quick fix solution for the UK’s economic partnership with the EU have become much bleaker unless, of course, the UK seeks agreement solely on matters which fall within the exclusive competence of the EU<sup>67</sup>.

Possibly because of the realization by the British government that negotiations are going to be extremely difficult, a little while after the submission of the letter for the UK’s withdrawal from the EU, Prime Minister May decided to go for snap elections in order to seek to strengthen her hands both at home, because of the significant resistance she was encountering from various quarters, and with the negotiators sitting on the other side of the table.

- 64 It is an intergovernmental organisation consisting of 52 Member States (the Maldives, which was the 53rd Member State left the Commonwealth in 2016), ranging from India with a population of 1.26 billion people and Pakistan with almost 190 million people to Nauru and Tuvalu, each with a population of around 10,000 people and from Canada and Australia with an area of almost 10 million km<sup>2</sup> and over 7.5 million km<sup>2</sup> respectively to Tuvalu and Nauru with an area of 26 km<sup>2</sup> and 21 km<sup>2</sup> respectively. The Commonwealth Member States are mostly former territories of the erstwhile British Empire. Mozambique and Rwanda are the only two members who were never a British colony whereas Myanmar and Aden (part of what is now Yemen) are the only former British colonies who elected not to join the Commonwealth. The Commonwealth operates by consensus of the Member States and is organised through the Commonwealth Secretariat. The British monarch is the ceremonial head. Online at: [thecommonwealth.org/member-countries](http://thecommonwealth.org/member-countries); [www.worldatlas.com/articles/what-is-the-commonwealth.html](http://www.worldatlas.com/articles/what-is-the-commonwealth.html); [https://en.wikipedia.org/wiki/Commonwealth\\_of\\_Nations](https://en.wikipedia.org/wiki/Commonwealth_of_Nations).
- 65 Avis 2/15 Opinion of the Court ECLI:EU:C:2017:376. Online at: <http://curia.europa.eu/juris/documents.jsf?num=C-2/15>. Online at: <https://curia.europa.eu/jcons/upload/docs/application/pdf/2017-05/cp170052.en.pdf>.
- 66 Online at: <https://www.euractiv.com/section/economy-jobs/news/singapore-trade-deal-cannot-be-concluded-by-eu-alone-ecj-rules/>.
- 67 Online at: <https://www.ft.com/content/f9cf18e4-3a1b-11e7-ac89-b01cc67cfeec>.

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By way of justification for calling early elections, Theresa May was quoted as saying that “it is the only way to guarantee certainty for the years ahead” that “Britain needed certainty, stability and strong leadership” and that “a decisive election victory would strengthen the Government’s hand in Brexit negotiations.”<sup>68</sup> She hoped to boost her slim working majority in order to help pass both domestic and Brexit-linked legislation.

The elections were held on the 8 of June. The result is quite the opposite of what Prime Minister May was hoping for. Instead of strengthening her majority, the UK has ended up with a hung Parliament. The Conservatives do not have a majority in the House of Commons and they must now rely on the qualified and somewhat tenuous support of the Northern Irish Democratic Unionist Party (DUP) to be able to command the slightest absolute majority of the House. It is less than what the Conservatives on their own enjoyed before the elections. It, therefore, considerably weakens the UK’s negotiating position<sup>69</sup>. Will Theresa May survive beyond this year? Will the Government last the full term of the Brexit negotiations? Will it manage to strike a deal that will be good enough to garner the support of the UK Parliament? Will the EU negotiators be willing to help May save face?

I have quite recently read a report prepared by *New Financial* entitled “What the rest of the EU thinks about Brexit and the City”<sup>70</sup>. The report contains a 10-point summary of the main concerns and priorities of the EU27 Member States ahead of the Brexit negotiations. The think tank scoured through hundreds of speeches, articles and reports from the EU27 in an attempt to distil what policymakers and regulators in each Member State really think about Brexit.

68 These three quotes are taken from the report of *The Guardian* of the 18 April 2017 entitled “Theresa May calls for UK general election on 8 June”. Online at: <https://www.theguardian.com/politics/2017/apr/18/theresa-may-uk-general-election-8-june>.

