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SMALL STATES AND EU GOVERNANCE

Malta in EU Decision-Making Processes

Jean Micallef Grimaud

Palgrave Studies in European Union Politics

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Jean Micallef Grimaud

Small States and EU Governance

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Political Science and International Studies
In loving memory of my dad, Aurelio Micallef Grimaud

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Abbreviations

CEAS	Common European Asylum System
CION	European Commission
CoE	Council of Europe
Coreper	Committee of the Permanent Representatives
Council	Council of the European Union
DG	Directorate-General
DOI	Department of Information
EC	European Community
EEA	European Economic Area
EEC	European Economic Community
EESC	European Economic and Social Committee
EFTA	European Free Trade Area
EP	European Parliament
EU	European Union
Eurodac	European dactylographic system
IMC	Inter-Ministerial Committee
IR	International Relations
JHA	Justice and Home Affairs
LI	Liberal Intergovernmentalism
LP	Labour Party
LTR	Long-Term Residence
MEAIM	Ministry for European Affairs and Implementation of the Electoral Manifesto
MEPs	Members of the European Parliament
MEUSAC	Malta EU Steering & Action Committee
MLG	Multi Level Governance

NATO	North Atlantic Treaty Organization
NP	Nationalist Party
NSO	National Statistics Office
OJ	Official Journal
OLP	Ordinary Legislative Procedure
OPM	Office of the Prime Minister
PfP	Partnership for Peace
QMV	Qualified Majority Voting
SCEFA	Standing Committee on Foreign and European Union Affairs
SMEs	Small and Medium-sized Enterprises
SNE	Seconded National Expert
TCNs	Third Country Nationals
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations
WGs	Working Groups

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CHAPTER 1

Introduction

1.1 The Focus and Aims of the Book

This book examines whether small state governments in the European Union (EU) exercise influence in decision-making legislative processes. It empirically examines small state governmental capacities and strategies to produce findings that reveal that at times (and depending on the presence of these factors), small states and their governments, contrary to what one might assume, may exercise influence in EU decision-making processes. It, therefore, asks the following main questions:

- ***Are*** EU small member state governments able to exercise influence in EU legislative decision-making processes? In other words, from the evidence of the Maltese cases presented in the book's empirical chapters, do small states exercise influence in these processes? And if so, ***how*** and at ***which stage*** do they do this?

To answer these questions, the book focuses on the smallest state in the EU—Malta and its government's capacities and strategies in EU uploading processes, i.e., the formation of EU legislation in two distinct stages—decision-shaping and decision-taking. The reader must bear in mind that the book focuses solely on EU 'legislative' decision-making, i.e., Malta's exercise or non-exercise of influence in the formation and approval of selected EU legislation in the Council of the EU (and partially, on its channels of influence in the European Parliament).

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One will ask the question: what is so interesting about small states and why should we focus on them? Neumann and Gstöhl (2006: 16) provide an answer to that question:

> small states are not just "mini versions" of great powers but may pursue different goals and policies worth studying… small state studies have several insights to offer to the broader discipline of International Relations.

This is in fact confirmed by Kirt and Waschkuhn (2001: 23–25) who maintain that the study of small states, besides being relatively young, occupies a niche in International Relations (IR). They maintain that such studies present opportunities for future research to concentrate on single small state studies as well as theoretical assumptions that are relevant to IR and, more specifically, to the study of the EU and its decision-making process.

Likewise, other authors such as Veenendaal and Corbett (2015) emphasize that small states are particularly absent from mainstream comparative political science. They attribute this absence to certain size-related factors such as the small populations and insignificant role that small states maintain in IR. As a consequence, these authors argue that political science is much poorer for not seriously utilizing small states as case studies for larger questions, something which is taken at heart by this book which attempts to remedy and provide answers to the question of small state influence in EU decision-making processes. As they observe:

> our call, therefore, is for scholars of comparative politics to be more reflexive about their exclusion of small states and its negative repercussions for the subjects they study… Furthermore, if a choice is made to leave out small states, in our opinion, scholars should also explain and justify their threshold of exclusion, that is, why countries below a certain size are less interesting cases than those that rank above this cut-off point. (Veenendaal and Corbett 2015: 543)

In short, this is the inspiration behind this research which in a similar manner to these authors identifies studies on small states as being significant contributions to the discipline of political science.

This leads us to ask other questions of a more direct nature to this topic such as: do small states suffer from their smallness? And are they

able to manifest influence in the international or European arena? Such potential difficulties faced by small states have been the subject of widespread discussion that has gained momentum over the last five decades (Robinson 1960; Benedict 1967; Dobozi et al. 1981; Kaminarides et al. 1989; Thorhallsson 2000; Wivel 2005; amongst others).

The good news is that in contrast to the established literature on small states, innovative literature that views smallness from the opposite spectrum is now being developed. In fact, the book's passion is in this direction arguing that small states, if opportunistic enough, capitalize upon their smallness precisely as a resource (Browning 2005) to exercise power and influence in the EU, particularly in its legislative decision-making processes. In order to find out whether this is correct, it is first necessary to conduct an analysis of whether a small state possesses relevant 'capacities'. Second, it requires an analysis whether such capacities are exploited to employ 'strategies' to influence EU legislative decision-making processes. This is precisely what the book examines empirically in its latter chapters. Together, small state capacities and strategies represent the book's centerpiece.

Of relevance, there are various authors who have devoted themselves to the study of state influence in EU decision-making who agree that power is no longer a question of military capacity or necessarily of size, but of the capacity to influence the political agenda. They identify power and persuasion in the EU as being based on a number of factors that enable policy practitioners to take advantage of the multi-actor, multi-level governance system that characterizes the EU (see Jachtenfuchs and Kohler-Koch 1995) and its institutions (March and Olson 2005).

Having said this, the study of small state influence in the EU, particularly during the shaping phases of EU legislative processes, has received less attention from academic circles which have tended to concentrate more on the final phases of decision-taking (Peterson and Bomberg 1999: 2). Besides, although the focus of this book is primarily on Malta as the smallest EU member state, it aims to produce findings that go beyond a single country dimension which could be applied more generally to small states and their influence in EU decision-making. The thrust of this argument is that if the smallest EU state does exercise influence in EU processes then, in principle, so should other small EU states with larger administrations and generally more expertise. As is indicated in the final paragraphs of the book, this presents itself as a potential subject matter for future research.

This research puts forward the hypothesis that in the EU context, 'small state' does not mean 'weak state' and that certain vulnerabilities related to their size can be overturned with appropriate capacities and strategies employed during EU decision-making. It is, therefore, not only concerned with which strategies are used or whether different strategies are more successful than others in EU decision-making, but equally important, whether a government maintains the necessary capacities which determine whether an EU government is likely to exercise influence in EU processes. As empirically analysed in Chaps. 7 and 8, this last argument is even more crucial for small states than for large states in the EU.

In short, governmental capacities and strategies form the backbone of this research in its quest to examine and measure a small state's governmental influence in EU legislative processes. As indicated in the book's abstract section, this is an innovative way of how to look at the study of small states in the EU which should thus be able to advance knowledge on this subject matter.

Before moving on, it is relevant to point out that there are a number of distinguishing features about the book worth spelling out at this stage. First is the point just mentioned above about its framework subdividing decision-making processes into two main stages—decision-shaping and decision-taking. One must realize that there is an overall lack of academic attention devoted specifically to the decision-shaping stage. This, therefore, represents one of the main driving forces behind this research, i.e., to study how this very crucial stage contributes and influences EU decision-taking (the subsequent stage which is involved with the adoption of EU legislation).

Second and as aforementioned, the book focuses on the smallest state of the EU, Malta, and its government, on which not much has been written at least in so far as its behaviour is concerned in the uploading process of EU legislative negotiations. As being highlighted in Chap. 2, since Malta is a relatively new EU member state having only adhered in 2004, it is, therefore, new to EU processes, not least to EU decision-making, with consequently not much research having been undertaken on. This means that the book is meant to contribute to literature on small states, particularly that on Malta in the EU.

Third, and linked to the previous point, the book does not only focus on small state's capacities (something which a lot of literature on small states does and which is reviewed in Chap. 2). It also focuses on small

state strategies in EU decision-making (which is based on the work of Liefferink and Skou-Andersen 1998; Haverland 2009; Börzel 2002; amongst others—see Chap. 3). This is novel and is emphasized by Diana Panke (2010) who reiterates that there is, indeed, a gap in the literature about insights on small states' negotiation behaviour (see Chap. 2). By focusing on the smallest EU state's strategies employed in specific EU legislative negotiations, the book is thus able to produce innovative research in under-explored territory.

The fourth point is about clarification on the term used throughout the book, i.e., 'small state governments' as against that generally used by other research on this topic referring to them as 'small states'. The term 'small state governments' refers to the governments of the small EU member states involved in EU decision-making processes. This clarification is required for two main reasons. First, it is necessary to avoid uncertainty and confusion about the use of this term. And second, it is required to denote that any other category of policy actor that may exist within a state other than the government itself is not part of the focus of this book. In this scenario, policy players such as domestic economic and social partners (trade and social unions), lobby groups, the private sector, regional or local government, and any other type of policy player that is active in a state and that may be involved in EU decision-making processes, are excluded.

Finally, the last point has to do with the book's methodology which collects six main variables (as part of its methodology to test a small state government's capacities and strategies in EU decision-making processes) from the existing literature on small states. This has already been pointed out earlier in the abstract and is entered into more detail in the next section (see also Chap. 5).

1.2 Selection and Justification for the Book's Case Studies

EU decision-making is characterized by a multi-actor, multi-level political framework comprising a juxtaposition of supranational and intergovernmental institutions. As is observed in Chap. 4, EU decision-making processes themselves are also fluid with policy goals and goal posts constantly shifting. All these factors make EU decision-making extremely complex and unique processes in nature. The book, therefore, deals with this broad setting, albeit with focus narrowed down on the Maltese

government's behaviour in the Council of the EU (in an intergovernmental setting) and on its channels of influence in two main supranational EU institutions—the European Commission and the European Parliament (EP).

As just mentioned above, six independent variables to test small state governmental influence in the EU have been selected. These are divided between governmental capacities and strategies (see Table 5.1 and Boxes 5.1–5.6 in Chap. 5) and may be viewed as important agents or factors of influence capable of furnishing causal explanations about the manifestation of governmental influence in EU decision-making processes. Chapter 5 spells out in detail the book's methodology, although clarification on why particular EU legislative cases were selected over others is necessary here. The book's empirical chapters present the following cases:

Case 1 — The EU legislative negotiations adopting Directive 2007/23/EC of 23 May 2007 on the placing on the market of pyrotechnic articles [dealt with in Sect. 7.2 of Chap. 7];

Case 2 — The EU legislative negotiations adopting (recast) Directive 2013/29/EU of 12 June 2013 on the making available on the market of pyrotechnic articles [dealt with in Sect. 7.3 of Chap. 7]; and

Case 3 — The EU legislative negotiations adopting Directive 2011/51/EU of 11 May 2011 on amending Council Directive 2003/109/EC on long-term residents to extend its scope to beneficiaries of international protection [dealt with in Chap. 8].

Therefore, the empirical chapters in the book consist of three main core studies which focus on Malta's influence in the formation and adoption of EU legislation on pyrotechnic articles (Cases 1 and 2) and legal migration (Case 3).

There are a number of methodological reasons for the case study selection. The first one has to do with the actual decision-type of the EU legislative instrument, i.e., the three cases involve EU 'directives' (and not regulations for instance). Although at the first glance, this might seem irrelevant, the decision-type of a legislative instrument has a role to play in the behaviour of EU member state governments during legislative negotiations. During the formation stages of an EU legislative act,

governments are aware of the implications that implementation brings to their administrations once it is adopted. EU governments are, therefore, aware that EU regulations, once adopted, take effect immediately unlike EU directives which allow for the transposition into national law to occur within a specified timeframe. This means that the selection of EU acts of a similar decision-type allows for uniformity in the book's analysis of negotiation dynamics, albeit in separate decision-making processes. There is, therefore, a constant existing between the different cases.

In contrast, these three cases also allow for analysis of differing factors represented on one hand by Council voting and the EU legislative procedures used, and on the other by different outcomes for Malta's government in each case. Starting with Council voting and the legislative procedure for the three cases, Cases 1 and 2 were both decided upon by the Qualified Majority Voting (QMV) rule through the ordinary legislative procedure (the former co-decision procedure). However, as clarified in Chap. 8, Case 3 differs from the other two cases in that its legislative process consisted of two phases (divided by the entry into force of the Treaty of Lisbon). The first phase of the negotiations was decided upon by unanimity in Council under the consultation legislative procedure (and thus in an intergovernmental setting as is stated in Chap. 8). This, however, changed once the Treaty of Lisbon entered into force and re-started the process with Council voting and the legislative procedure shifting to QMV and the ordinary legislative procedure, respectively. In the first two cases (Cases 1 and 2), the outcomes were positive for Malta's government, while the third case (Case 3) differed once again with a negative outcome for the government.

Another methodological issue worth highlighting here concerns the book's framework which is based on a multiple policy sphere rather than a single one. The advantage of this methodological design is that it provides a solid basis to test a small state government's exercise (or non-exercise) of influence in EU legislative negotiations. Besides, the legislative spheres have been selected with a fundamentally important element in mind: that of being representative of Malta's needs in policy spheres that are extremely relevant to it. They are, therefore, not 'one-offs' and 'unusual'.

One of the main justifications for selecting Malta over other small EU states is about its status as the smallest member state in the EU (Chap. 6 is dedicated to Malta and the EU). Later chapters will observe how literature on power notions of states in mainstream IR theory usually

associates 'smallness' with 'weakness'. Small states are usually depicted as weak players (similar to pawns in a chess game) in the international system or in decision-making processes such as those of the EU. The crux here is that logic should then follow that Malta, being the smallest EU member state, should be the weakest state in EU processes. However, as being discussed in Chaps. 2 and 3, this generalization or better conceptualization, is, indeed, problematic leading to misconceptions about power-state debates. As will be stated, being powerful does not always refer to the larger states and to the contrary, weakness does not necessarily imply smallness (see Rostoks 2010: 90). Therefore, this conceptualization linking smallness to being weak is examined in the empirical chapters of the book.

This last argument contains wider implications to do with the overall methodological framework found here. Selecting Malta as the smallest EU state allows one to advance the following hypothesis: that if Malta's government manages to exercise influence in EU decision-making, then other larger EU small state governments should be able to do the same. Therefore, conducting research on the smallest of the 'EU small state' category presents an opportunity to add value to the study on small states in EU decision-making processes.

Another reason for the selection of Malta is that the author is Maltese and holds a genuine interest in this topic having obtained a doctorate in this subject. He has also worked as a diplomat for Malta's government in Brussels. Throughout this time, the author has participated directly in EU decision-making gaining 'inside' knowledge on how it functions, which is reflected in this book. This has hopefully helped to make the research novel and more accurate than what is generally found in research on this subject made possible by illustrating accurately what occurs 'behind the scenes' in Council negotiations (at every level)—something which, as stated in Chap. 4, is quite secretive due to the nature of this particular EU institution.