69 For an account of the UK election results see: [www.bbc.com/news/election/2017/results](http://www.bbc.com/news/election/2017/results); <https://www.theguardian.com/politics/ng-interactive/2017/jun/08/live-uk-election-results-in-full-2017>.

70 Online at: [newfinancial.eu/what-the-rest-of-the-eu-thinks-about-brexit-the-city/](http://newfinancial.eu/what-the-rest-of-the-eu-thinks-about-brexit-the-city/); [newfinancial.eu/wp-content/uploads/2017/04/2017.04-What-the-rest-of-the-EU-thinks-about-Brexit-New-Financial.pdf](http://newfinancial.eu/wp-content/uploads/2017/04/2017.04-What-the-rest-of-the-EU-thinks-about-Brexit-New-Financial.pdf).

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Of the findings identified in the report I would like to mention the following, since they throw light on the whole negotiation process:

- The UK will not be allowed to choose between the four freedoms;
- Nothing will be agreed in any sector until everything has been agreed in all sectors;
- The UK will face a tough negotiation process;
- While there is little appetite to ‘punish’ the UK, the stance of some countries has hardened in recent months in response to ‘hard Brexit’ and the talk in the UK of ‘no deal is better than a bad deal’;
- Negotiations will require a lot of give and take and will be more complex and more political than is thought in the UK;
- Few people in the EU27 expect a deal to be agreed in less than two years;
- The almost universal view in the EU27 is that a deal based on equivalence would not be appropriate and public support by policymakers within the EU for the sort of ‘enhanced equivalence’ regime for Banks<sup>71</sup> that the UK has floated is very scarce;
- Agreeing on financial services is going to be the toughest part of trade talks and getting a deal for the City is more important for the UK than for the EU27. It is a known fact that the UK needs a deal on financial services and really wants one on trade in goods;
- Everyone agrees that some relocation of UK-based activity will be required; and
- The UK will not be able to set lower taxes to attract business since it needs to raise revenue from taxes to cater for its budget deficit and furthermore it will have to adhere to global norms such as the OECD guidelines.

71 “Loosely, equivalence means banks in the UK will be able to operate in the EU if relevant financial regulations in the two jurisdictions are deemed the same by the EU’s assessors. Unfortunately, equivalence can be withdrawn within 30 days and is open to manipulation for political purposes. What banks and the British government really want, therefore, is ‘enhanced equivalence’ or ‘equivalence plus’...[where] the EU wouldn’t have the final word on equivalence and it wouldn’t be removable at short notice.”. eFinancialCareers, Sarah Butcher, 27 February 2017. <http://news.efinancialcareers.com/uk-en/275400/enhanced-equivalence-brexit>.

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These findings reflect the position of the EU Institutions and of a large number of the Member State policymakers and regulators<sup>72</sup>.

At this stage, I would like to make two other observations which I consider very relevant to this whole matter. On the one hand, linked to Brexit there is the whole question of the Independence of Scotland from the UK. The Scottish First Minister, Nicola Sturgeon is proposing a second independence referendum for around spring of 2019 which is by when the Brexit negotiations will have to be completed. She obtained the support of the Scottish Parliament for this on the eve of the date when the British Prime Minister presented the letter triggering the start of negotiations for the UK's withdrawal from the EU<sup>73</sup>. The connection between the respective dates is obvious. Has the negative performance of the SNP in the June elections dampened such aspirations? There is then also the question of Northern Ireland. If the reinstatement of the border between the Republic of Ireland and Northern Ireland were to rear its head as a result of a possible “no deal” between the EU and the UK, would the Northern Irish be tempted to go their own way or to join up with the Republic of Ireland or would they rather face the risk of, so to say, history repeating itself? And what about Gibraltar? All this complicates life for Theresa May, and for the British negotiators, beyond measure.

On the other hand, the European Union will not be prepared to make life easy for the UK or to give it any concessions for free. Independently of it being a question of pride and quite apart from the EU's desire to project a show of strength, there is the consideration that if the European Union were to show weakness in negotiations; if it were to give special concessions to the UK; if it would appear as if the UK is having the cake and eating it at the same time; other Members, who are not in the EU because they really believe in the European project, but because of what they can get out of it,

72 The feature that appeared in the online issue of the *Times of Malta* of the 8 May 2017 entitled “EU27: the Brexit issues” provides further information on the main findings of the report, including the position of the Member States and the EU Institutions on the different issues. Online at: <https://www.timesofmalta.com/articles/view/20170508/business-news/EU27-the-Brexit-issues-647363>.