One final observation concerns selection bias or, more accurately put, the selection of cases to prove predetermined ideas and aims. The reply to this is that the cases were selected partly on the grounds that there were enough reasons to suspect in advance whether Malta's government exercised influence in them or not. Therefore, the approach of selecting three directives (two of them in the same policy sphere, albeit with separate decision-making processes) in diverse EU policy spheres (where

both influence and non-influence were exercised and with differing outcomes for Malta) was a deliberate decision. This allows examination of whether or not similar or different governmental capacities and strategies were used in differing policy spheres and processes to influence EU decision-making.

1.3 Structure of the Book

The book is structured in nine chapters with Chaps. 1–5 treating historical, conceptual, and methodological elements of the book and Chaps. 6–8 dealing with the empirical chapters, or better the case studies. At the end, Chap. 9 provides a conclusion by presenting the empirical findings on Malta's exercise or non-exercise of influence and analyses comparatively the three cases presented in the preceding chapters. The following paragraphs give an overview of the book's chapters.

Chapter 2 is divided into seven sections presenting a historical and theoretical review on small state governmental capacities and strategies in EU decision-making. Since the book centres on small states and their governments in the EU, this chapter serves as a point of departure in the analysis of small state governmental influence in EU legislative processes. Chapter 2 thus defines and clarifies key concepts used throughout the book.

Chapter 3 is divided into four sections and presents a conceptual analysis on small state governmental capacities and strategies revolving around the notions of power and influence in the EU. It, therefore, focuses on the central theme of the book, i.e., governmental capacities and strategies in EU processes.

Chapter 4 is divided into six sections. This chapter presents a framework for the book's investigation on understanding 'whether', 'how', and at 'which' stages of EU decision-making processes do small state governments exercise influence. It focuses on EU decision-making as a process made up of different stages in a policy cycle and shines light on the main research subjects—the governments in the Council of the EU (the Maltese government in this book). One will find that small state governments are hereby placed in an EU multi-level backdrop, i.e., the EU decision-making process involving multi-players (the Council but also the EP and the Commission) and multi-stages.

Chapter 5 focuses on all aspects related to the methodology and is divided into four sections. Although Sect. 1.2 partly dealt with the methodology, this is dealt with fully in Chap. 5 which outlines the research design and the methods used for data collection.

Chapter 6 presents Malta's relations with the EU, allowing the reader to place, in context, the three legislative case studies found in subsequent chapters. It, therefore, deals with Malta's EU relations pre- and post-EU membership and describes the method of co-ordination of its administration in uploading processes in the EU.

Chapters 7 and 8 present a critical analysis of Malta's government in the three EU legislative processes. Chapter 7 deals with the Maltese government's capacities and strategies in two EU decision-making processes adopting EU directives on pyrotechnic articles, while Chap. 8 focuses on the government's behaviour in a differing EU policy sphere, that of EU legal migration on the adoption of an EU amendment directive extending EU long-term residence to beneficiaries of international protection.

Finally, Chap. 9 presents a conclusion centering on the empirical findings on Malta's exercise or non-exercise of influence. It does this by analysing comparatively the three cases presented in the preceding chapters. Besides presenting the main findings, this chapter also prepares new ground for future research to be carried out in this discipline.

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CHAPTER 2

A Historical Perspective of Small States in the European Union

2.1 Introduction

This chapter sets out and establishes the main literature on small states in the EU and its decision-making process. It, therefore, examines the role of small state governments in this process without delving into the EU decision-making process, something which is dealt with in detail in Chap. 4. This chapter is divided into seven main sections.

Since the research centers around small states and their governments in EU decision-making, they thus form the basis of the discussion in Sect. 2.2 which serves as a point of departure in the analysis of small state governmental influence in EU legislative processes. Section 2.3 provides a historical and theoretical overview of the development of small state studies which focus on their capacities in an international relations context. This section, in fact, focuses on the literature that reveals how small states maintain certain capacities that make up for size-related burdens. Section 2.4 then reveals that there is not much literature on small state strategies as opposed to their capacities. As being stated in Sect. 2.5, this is truly the case for the smallest states in the EU. Therefore, these last two sections illustrate the point that small state strategies should be focused upon if we are to understand small state influence in EU decision-making processes. Section 2.6 then presents key explanatory factors on small state governmental channels of influence in EU decision-making processes which, as stated in Chap. 1, are revisited

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in the methodology chapter (Chap. 5) and empirical chapters (see Chaps. 7 and 8). Finally, Sect. 2.7 provides a conclusion.

2.2 Defining Small States in the EU

As being stated subsequently when discussing EU decision-making (see Chap. 4), governments are in their own right extremely strong players when compared to other players (such as the Commission and the EP) in EU legislative processes. However, as in all international organizations, the EU (as clarified in Chap. 4, it can neither be defined as an international organization nor as a state) contains an element of heterogeneity in that the member state governments are not all the same. When referring to size, one observes that the EU is made up of large and small states. This factor represents the point of departure for the discussion on small state governmental *capacities* and *strategies* to influence EU decision-making processes.

As widely accepted by the literature on small states, defining them presents a real challenge. This is because a single universal definition does not exist. In fact, the dividing line separating large from small states is extremely ambiguous and unclear (see Magnette and Nicolaidis 2005; Thorhallsson 2006; Thorhallsson and Wivel 2006). If one was to take the early twentieth century as the starting point, this was a time which marked a rise in the number of small states appearing (or re-appearing) on the map. This was mainly attributed to the fall of many regimes and empires such as the Habsburg Empire in 1919, the British and French empires and other European empires as a result of decolonization in the 1950s and 1960s, as well as the Soviet Union in 1991. As a result, a myriad of states emerged that could not be defined as great powers. These states were thus branded small through a simple method of elimination which excluded states that were not great or large powers. As Neumann and Gstöhl (2006: 6) maintain, '*small states are defined by what they are not*'. Furthermore, at this time, many small states were being wrongly defined. For instance, micro-states and middle powers were considered small states too.

Here, one must notice the use of the word 'power' which, in the nineteenth century, linked this concept with the greatness and size of a state. Put simply, great powers were the large states capable of developing their own foreign policy and exporting it to other countries and regions. Today, this generalization is, indeed, problematic giving way

to misconceptions about power-state discussions. This is because being powerful does not always refer to the larger states, and thus, in the opposite sense, 'weak' does not necessarily imply smallness. As Rostoks (2010: 90) maintains, '*smallness expressed in terms of power becomes very problematic*'. This author observes that even though the concept of power is rooted in neorealist and neoliberalist schools of thought, there are alternative power dimensions that emerge. He maintains that:

> the understanding that there may be subtler ways of producing desired outcomes has been growing. (Rostoks 2010)

There are, in fact, various authors who have devoted themselves to the study of decision-making linking power relationships between states with a state's influence in the EU. Based on the literature on the notion of power (e.g., Lukes 2005; Habeeb 1988—discussed in the next chapter), many of these authors agree that power is no longer a question of military capacity or necessarily of size but rather of the capacity to influence the political agenda. They identify power and persuasion in the EU as being based on a number of factors that enable policy practitioners to take advantage of the multi-actor, multi-level governance system that characterizes the EU (see Jachtenfuchs and Kohler-Koch 1995) and its institutions (see March and Olson 2005). This is, in fact, what interests this research the most. For this reason, such factors are empirically examined revealing that, as Risse (2000) claims, small states use a variety of persuasive strategies and tactics to achieve their goals.

This should, therefore, strengthen a possible hypothesis that 'weak state' does not automatically mean 'small state' and that certain vulnerabilities related to size could be overturned with the right doses in the capacities held and the strategies employed during EU decision-making.

This leads to a central question: with regard to what and how much are we able to determine that a state is large or small? There is a divergence here to be found in research on small states with authors using absolute numbers in terms of population size, geographic size (a state's territory), and/or the economic status (mainly the gross domestic product) of a state to determine its size-related category (see Katzenstein 1985; Krasner 1981; Handel 1981; Crowards 2002; Neumann and Gstöhl 2006). Yet, other authors use Council votes under the Qualified Majority Voting (QMV) rule to determine and distinguish small from

large states in the EU (see Panke 2010: 15), even though it is the norm that EU decisions are taken by consensus rather than by voting (Hayes-Renshaw 2006; Wallace 2005: 61). This means that there are various measures and depending on which one is used, a state may vary between large and small states. For instance, as Panke (2010) observes, Finland would be a big state based on its territory, but a small one according to other criteria such as economic and financial standing, and population figures.

Of all these different criteria about differences in state size and because of its common usage, this book uses 'population size' as the most relevant indicator of state size in EU decision-making processes. Without reducing the salience of other criteria in this matter, this is because the EU system in general tends to select this criterion as *the* one that is most essential, for instance in allocating Council votes to member states under the system of QMV (a system that before the entry into force of the Treaty of Lisbon was referred to as 'weighting'; as being clarified in Chap. 4, weighting is no longer used in today's QMV rule, although member states may still call for its use until 2017). Indeed, QMV rules demonstrate concrete and significant differences between member states in population figures. Put simply, differences in population figures are important and are the subject of immense contentious battles fought between the member state governments whenever an InterGovernmental Conference (IGC) involves a revision of institutional provisions of the EU Treaties (referred to as the Treaty on the Functioning of the EU (TFEU) and Treaty on the EU (TEU) with the entry into force of the Treaty of Lisbon on 1 December 2009).

Therefore, this research tends to agree with Neumann and Gstöhl's (2006: 6) general definition, that of setting the dividing line between large and small states in the EU at the population size of the Netherlands (at around 16 million inhabitants). As they observe, this leaves '*all European countries as being small states except for Russia, Germany, Turkey, France, Great Britain* (as indicated in Table 2.1, the UK is still a member of the EU at the time of writing this book, although Brexit will take place shortly), *Italy, Ukraine, Spain, Poland, and Romania*' (emphasis added in underlined text indicating the EU large member states). In fact, if one was to put aside the seven large EU member states, identified in Table 2.1, the remaining states all fit under the wide category of small states, even though there are clear differences in size

Table 2.1 Classification of European states according to population size (EU member states, EU candidate and potential candidate countries, EFTA states, and other micro-states not affiliated to any regional group)

• **Large EU states:** Germany; France; the UK[a]; Italy; Spain; Poland; Romania (Turkey is an EU candidate country)
• What is left is a cluster of **medium–small–micro-states** which are less clear-cut and are generally tagged as small states:
- 21 EU small states (Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; Greece; Hungary; Ireland; Latvia; Lithuania; Luxembourg; Malta; the Netherlands; Portugal; Slovakia; Slovenia; Sweden)
- 4 small EU candidate countries (Albania; the former Yugoslav Republic of Macedonia; Montenegro; Serbia)[b]
- 2 EU potential candidate countries (Bosnia & Herzegovina; Kosovo)
- 4 EFTA states (Iceland[c]; Liechtenstein[c]; Norway[c]; Switzerland)
- 4 micro-states neither being members of the EU nor having expressed a wish for EU or EEA/EFTA membership (Andorra; Monaco; San Marino; the Vatican)

Source Table compiled by the author

[a]At the time of writing, the UK is still a member of the EU, although it has already expressed its intentions to leave (Brexit)

[b]Turkey is not listed here, since, although it is also an EU candidate country, it is a large state

[c]Iceland, Liechtenstein, and Norway are also members of the EEA. Prior to March 2015, Iceland was also an EU candidate country, i.e., before its government decided to put its accession negotiations on hold requesting that it should no longer be regarded as a candidate country for EU membership

existing between them. Within this category, there are medium states (such as the Netherlands, Finland, and Sweden amongst others), small states (Ireland and the Baltic states, amongst others), and extremely small or 'mini' states (mainly Luxembourg, Cyprus, and Malta) and micro-states such as San Marino, Monaco, and others (illustrated in Table 2.1). By way of elimination, all these EU states amount to 21 small states. Besides, most current applicant states for EU membership (whether having achieved 'candidate' or 'potential candidate' status) are small countries (apart from Turkey). However, as aforementioned, a universal definition does not exist, meaning that this number could vary according to different criteria used to determine whether a state is large or small. As Neumann and Gstöhl (2006) point out, such classifications serve simply as a guide. In other words, since the demarcation line between these states is debatable and because a universal definition does not exist, such classifications can only be at best subjective and arbitrary.

2.3 A Historical Development of Studies on Small State Capacities in International Relations

This section illustrates some of the main contributions to the literature on small states and presents differing aspects emerging from them. The reader should bear in mind that there is in fact quite an extensive list of authors coming from different disciplines who have focused their research on small states. As observed by Neumann and Gstöhl (2006: 9), the origins of studies on small states may be traced as far back as the eighteenth and nineteenth centuries, particularly through contributions of mainly German-speaking scholars. Amstrup (1976: 163) gives an example of issues during that epoch attracting the attention of scholars who wrote about small states, such as the discussion about various small German states and their role in the wider issue of possible German unification of that time. However, research on small states can be said to have begun in earnest by the turn of the twentieth century and particularly during the inter-war period, which happened in parallel with the evolution of International Relations (IR) studies. In fact, the study of small states is entrenched with the development of three main strands in IR theory, namely realism (later neorealism); liberalism (neoliberal institutionalism); and social constructivism. Table 2.2 summarizes the evolution of IR theory and the study of small states along a specific timeframe of when these theories were mostly in use.

This evolution broadly reveals that studies about small states began in parallel with developments in IR theory, but later (1990s onwards), most spilled-over to a greater focus on small states in specific settings—such as the EU—and more specifically to the role of small states in EU decision-making processes. In other words, most of today's literature on small states has derived from and moved out of the IR discipline to one that is positioned more within a specific framework such as that of the contemporary EU (partly because theoretical foundations of European integration themselves originate from IR theory).

The first major study on small states in the twentieth century is to be found with the work of Annette Baker Fox (1959), considered by the academic community as a founder and critical player in the history of this sub-field (see Neumann and Gstöhl 2006: 23). Her study entitled, 'The Power of Small States', mainly looks at wartime diplomacy with an emphasis on geopolitical (geostrategic) and diplomatic skills (such as bargaining and persuasion) as important factors for the livelihood of

Table 2.2 Background to the development of small state studies in IR theory

Name of the theory	*Summary of the theory*	*Inception period of the theory*
1. Realism (neorealism)	This theoretical approach focuses on the 'relative' power of states with an emphasis on security issues. During this period, studies on small states mainly focused on how to define such states. Equally important, realist studies on small states also focused on other aspects such as the relevance of neutrality for such states (of a geostrategic nature), their diplomatic skills (bargaining), and small state survival strategies (such as alignment policy) as important features to help such states make up for their size-related vulnerabilities.	1940s–1970s
2. Liberalism (neoliberal institutionalism)	This approach focuses on the 'absolute' power of states in terms of gains through mainly economic issues and the relevance of institutions. In contrast to the realist approach above, the size of states was no longer an all important factor. This permitted for studies on small states to focus on economic issues of global interdependence brought about by a gradual eradication of barriers to trade and also, on the importance that international institutions (NATO) and establishments, such as the EU and its Internal Market (IM), held for small states.	1980s–(early) 1990s
3. Social Constructivism	This approach focuses on international norms, values, identity, and ideas. This promoted new literature that focused on the study of small states as norm entrepreneurs capable of being actors themselves in the world stage or in regional integration. This era saw a proliferation of small state studies focusing on the role of small states in EU policy-making.	1990s onwards