73 Severin Carrell, *The Guardian* online, 28 March 2017, “Scottish Parliament votes for second independence referendum”. Online at: <https://www.theguardian.com/politics/2017/mar/28/scottish-parliament-votes-for-second-independence-referendum-nicola-sturgeon>.

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may be tempted to follow suit. This would be extremely disruptive for the European Union.

In the light of all this I would hazard an opinion that it would have been better all round for both sides if a face saving way were to be found whereby the Brexit process would be reversed so that the UK would remain part of the European Union. I am confident that the EU would not have any issue with this. The problem is very much on the side of the UK since its hands are tied by the referendum result. Is it possible to begin to fantasize that June's election result in the UK can pave the way for Britain to change its decision to withdraw from the EU? Will the possibility of holding another referendum become a realistic alternative to what may turn out to be a really bad deal for the UK? Only time can tell!

In her speech on the occasion of the opening of the British Parliament on the 21 June 2017, Her Majesty Queen Elizabeth told lawmakers: "My government's priority is to secure the best possible deal as the country leaves the European Union"<sup>74</sup>, and in introducing the policy plan, Prime Minister May said: "We need to get Brexit right. That means getting a deal which delivers the result of last year's referendum and does so in a way that commands maximum public support."<sup>75</sup> A tall order indeed!

Negotiations started on the 19 June of this year signalling that for the two negotiating teams it is business as usual. Agreement was reached on the timetable, on the organisation and on the priorities for negotiations. Both sides stressed their goodwill but acknowledged the huge complexity of the task and the tight deadline<sup>76</sup>.

Negotiations will be divided into two parts. "The first will cover the most important and pressing aspects concerning the withdrawal of the UK from

74 Reuters report of the 21 June 2017 entitled "Theresa May waters down manifesto pledges as Queen opens British parliament", reproduced in the *Times of Malta* online issue of the same date. Online at: <https://www.timesofmalta.com/articles/view/20170621/world/theresa-may-waters-down-manifesto-pledges-as-queen-opens-british.651296> - Reuters report.

75 The same source given in ft. note 75.

76 BBC News online, 19 June 2017, "Brexit negotiations: Barrier rules out concessions". Online at: <http://www.bbc.com/news/uk-politics-40321271>.

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the EU whereas the second will seek to shape the future relationship between the two sides”<sup>77</sup>.

The status of the EU nationals living in the UK post Brexit and the single financial settlement are amongst the most important matters that have to be agreed first. It was no surprise therefore that in the European Council meeting of the 22 and 23 June, the British Prime Minister affirmed that the UK “wanted to offer ‘certainty’ to the estimated 3 million EU expats living in the UK”<sup>78</sup>. Although details of the British proposal were revealed in a paper published by the UK government on the 26 of June<sup>79</sup>, this whole matter is still far from being resolved. There are two very thorny issues that need to be ironed out before any light may be seen at the end of the tunnel. These are the question of the cut-off date and that of the continued jurisdiction of the European Court of Justice (ECJ). British attitudes on the latter are far from conducive to an agreed way forward. It is enough to quote what a UK senior official was reported to have said on this matter: “We have been clear on the ECJ that we are taking back control of our own laws.”<sup>80</sup>

Despite all this and more, negotiations appear to be moving forward in good spirit and in the hope that a mutually acceptable outcome will finally be ironed out.

I recently got hold of an opinion piece written by Hans-Werner Sinn who is Professor Emeritus of the University of Munich titled “A two-speed post-Brexit Europe is best avoided”<sup>81</sup>. I must admit that I beg to differ from some of the considerations he puts forward against a “two-speed” Europe as an option, and from his arguments in favour of the possibility of agreeing with the UK on free trade without the movement of people.

77 Vanni Xuereb, *Times of Malta* online, 23 June 2017, “Brexit a year on”. Online at: <https://www.timesofmalta.com/articles/view/20170623/opinion/Brexit-a-year-on.651414>.