Source Table based on Table 1.1 in Neumann and Gstöhl (2006: 16)

small states existing among larger and generally more powerful states. This work exposes how small and militarily weaker states and their governments withstand pressure from larger states especially during time of international crisis, i.e., World War II (WWII) in her work. Baker Fox sets examples of Switzerland, Ireland, Portugal, and Sweden (besides Spain and Turkey which are not small states but which were militarily weak at the time) that all avoided being drawn into the war. Other studies published later (see Rothstein 1968; Keohane 1969; amongst others) focused on events unwinding in the post-WWII period. They were similarly concerned with the survival of small states but not in time of war. Rather, their main concern was with categorizing, or better, defining small states (or small 'powers' as was custom to use at that time) and on the systematic role that small states could have in the world order and in international organizations (see Keohane 1969: 297). They were also concerned with alignment policy, i.e., small states aligning with powers capable of providing them with shelter from external shocks (mainly in the form of security issues). For instance, Neumann and Gstöhl refer to Vital's 'The Inequality of States' (Vital 1967) observing that:

> Vital argues that small states acting alone face high (and rising) costs of independence. They have the choice of three broad policies: a passive strategy of renunciation, an active strategy designed to alter the external environment in their favor (e.g., subversion), or a defensive strategy attempting to preserve the status quo (e.g., traditional diplomacy and deterrence). (Neumann and Gstöhl 2006: 24)

This observation, in fact, leads one to the strands of literature (during the late 1970s and early 1980s) focusing on strategies used by small states to make up for certain vulnerabilities, mainly related to size.

Starting with work by Vogel (1983), he establishes a typology of different small state foreign policy strategies such as those used to decrease inter-dependence and high external dependence. For instance, the adoption of selective foreign policies which save small states costs allowing them to exploit the overall lack of resources. This also increases their possibilities for success (since more effort is invested into precise single issues). This theme is similarly found in more recent literature that speaks about the capacity to prioritize, a crucial aspect for small states in the EU's decision-making process (see Thorhallsson 2000; Panke 2010).

Moreover, other concepts deriving from IR theory are those of neutrality and integration, important concepts for small state strategies on how to deter occupation by foreign forces. In sum, Vogel maintains that small states must pursue certain strategies if they are to minimize the risk of being dependent on foreign aid (even economic aid such as excessive imports due to the scarcity of natural resources in many small states), or better, foreign determination. He observes that small states should, therefore, adopt strategies such as those seeking integration (membership) in international organizations which offer protection from foreign occupation (with 'safer' conditions than those imposed by larger and more powerful states).

However, by the mid-1970s, small state literature—in both economic and political respects—began to stress the importance of the physical size of a state in determining a state's behaviour in international relations. For instance, economics dictated that the size of a state was directly related to its wealth and consequently its power status. The argument would follow this trail—small states generally have a small domestic market with no economies of scale, scarce diversification of their economies, very high costs of production, and dependence on imports due to scarce natural resources. This, therefore, makes small states incur high costs, making them less wealthy and powerful than larger states with larger markets.

However, Handel (1981) argues differently. He maintains that small states are not necessarily the weaker part of the equation. For example, he gives the example of the OPEC group of countries in the Middle East and their embargo imposed on militarily stronger Western states during the oil crisis of the 1970s. Here, he puts forward the argument that these states, although small and militarily weak, were still able to impose themselves on more powerful and larger states due to their economically strong status. Therefore, the point here is that states could be militarily weak (the political domain) but economically strong. As Neumann and Gstöhl (2006: 25) state about Handel, his work finds that 'weakness' of states is a continuum and must be examined against a multi-criteria definition of what constitutes a weak state, i.e., population, economy, military power, interests, and, finally (but crucially for this research), influence levels in the international domain.

In another study conducted by East (1973), it was found that conflictive non-verbal behaviour was more of a strategy which small states pursued when compared to their larger counterparts and that, therefore,

economics was more of their natural ally than politics. Importantly, East observed that in contrast to large states, small states would invest more in joint actions as against unilateral ones and in targeting multiple-actor fora in the way they perform foreign policy. This is in order to minimize as much as possible costs deriving from such a policy.

This period (mid-1970s) represented the apex of literature on small states, which, according to Neumann and Gstöhl, occurred at a time when many small states around the world were being decolonized. This was the time when according to IR theory, the neorealist school of thought was leading the theoretical debate, arguing that the physical size of a state and its relative power capabilities determined its behaviour in international relations.

However, the next decade experienced a drop in the interest of the academic world to produce new research on small states. In Kramer's (1993: 257) view, this may be attributed to a decline of theory-driven studies on small states and also the neglect of scholars to consider a changing international environment. As Christmas-Møller (1983: 39) observes, the subject matter suffered from a genuine and 'benign neglect'. During this time neoliberal institutionalism, a new dimension to IR theory started to develop and challenge the previously uncontested neorealist school. One of its biggest contributions was that the concept of state size was no longer as important as previously held. Rather, this theoretical strand promoted absolute gains, economic issues, and international institutions as important categories on which to base the definition of a state. Works by Katzenstein (1985) and Krasner (1981) particularly stand out during this timeframe. For instance, Katzenstein's work entitled, 'Small States in World Markets' (see also Katzenstein 2003) examines how small states manage to respond to pressures of the global market and how such pressures affect the domestic structures of small states.

The 1990s experienced a resurgence in the literature on small states, in part because forces such as globalization and regional integration, with free trade and elimination of borders, were seen to benefit small states. During this decade, there were a number of small states in Europe that were seeking membership of the EU and the North Atlantic Treaty Organization (NATO). This logically redirected the attention of academia to this subject matter. In fact, one may safely attribute the beginning of newer and emerging contemporary literature on small states in the EU to historical events occurring during this particular time

(see Bauwens et al. 1996; Goetschel 1998; Hanf and Soetendorp 1998; Thorhallsson 2000; Gaertner and Reiter 2000). Moreover, a new and separate strand in IR theory, social constructivism, emerged at around this time. This theoretical approach has its focus on norms, identity, and ideas. This also contributed in a renewed interest in the study of small states in certain aspects, such as in their role as norm entrepreneurs in international negotiations (see Björkdahl 2002, 2008; Börzel 2002; Ingebritsen 2002). As Neumann and Gstöhl (2006: 14) observe:

> If not only relative power (neorealism) and/or international institutions (neoliberal institutionalism) matter, but also ideational factors (social constructivism), small states may gain new room to maneuver in their foreign policy. (emphasis added in parentheses)

This renewed enthusiasm on the part of the literature has led to modern studies on small states published in the new millennium. Many of these studies have focused on the specific issue of small states and their role in EU decision-making processes. As already pointed out, this is partly due to the fact that the EU is made up of a majority of small states, and that EU decision-making is complex and offers opportunities that small states can potentially exploit. Works by Baldur Thorhallsson (2000), Jeanne Hey (2003), Simone Bunse (2009), Robert Steinmetz and Anders Wivel (2010), and Diana Panke (2010) all deal with small EU state vulnerabilities (listed in Table 2.3) and their influence and behaviour in EU decision-making. The various strands making up the literature on small states have thus agreed with this list of vulnerabilities common among such states.