78 PA report of the 22 June 2017 entitled “Theresa May outlines plans on status of EU nationals living in UK post-Brexit”, reproduced in the *Times of Malta* online issue of the 23 June 2017. Online at: <https://www.timesofmalta.com/articles/view/20170622/world/theresa-may-outlines-plans-on-status-of-eu-nationals-living-in-uk-post.651400>.

79 Online at: <https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu>.

80 Ibid ft. note 79.

81 *Financial Times*, 16 April 2017, pg. 9. Online at: <https://www.ft.com/content/e0051162-1ee0-11e7-b7d3-163f5a7f229c>.

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Having said this, he makes the very valid point that “Brexit destroys the European equilibrium rendering otiose minority rights in the European Council”<sup>82</sup>. He rightly says that a blocking minority needs 35% of the EU population. The group of so called “free traders” within the EU will no longer form a blocking minority between them with the exit of the UK whereas the Mediterranean countries who have traditionally been considered as more protectionist will have a stronger blocking minority and thereby their hand will be strengthened.

As rightly said this will require new negotiations of the existing EU Treaty which will therefore mean that Brexit negotiations will become all that much more complex since the question of the voting rights and relative voting strength between the different Member States will have to be addressed before the UK’s withdrawal.

Having said this, I would like to link, for one moment, this whole question with what I said before relating to the future of the European Union.

Continuing to speak of the European equilibrium in terms of blocking minorities may not be the right way forward for the European Union. After all, if there is a blocking minority against ‘free trade’ on one side and there is a blocking minority against ‘protectionism’ on the other side, to mention one example of the possible use of blocking minorities, would normally mean that progress in either direction would be extremely difficult, and would consequently entail a lot of horse-trading and a very realistic risk of progressing at the pace of the least common denominator.

In the discussions on the future of the European Union the occasion should therefore be grasped to seek solutions on the decision-making process that are less dependent on blocking minorities intended to stall progress, and that rely more on the building of proper mechanisms the purpose of which would be to narrow the gap between divergent positions and to facilitate the adoption of common positions.

82 Ibid ft. note 82.

### ***The Mediterranean Reality***

I would now like to dedicate the last part of my intervention on the Mediterranean, with particular focus on the contribution that the Maltese Presidency of the Council of the EU has made, or could have made, towards the unfolding of more intense Euro-Mediterranean relations in the years to come.

For Malta, the Mediterranean is where we are, it is what we are. It, therefore, goes without saying, that the Mediterranean cannot but be an absolute priority for the Maltese Presidency. In a paper published just before the end of 2016, I said that:

“This makes sense, because of Malta’s location and its history and because, in any case, the subject is very topical with the whole question of migration and the huge security concerns that exist within and around the region. The last time that a Presidency was held by a Member State, which had an immediate interest in the Mediterranean, was in 2014, when it was held by Greece in the first six months and then by Italy in the second six months. The next time around will be in 2020 when Croatia will be at the helm.”<sup>83</sup>

Malta’s turn to hold the Presidency of the Council once again will only come in 2030<sup>84</sup>. This occasion was therefore a golden opportunity for Malta to leave its own strong mark on the future development of Euro-Mediterranean relations. Has Malta managed to do so?

There were, first of all, the immediate grave problems rife within the Mediterranean that needed urgent attention. The strengthening of all existing modes of cooperation and the building of new ones on the security front; the framing of terms for an agreement on the whole migration ordeal; the clampdown of people trafficking and the organised crime connected therewith; and the fight against terrorism; were all matters that needed to be addressed straightaway.

On the 3 February of this year, only one month into the Maltese Presidency, a European Council meeting was convened in Malta on the

83 Dr Joe Borg, “Euro-Mediterranean Relations – Malta’s Forthcoming EU Presidency: Personal Reflections” in *Perspectives in a Changing Mediterranean*, Mediterranean Academy of Diplomatic Studies, Med Agenda – Special Issue, MEDAC Publications in Mediterranean IR and Diplomacy, pg. 7.