2.4 A Call for More Focus on Small State Governmental Strategies in the EU

The notions of power and influence of governments in the EU, which in the case of smaller states are so disparate when compared with their larger counterparts, have not yet been fully explored. Furthermore, it is unfortunate that current literature on small states in the EU appears to be both diverse and fragmented. For instance, as already discussed, there is no agreement on a universal definition for small states, on what similarities one would expect to find in their foreign policies or on how they influence international relations (see Knudsen 2002: 182–185; Archer and Nugent 2002: 2–5; Thorhallsson and Wivel 2006). Besides, there is

Table 2.3 Most common burdens and vulnerabilities faced by small states in the EU

1. Small administrative size (big burden to cope with the vastness of the EU's *acquis communautaire* in 'downloading' and 'uploading' processes)
2. Lack of expertise (e.g., it is more difficult for the smaller EU states to adopt persuasion-based strategies which need to be based on scientific data)
3. Lack of experience (mainly relevant to newer EU member states when compared to older ones)
4. Lack of votes for Council voting by QMV (even when voting does not take place, consensus norms in the Council do not prevent formal power formation from being significant (e.g., Panke 2010: 16)
5. Disadvantage to form coalitions due to small size (e.g., lower weight in Council votes when compared to their larger counterparts signals a real need to form additional coalition partners to win an outcome)
6. More difficult for smaller EU states to jointly form majorities and/or blocking minorities than for large states
7. Few financial and economic capacities to offer other states as trade-offs to win policy deals
8. Effect of 'brain-drain' felt more acutely by smaller administrations (e.g., workers moving from public sector to EU institutions/agencies)

Source Table compiled by the author

hardly any research which links small states with their behaviour during actual legislative negotiations in EU decision-making processes.

Indeed, small state governmental influence in the shaping and taking of EU decisions has been overlooked by the literature on small states. There is thus a vacuum in the literature on this topic and precisely on these crucial stages of the EU process that precede the adoption of EU legislation.

This is mainly because there is more attention afforded by academic communities to the larger states (see Moravcsik 1998; Hoffmann and Keohane 1991) to the detriment of smaller ones. As observed by emerging literature on this topic (e.g., Panke 2010), there is, indeed, a gap about insights into small states' negotiation behaviour. As she indicates:

> We do not have a comprehensive knowledge about which small states are most likely and which are least likely to participate actively in EU negotiations to make their voices heard and under which conditions small states succeed in influencing European policies. (Panke 2010: 11)

Small state behavioural strategies and negotiation tactics can be distinguished and differ from those of their larger counterparts (Thorhallsson 2000). This may be because of size-related disadvantages which small states face. For instance, small states may not be as capable as their larger counterparts to offer persuasion-based strategies (Kassim and Peters 2000: 300; Raik 2002) due in part to their small administrative size and a lack of expertise and resources to lobby effectively the Commission, the Council Presidency, and other delegations involved in the EU legislative process (Radaelli 1995; Young 1999). This situation is even more unsatisfactory when pointing, at the shortfalls, small states may face when trying to launch successful arguments, which, as Panke states, renders effective arguing more difficult (Panke 2010: 17). This is partly because small state representatives have to cope with various issues simultaneously. This reality differs starkly from larger administrations with larger number of experts. However, this can also be attributed to the lack of votes in the Council of the EU (under Qualified Majority Voting (QMV)) which is interpreted as a lack of political clout to put forward convincing arguments to persuade and receive support from other parties to a negotiation.

2.5 A Call for More Focus on the Smallest EU States and Their Governmental Strategies

If literature has not yet really focused on small state behaviour in EU decision-making processes, the situation is even more unsatisfactory for the extremely small or 'mini' states which have only been partially covered by works focusing on their role in international relations as opposed to that of the EU (see Duursma 1996). The EU's smallest states of Luxembourg, Cyprus, and Malta (with Malta being the smallest of the three), particularly the latter two EU member states and their behaviour in attempting to influence EU decision-making processes, have hardly been afforded any form of attention by existing literature.

Cyprus and Malta have a number of features in common. First, they are both Mediterranean and small *island* states with similar interests and face similar challenges in trying to 'upload' their preferences into the EU's legislative process. Consequently, the influence that these two countries hold in EU decision-making processes is often pitched at the same level. However, this does not mean that their level of influence is in

actual fact the same. There are times when their behaviour (in terms of how active the government is to try and influence a legislative outcome) differs considerably during legislative negotiations in Council.

Second, they are both new EU member states which make them different from Luxembourg, a similar state in terms of size and population figures but an 'old' and founding member of the EU. Luxembourg is thus a more experienced state than any of the other two. Furthermore, and as Panke (2010: 5) observes, Luxembourg frequently operates as the institutional memory of the EU. According to her, this can be mainly attributed to the government's policy of maintaining its diplomats in Brussels to serve longer periods than those of other countries. This naturally guarantees that Luxembourg's diplomatic corps has an extremely high level of expertise and continuity in EU matters, something which as discussed empirically in subsequent chapters is crucial for small states.

However, there are also differences between these three mini-states in relation to the size and wealth of their economies. Luxembourg is by far the 'richest' of the three for various reasons, one of which being its capability to attract foreign direct investment (FDI) through tax relaxation (a tax haven) and optimal rates of interest. Whereas the economies of Malta and Cyprus were—before the global economic, financial, and debt crisis—comparable (mainly flourishing maritime and tourist sectors), they now differ starkly from each other. This is because Malta—at least at the time of writing—has not emerged from the crisis as a casualty like Cyprus, which has adversely been hit by the severe recession in Greece and its banking sector and its nearly total dependence on the financial services market with overly large Russian investments in it.

One further difference is that politically, Malta and Luxembourg do not have the same problem that Cyprus has with its territory divided (and 'accepted' by the EU as a consequence of Cyprus's EU accession) between Southern Greek Cypriots and Northern Turkish Cypriots.

With respect to Malta—since this is the small EU member state which is being focused upon by this book—there is no literature which addresses specifically Malta and its influence in EU decision-making processes. There is also no literature which links works by authors on state strategies in EU decision-making processes (see Liefferink and Skou-Andersen 1998; Haverland 2009; Börzel 2002; each dealt with in Chap. 3) with Malta and its influence in such processes. Existing studies on Malta have focused on either its EU pre-accession stage (see Pace 2001, 2004), on the Europeanization process occurring before and after

EU accession (see Harwood 2009, 2014), or on wider issues such as the economic vulnerabilities of a small island state (see Briguglio 1995).

One reason for this paucity of literature is that Malta is a new EU member state, which means that it has only started to participate fully in EU processes as from 1 May 2004 (its date of EU accession). Another reason is that Malta is the smallest EU state (consisting of a population of around 425,384 inhabitants followed by Luxembourg with 550,999 inhabitants), which could, therefore, run the risk of being instinctively perceived as a state having hardly any influence in EU decision-making processes. It may, therefore, be mistakenly perceived as a weak subject on which to test governmental influence in the EU. To the contrary, studying extremely small states and their ways to channel influence in EU decision-making processes could reveal interesting elements and findings. It allows one to shine light on the vagueness and uncertainty which is so easily inferred upon the extremely small EU states, i.e., on whether such states and their governments are, indeed, able to manifest influence in EU decision-making processes and whether they are able to achieve positive outcomes from them. Here, influence is said to be manifest when EU outcomes (in the form of EU legislation) match a small state government's preferences in the decision-shaping and taking stages of EU legislative processes. As Golub (2012) states: '*we know surprisingly little about whether the content of European Union legislation reflects the preferences of some Member States more than others*'. This book aims to clarify such aspects.