84 Online at: [https://en.wikipedia.org/wiki/Presidency\\_of\\_the\\_Council\\_of\\_the\\_European\\_Union](https://en.wikipedia.org/wiki/Presidency_of_the_Council_of_the_European_Union).

question of the migration crisis. In their conclusions, the members of the European Council expressed their determination “to take additional action to significantly reduce migratory flows along the Central Mediterranean route and break the business model of smugglers, while remaining vigilant about the eastern Mediterranean as well as other routes”<sup>85</sup>. The stabilisation of Libya was also addressed. A ten-point plan was agreed and additional funds were mobilised for the purpose<sup>86</sup>. Again, the European Council Meeting of the 9 March addressed Security and Defence and, once again, the migration crisis<sup>87</sup>.

During the course of the six-month Maltese Presidency stint, new measures updating and extending the tools available to Member States to respond to the evolving threat of terrorism were approved. The final green light was given for a new Regulation aimed at further securing EU borders<sup>88</sup> and the finalisation of a European Travel Information and Authorisation System is expected in the coming months<sup>89</sup>. Progress was registered on the entry-exit system of passengers in the European Union, agreement on which is expected shortly<sup>90</sup>. Once implemented these instruments will enhance external border control and internal security. Progress was made on the, so called, Seahorse Mediterranean Network, which is a satellite based

85 Informal meeting of EU Heads of State or Government in Malta, “Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route”, 3 February 2017, paragraph 3. Online at: [http://www.consilium.europa.eu/press-releases-pdf/2017/2/47244654402\\_en.pdf](http://www.consilium.europa.eu/press-releases-pdf/2017/2/47244654402_en.pdf).

86 Ibid ft. note 86.

87 Conclusions by the President of the European Council, 9 March 2017, at pages 4 and 5. Online at: <http://www.consilium.europa.eu/en/press/press-releases/2017/03/09-conclusion-pec/>.

88 General Affairs Council, Brussels, 7 March 2017, pg. 8, “Schengen, checks at external borders”. Online at: <https://www.google.com/search?q=Council+of+Ministers+7+march+2017&ie=utf-8&oe=utf-8&client=firefox-b-ab>; <https://www.eu2017.mt/en/news/Pages/Securing-the-EU%E2%80%99s-borders-EU-agrees-to-bolster-checks.aspx>.

89 Justice and Home Affairs Council, Luxembourg, 9 June 2017, at page 12, “European Travel Information and Authorisation System”. Online at: <https://www.google.com/search?q=Home+Affairs+Council%2C+9+June+2017&ie=utf-8&oe=utf-8&client=firefox-b-ab>; <http://www.consilium.europa.eu/en/press/press-releases/2017/06/09-etias/>.

90 Briefing, EU Legislation Process, June 2017, European Parliament, “Smart Borders: EU Entry/Exit System”. Online at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586614EPRS\\_BRI%282016%29586614\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586614EPRS_BRI%282016%29586614_EN.pdf).

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communication infrastructure scheduled to become operative during the course of this year<sup>91</sup>.

Mention should also be made of the mobilisation of funds to the tune of 200 million Euro for the North Africa window of the EU Trust Fund for Africa for projects in 2017 with a priority focus for migration related projects concerning Libya<sup>92</sup>. Furthermore, agreement was reached by the Council for additional funding, of up to 3.7 billion Euro, to be provided by the European Investment Bank for projects outside the EU which address the root causes of migration and the needs of transit and host communities<sup>93</sup>.

On the 24 April, a directive on the control of the acquisition and the possession of weapons, especially the most dangerous ones, was adopted by the Justice and Home Affairs Council<sup>94</sup>, which revises and complements the existing directive 91/477/EEC<sup>95</sup>. On the 20 June, the same Council also adopted a regulation amending regulation (EC) No. 1693/95<sup>96</sup> laying down a uniform format for visas<sup>97</sup>. More recently, the European Council meeting of the 22 and 23 June stressed the EU's determination to fight the spread of

91 Online at: <https://digit.site36.net/2017/04/25/migration-monitoring-in-the-mediterranean-region-libyan-military-to-be-linked-up-to-european-surveillance-systems/>. Commission response to a question made by the European Parliament. Online at: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2017-000223&language=EN>.

92 European Commission, Press Release, Brussels, 28 July 2017, "EU Trust Fund for Africa adopts Euro 46 million programme to support integrated migration and border management in Libya". Online at: [http://europa.eu/rapid/press-release\\_IP-17-2187\\_en.htm](http://europa.eu/rapid/press-release_IP-17-2187_en.htm). Joint Communication to the European Parliament, the European Council and the Council, "Migration on the Central Mediterranean route – Managing flows, saving lives". Brussels, 25.1.2017, JOIN (2017) 4 final, subtitle 7 at page 15 (doc). Online at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN%3A2017%3A4%3AFIN>.

93 Council (Justice and Home Affairs/Foreign Affairs and International Relations/Economy and Finance), 5 April 2017, Press Release 190/17, "EIB: Council agrees to increase funding to address migration issues". Online at: <http://www.consilium.europa.eu/en/press/press-releases/2017/04/05-eib-migration-funding-increased/>.

94 Justice and Home Affairs Council, 24 April 2017, Press Release 213/17, "EU strengthens control of the acquisition and possession of firearms". Online at: <http://www.consilium.europa.eu/en/press/press-releases/2017/04/25-control-acquisition-possession-weapons/>.

95 Online at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31991L0477&from=EN>.

96 Online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995R1683:EN:HTML>.

97 Justice and Home Affairs Council, 20 June 2017, Press Release 388/17, "Uniform format for short-stay visas (Schengen): Council adopts regulation on the update of security features in the visa sticker". Online at: <http://www.consilium.europa.eu/en/press/press-releases/2017/06/20-uniform-format-short-stay-visas/>.

radicalisation online and that it expects the Industry to develop new technology and tools to improve the automatic detection and removal of content that incites terrorist acts; which may be complemented by legislative measures at EU level, if necessary<sup>98</sup>.

The European Council also reaffirmed its previous conclusions on the reform of the Common European Asylum System (CEAS) and stressed that there is a common understanding that the reformed CEAS needs to strike the right balance between responsibility and solidarity and that it needs to ensure resilience to future crises and provide adequate support to the most affected Member States. The European Council then called for work to be carried out on an EU list of safe third countries which will be part of a future overall agreement on the Common European Asylum System<sup>99</sup>.

In furtherance of the Union's determination to tackle migration from all angles, the European Commission launched infringement procedures, on the 13 June of this year, against the Czech Republic, Hungary and Poland for failing to fulfil their commitment on the reallocation and resettlement process<sup>100</sup>.

On more general lines, the European Council agreed to step up cooperation and delivery on all the elements contained in the Malta Declaration<sup>101</sup>, the Partnership Framework<sup>102</sup> and the Joint Valletta Action Plan<sup>103</sup>, which are to be underpinned by sufficient financial resources<sup>104</sup>.

98 European Council meeting (22/23 June 2017) – Conclusions, Title I – Security and Defence – paras. 1 and 2. Online at: <http://www.consilium.europa.eu/en/press/press-releases/2017/06/23-euco-conclusions/>.

99 Ibid ft. note 99 – Title IV – Migration – para. 23.

100 Online at: <http://www.euractiv.com/section/justice-home-affairs/news/eu-opens-sanctions-procedure-against-hungary-poland-and-czech-republic-over-refugees/>.

101 Informal meeting of EU Heads of State or Government in Malta, “Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route”, 3 February 2017. Online at: [http://www.consilium.europa.eu/press-releases-pdf/2017/2/47244654402\\_en.pdf](http://www.consilium.europa.eu/press-releases-pdf/2017/2/47244654402_en.pdf).

102 Online at: [http://europa.eu/rapid/press-release\\_IP-16-2072\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2072_en.htm); [http://europa.eu/rapid/press-release\\_IP-17-1595\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1595_en.htm).

103 European Council, Valletta, 11-12 November 2015, Valletta Summit on Migration – action plan and political declaration. Online at: <http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/>.

104 Ibid ft. note 99 – Title IV – Migration – para 21.

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All this goes to show that the Maltese Presidency has done its utmost to spur the European Union on to address the immediate plights of the Mediterranean. At the end of the European Council of the 22 and 23 June, President Tusk described the work undertaken by the Maltese Presidency on migration and security as “impressive and excellent” work<sup>105</sup>.