2.6 Establishing Explanatory Factors for a Small State's Channels of Influence: Governmental Capacities and Strategies

As observed by Archer and Nugent about the expanse of explanatory factors and hypotheses on small states in the EU:

> …there is no shortage of hypotheses to be tested about the small Member States of the EU and their behaviour. (Archer and Nugent 2002: 9)

There are in fact many authors who agree with this point about the existence of various different hypotheses and factors to explain small state influence within the EU. For instance, Arter (2000) utilizes three

variables to explain this phenomenon—in this case, the success of the Finnish Northern Dimension initiative. However, Jakobsen (2009: 81) uses another set of four variables to explain small state influence in the EU—in his case, the Nordic influence on the EU's civilian European Security and Defence Policy (ESDP). Another author, Honkanen (2002), selects six factors in her research on small state influence in NATO, whereas Wallace (2005) adopts seven factors to explain and assess the power and influence of EU member states' in EU governance and negotiation. Panke (2010: 3) develops a variety of possible explanations for small state influence in the EU which include the capacity of a government to issue timely instructions to be adopted during a negotiation; the duration of membership and experience levels acquired; specific and diffuse EU support as an incentive to engage in the EU; the administrative set-up of a government's civil service that could affect the ability to work on EU matters; and differences in political and economic power, amongst others. Likewise, Thorhallsson also maintains that:

> the characteristics of the administrations of the smaller states are key factors in explaining how smaller states operate in the decision-making processes…. (Thorhallsson 2006: 221)

Another author, Simone Bunse (2009: 5), focuses on the relevance of the Council Presidency for small states and observes that analysing this EU institutional mechanism represents in itself a key factor explaining governmental influence in the formation of outcomes brokered in Council. For instance, she hypothesizes that studying the Council Presidency could offer an explanation about the equalization of power differences between small and large EU states. Besides, since the Council Presidency is an opportunity to be exploited by every member state government (to shape the EU's agenda and its policy outcomes in line with their national preferences), it thus offers a platform that is significant in the study of governmental influence in EU decision-making processes. Of paramount importance is her hypothesis that the Council Presidency stands as a variable that differs from those on state size (administrative size), since factors such as leadership and the distribution of preferences in the Council are able to render more in the explanation of a Presidency's ability to successfully pursue its national interests.

A review on the range of explanatory factors on this topic could be endless producing a variety of variables offering interesting explanations

about small state influence in the EU. The gist here is that it is impossible to treat all possible explanatory factors existing in this field and apply them to a single piece of work. Therefore, this book selects only those variables which best suit the nature of this research. As with other works, the explanatory variables chosen here have emerged from the literature on small states in the EU. As is stated in Chap. 5, the variables are applied both in a qualitative and quantitative manner in the empirical chapters of the book to validate the central hypothesis that small states are able to influence EU decision-making processes when possessing and injecting the right doses of governmental capacities and strategies in them.

Table 2.4 Non-exhaustive list of some common explanatory factors identified by the literature on small state governmental influence in the EU

Capacities used by a government in EU decision-making processes:
1. Quick instructions being drafted and sent to government representatives in Brussels (Thorhallsson 2000; Panke 2010; amongst others)
2. Administrative size and working system such as informality, flexibility in their decision-making systems (at domestic level) and a greater role of Permanent Representations (Thorhallsson 2000)
3. Opportunity to exploit the Council Presidency (Panke 2010; Bunse 2009; amongst others)
4. Expertise (possession of expert knowledge) of civil service (Radaelli 1995; Young 1999; Panke 2010; amongst others)
5. Experience of civil service in relation to duration of member state status (Panke 2010; amongst others)
Strategies used by a government in EU decision-making processes:
6. Strategies such as forerunner, convincing argumentation and honest-broker coalition building used by a government in the EU policy process (Liefferink and Skou-Andersen 1998; Haverland 2009; Börzel 2002; Panke 2010; Browning (2005); Jakobsen (2009); Björkdahl (2002) (2008), Ulbert and Risse (2005), amongst others)
7. Capacity to lobby effectively the Commission, Council Presidency, and other EU member state governments (Radaelli 1995; Young 1999; Kassim and Peters 2000; Raik 2002; Thorhallsson 2000; amongst others)
8. Diplomacy as a tool of statecraft as against military strength (Baker Fox 1959; amongst others)
9. Economic strength (Panke 2010; amongst others)
10. Representation (in numbers and level) in the various EU institutions and agencies (Neumann and Gstöhl 2006; amongst others)

Source Table compiled by the author

Table 2.4 lists the most widely accepted explanatory variables for a small state's influence in EU decision-making. The variables in the table are divided between government's capacities and strategies in line with the book's framework.

2.7 Conclusion

This chapter has provided the reader with an understanding of the development of small state literature. As seen, this was depicted in a theoretical setting made up of three main strands of thought—realism (neorealism), liberalism (neoliberal institutionalism), and social constructivism.

Besides the historical and theoretical aspects, this chapter has also reviewed the literature dealing with explanatory factors on small state governmental capacities and strategies to influence EU processes. It has also identified gaps in the literature on small states in relation to their role and behaviour in EU decision-making processes. This chapter has, therefore, introduced the conceptual, theoretical, and methodological elements of the book, the elements which are further explored and clarified in subsequent chapters.

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CHAPTER 3

Conceptualizing Notions of Power and Influence in the EU Legislative Process: Governmental Capacities and Strategies

3.1 Introduction

This chapter provides a conceptualization of governmental power and influence in EU legislative decision-making processes. It, therefore, focuses on the central theme of the book, i.e., governmental capacities and strategies in EU processes. This chapter is divided into four main sections.

Section 3.2 follows on from Chap. 2 which drew attention to notions of power, influence, and governmental capacities of states in mainstream International Relations (IR) theory. Chapter. 2 has, in fact, already provided a theoretical setting for the manner by which the study of small states developed—it presented a theoretical framework to explain the review of the evolution of small state literature in line with the three approaches of realism, liberalism, and constructivism (see Sect. 2.3). Section 3.2 continues this discussion further by clarifying key terms in relation to governmental 'capacities'. It does this by focusing on two main strands of thought, i.e., pluralism and Marxism/capitalism. Work such as that by Lukes (2005) forms the backbone to this discussion.

Section 3.3 then focuses on small state governmental 'strategies'. It presents a typology of governmental strategies as tools to influence EU legislative negotiations. These strategies are returned to and examined empirically in the latter chapters of the book.

Finally, Sect. 3.4 provides a conclusion.

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3.2 Governmental Capacities: Pluralism Versus Power Inequality

Before moving the discussion forward, it is necessary to air preliminary views on notions of power and influence that involve clarifying questions such as: what makes states powerful and influential in the international community? More precisely, what makes EU member state governments powerful to influence EU decision-making processes? And how do they influence these processes and what strategies do they adopt in attempting to do this?

Michael Hill (1997: 41) asserts that if one is to understand what occurs in a policy process, it must first be linked to the power structure of a society within a state. He claims that:

> policy is the product of the exercise of political influence, determining what the state does and setting limits to what it does.

But how is one to define a government's exercise of political influence in the context of a policy process involving more than one government? Knowledge on different views about what is meant by this and about defining and investigating power exercised by governments in decision-making processes is thus necessary to obtain an understanding about notions of power and influence in the EU.

Like many political scientists and sociologists interested in this topic, Lukes (2005) discusses the controversy about power in society and maps out the classical debate between two main strands of thought on this topic, i.e., pluralism versus other theories about structured power inequalities, such as 'capitalism' (finding its roots in Karl Marx's ideology about power) and 'elitism'. Lukes defines this debate as pertaining to two main power dimensions with a third view emerging about power relations between actors. As Lukes (2005: 16) observes, the third view:

> allows one to give a deeper and more satisfactory analysis of power relations than either of the other two dimensions.

The following sub-sections discuss separately these three dimensions.