It is also opportune to recall at this stage what the President of the European Parliament, Antonio Tajani, said the day before the commencement of the same European Council. He stressed that a serious response to the migration crisis “calls for a comprehensive European strategy which goes to the root of the problem...On the one hand, we must step up external border controls, which will require us to increase the resources made available to the European Border and Coast Guard Agency...On the other hand, we must build a new partnership with Africa which focuses not only on the challenges, but also on the major opportunities for growth on the continent...Against this background it would be possible to frame more effective repatriation agreements and – together with the United Nations agencies – establish repatriation centres south of the Sahara.” He concluded by saying that “[t]his is one more reason why Europe needs a proper budget so that funds are available for both border control efforts and the development fund for Africa”<sup>106</sup>.

While it is a *sine qua non* to tackle the immediate problems, it is just as essential to focus on the long term for the Mediterranean, on the future shape and form of the Euro-Mediterranean relations.

Malta could have adopted one of two different approaches – either that of seeking to improve what we already have in place or that of going back to the drawing board to map out something new.

The latter approach would have meant the formulation of a new template upon which future Euro-Med relations would be based, accompanied by an overhaul of the existing ones. On the other hand, the former approach simply means going for more of the same with the ‘Euro-Mediterranean

105 Online at: <https://www.timesofmalta.com/articles/view/20170623/local/maltese-presidency-of-the-eu-was-efficient-and-impressive-donald-tusk.651484>.

106 Article by Antonio Tajani which appeared in the *Times of Malta online* of the 21 June 2017. Online at: <https://www.timesofmalta.com/articles/view/20170621/opinion/Time-for-real-answers.651258>.

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Partnership'<sup>107</sup>, the 'European Neighbourhood Policy'<sup>108</sup> and the 'Union for the Mediterranean'<sup>109</sup> continuing to occupy centre stage.

I would like to repeat here what I wrote in a short publication that appeared in March of this year on these two approaches. I remarked that, by opting for more of the same, "one may argue that what we have in place has worked well in times when the going was good and that we should simply fine tune what we already have in place. Whilst doing so, we may also propose new initiatives on the cultural and socioeconomic fronts or on any of the other fronts to supplement the pool of initiatives that already exist"<sup>110</sup>.

On the other hand, by opting for an overhaul, for something new, "one may argue that, based on the logic that even when the going was good, what there is in place did not work well enough, now that the going is far worse, what we have in place is not working at all. We therefore need to come up with something new, either to completely replace the Union for the Mediterranean and the European Neighbourhood Policy or to at least change whatever is not working within those instruments with something that can work"<sup>111</sup>.

The first approach, that of seeking to improve what we already have in place, makes sense and is less risky for any Presidency since some success may always be registered, no matter how measured it may be. Taking up the challenge presented by the other approach and achieving a successful outcome is far easier said than done.

If the riskier approach were to be attempted, a successful outcome would be possible if the process is not driven by one set of players and the agenda is not set by one of the sides only. I firmly believe that co-ownership of the initiative should dictate matters and that it should be founded on a genuine sense of co-operation between all parties which should continue to prevail

107 Online at: [http://www.barcelona.com/barcelona\\_news/the\\_barcelona\\_process\\_or\\_euro\\_Mediterranean\\_partnership](http://www.barcelona.com/barcelona_news/the_barcelona_process_or_euro_Mediterranean_partnership).

108 Online at: [https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/overview\\_en](https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/overview_en).

109 Online at: <http://ufmsecretariat.org/who-we-are/>.

110 Online at: <https://www.eu2017.mt/en/Blog/Pages/Euro-Mediterranean-relations.aspx?IsPrintPrev=1>; <http://www.eu2017.mt/en/Blog/Pages/Euro-Mediterranean-relations.aspx>.

111 Ibid ft. note 111.

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at all times so that it will be, and will be perceived to be, the motive force behind the whole initiative.

The Maltese Presidency could have laid the groundwork and the foundations for this to happen. We did not, and we opted instead to go for more of the same.

To the Maltese Presidency's credit, I counted at least six Ministerial or High-Level meetings, held during the Presidency in Malta, with a focus on the strengthening of existing Euro-Mediterranean relations. They dealt with a number of instruments and initiatives such as blue growth and ocean governance, the water agenda, research and innovation and energy efficiency in the Mediterranean<sup>112</sup>.

Furthermore, approval has been given by the EU's Committee of Permanent Representatives (Coreper) to a provisional deal between the European Parliament and the Maltese Presidency which entails EU participation in the so-called PRIMA Initiative (The Partnership for

- 112 (1) Union for the Mediterranean Senior Officials Meeting and Anna Lindh Foundation (ALF), 7 March 2017, Malta, 53rd Board of Governors Meeting. Online at: [https://www.eu2017.mt/en/Events/Pages/Union-for-the-Mediterranean-Senior-Officials%E2%80%99-Meeting-and-Anna-Lindh-Foundation-\(ALF\)-53rd-Board-of-Governors-Meeting.aspx](https://www.eu2017.mt/en/Events/Pages/Union-for-the-Mediterranean-Senior-Officials%E2%80%99-Meeting-and-Anna-Lindh-Foundation-(ALF)-53rd-Board-of-Governors-Meeting.aspx); <http://www.independent.com.mt/articles/2017-03-08/local-news/Malta-reinforcing-historic-vocation-as-a-catalyst-of-an-innovative-vision-in-the-Med-George-Vella-6736171394>.
- (2) BLUEMED Initiative –Technical Meeting, Malta, 19 April 2017, “A Basin of Research and Innovation for Sustainable Growth. Online at: <https://www.eu2017.mt/en/Events/Pages/BLUEMED-Technical-Meeting.aspx>.
- (3) Informal Ministerial Meeting, 20 April 2018, Malta, Blue Growth and Ocean Governance in the EU and the Mediterranean – Innovation and Nautical Tourism. Online at: <https://www.eu2017.mt/en/Events/Pages/BLUEMED-Technical-Meeting.aspx>.
- (4) Ministerial Meeting of the European Union and Mediterranean Water Ministers, 27 April 2017, Malta. Online at: <https://www.eu2017.mt/en/Events/Pages/Ministerial-Meeting-of-the-European-Union-and-Mediterranean-Water-Ministries.aspx>; <http://www.swim-h2020.eu/27-april-2017-valetta-malta-ministerial-meeting-of-the-european-union-and-mediterranean-water-ministries/>.
- (5) Informal High-Level Meeting on Energy Efficiency in the Mediterranean, 19 May 2017, Malta. Online at: <https://www.eu2017.mt/en/Events/Pages/Informal-High-Level-Meeting-on-Energy-Efficiency-in-the-Mediterranean.aspx>; <http://ufmsecretariat.org/fostering-energy-efficiency-solutions-in-the-mediterranean-high-level-meeting-to-be-held-in-malta/>.
- (6) Space Solutions for Resilience in the Mediterranean, 27 June 2017, Malta. Online at: <http://www.independent.com.mt/articles/2017-06-28/local-news/Satellite-data-important-tool-to-tackle-global-humanitarian-migration-security-challenges-6736175988>.

Research and Innovation in the Mediterranean Area)<sup>113</sup>, and which currently involves 11 EU Member States and 8 non-EU Mediterranean Countries.

The Maltese Presidency did not attempt the more challenging approach possibly because it suspected that there was no appetite in the European Union and in the Arab world for any radical change, for any new approach, to Euro-Med relations.

### ***Conclusion***

I would like to hope that the reflections on the future of the European Union; the discussions on the immediate concerns involving the Mediterranean and on the strengthening of Euro-Mediterranean cooperation commenced or furthered during the Maltese Presidency; will lead to outcomes in the years to come that will be in the best long-term interests of the European Union and of the Mediterranean. I also would like to wish that the Brexit negotiations will be concluded positively for all and that we will manage to turn the page and move on without acrimony.

113 Coreper, 26 April 2017, Press Release 215/17, “EU-Mediterranean Partnership for food and water projects: Coreper approves the ‘PRIMA’ initiative”. Online at: <http://www.consilium.europa.eu/en/press/press-releases/2017/04/26-prima-food-water/>.

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