3.2.1 Pluralism as a 'One-Dimensional View' of Power

An analysis of power finds its proper roots in Weber's ideology. For Dahl and other political scientists mainly active in the 1960s and 1970s, such as Polsby (1963), Wolfinger (1971a, b), Merelman (1968a, b), this ideology represented a starting block in their views about power—an approach which is labeled pluralist. Since most of these pluralists were studying the U.S. system, for them, power was to be distributed pluralistically in the U.S. political system as a whole. Lukes identifies their approach as 'the one-dimensional view' which defines power as involving '*a focus on behaviour in the making of decisions on issues over which there is an observable conflict of (subjective) interests, seen as express policy preferences, revealed by political participation*' (Lukes 2005: 19).

In this sense, Dahl (1957) came up with a power conception defining power as follows:

> *A* has power over *B* to the extent that he can get *B* to do something that *B* would not otherwise do. (Dahl 1957)

This is a zero-sum conception, i.e., if one policy player gains power, the other loses it (see Hooghe and Marks 2001: 5). However, in the same article, Dahl re-defines power as:

> … to involve a successful attempt by *A* to get *a* to do something he would not otherwise do. (emphasis added in underlined text)

The difference between the two power conceptions/dimensions is that in the latter case, Dahl refers to power as the result to be achieved, i.e., a successful one. Lukes (2005: 17) differentiates the two by referring to the first definition as capacity bound, while the other as being actual rather than potential.

Of interest to this book is Dahl's method of classifying participants' successes or defeats in a policy process which enables one to determine governmental influence (Dahl 1967: 336). This approach is being applied later on in the empirical chapters of this book and it is worth highlighting that this method is used today by various contemporary authors; for instance, Bunse (2009) through which she is able to classify the overall performance of small state Council Presidencies.

Further examination of the pluralists vision on power leads one to portray it as an attempt:

> …to study specific outcomes in order to determine who actually prevails in community decision-making. (Polsby 1963: 113)

Polsby (1963: 121) specifies that one:

> should study actual behaviour, either at first hand or by reconstructing behaviour from documents, informants, newspapers, and other appropriate sources.

Therefore, the emphasis here is clearly not on potential behaviour but more on *actual* and *observable behaviour* by successful policy players in decision-making processes. Merelman (1968a: 451) sums it up best when he states that pluralists:

> studied actual behaviour, stressed operational definitions, and turned up evidence… it seemed to produce reliable conclusions which met the canons of science.

Hence, pluralists conceive power as intentional and active, their main research questions being: how much power do the relevant actors have with respect to selected key issues in a particular setting, key issues being those that affect large numbers of citizens? And who prevails in decision-making situations? Therefore, pluralism is interested in:

> the frequency of who wins and loses in respect of such issues, that is, who prevails in decision-making situations. Those situations are situations of conflict between interests, where interests are conceived as overt preferences, revealed in the political arena by political actors taking policy stands or by lobbying groups, and the exercise of power consists in overcoming opposition, that is, defeating contrary preferences. (Lukes 2005: 5)

The pluralist ideology thus maintains that conflicts exist over issues and that these conflicts are the result of differing policy preferences between actors. In sum, without conflicts, it is, therefore, extremely difficult to measure power and influence.

3.2.2 Criticism of Pluralism—a 'Second-Dimensional View' of Power

Parallel to the development of pluralism, another ideology emerged from the 1960s that criticized pluralism as being too simple, superficial, restrictive, and complacent. For authors, such as Walker (1966), Morriss (1972), Domhoff (1978), pluralist thinking was too simplistic and unrealistic. They all maintained reservations on its descriptive accuracy. Hill (1997: 41) clarifies that:

> pluralism was in the first place an adaption of nineteenth-century individualist thinking, which had to be modified to recognize that in a complex society citizens relate to the state through intermediary groups.

Two of the main proponents of this view, Bachrach and Baratz (1970), labeled the pluralist approach as 'restrictive', maintaining that power has another dimension to it. Although agreeing that power and influence are about, and reflected in, concrete decisions as well as in shaping dynamics influencing the taking of those decisions, these authors re-visit and add on to the power theorem discussed above. They claim that decision-making power is also about the limiting of the process, i.e., that influence is also manifest in the limiting of scope '*of the political process to public consideration of only those issues which are comparatively innocuous to A*'. Lukes (2005: 6) illustrates their second face of power as follows:

> power was not solely reflected in concrete decisions… some person or association could limit decision-making to relatively non-controversial matters, by influencing community values and political procedures and rituals, notwithstanding that there are in the community serious but latent power conflicts.

According to this second face of power, possessing power and influence signifies also a capacity to pacify policy conflicts and not just to prevail as a winner in decision-making processes (as mainly held by the pluralists). As Bachrach and Baratz (1970: 8) state:

> to the extent that a person or group—consciously or unconsciously—creates or reinforces barriers to the public airing of policy conflicts, that person or group has power.

Their ideology is in line with Schattschneider's (1960: 71) hypothesis about policy preferences in a wider power debate that:

> All forms of political organization have a bias in favor of the exploitation of some kinds of conflict and the suppression of others because organization is the mobilization of bias. Some issues are organized into politics, while others are organized out.

In addition, as Schattschneider (1957: 937) observes:

> the definition of the alternatives is the supreme instrument of power… because the definition of the alternatives is the choice of conflicts, and the choice of conflicts allocates power.

As being stated in Chap. 4, this has to do with the decision-shaping stages (i.e., agenda-setting and preference formation) in a policy process, with agenda-setting leading to preference formation focused upon by pluralist ideology.

As Lukes points out, Bachrach and Baratz merge two distinct features within their neo-elitist conceptualization of power. First, it refers to all forms of successful control by *A* over *B*. Second, it secures compliance through the threat of sanctions. Therefore, their ideology about power and influence has to do with various sub-forms such as coercion, authority, force, and manipulation (Lukes 2009: 21). Influence is thus defined as being manifest when:

> [A], without resorting to either a tacit or an overt threat of severe deprivation, causes [B] to change his course of actio. (Bachrach and Baratz 1970: 30)

As Lukes (2005: 22) points out, the central difference between their definition and that of the pluralists' is that the latter overly emphasize '*the importance of initiating, deciding, and vetoing*' and '*takes no account of the fact that power may be … exercised by confining the scope of decision-making to relatively "safe" issues*'. Therefore, one will see that the second face of power introduces the element of non-behaviour, or as the proponents themselves maintain, of non-decision-making. In sum, the second-dimensional view of power recognizes both worlds of decision-taking and non-decision-taking (Lukes 2005: 22), and defines a decision as '*a*

choice among alternative modes of action' and a non-decision as one that '*suppresses or thwarts a latent or manifest challenge to the values or interests of the decision-maker*' (Bachrach and Baratz 1970: 39–44).

Similar to the pluralists' view about power in decision-making, neo-elitists such as Bachrach and Baratz suggest that power in non-decision-making can only emerge when there is conflict occurring. Therefore, like the pluralists (discussed in the previous sub-section), neo-elitists also adopt a behavioural approach. However, neo-elitists go one step further than pluralists by also including, in their analysis, behavioural preferences of those not only assumed to be in a political process, but also those 'outside' it.

3.2.3 Multivariate Approaches—a 'Third-Dimensional View' of Power

The main contribution by the third dimension is in its recognition of different forms of behaviour other than those prescribed by the first two views. In fact, this view refers to a third type of conflict, or better, a *latent* conflict, other than overt and covert types of conflicts mentioned previously. According to Lukes (2005: 28), a latent conflict consists in:

> … a contradiction between the interests of those exercising power and the real interests of those they exclude. These latter may not express or even be conscious of their interests….

Therefore, in a latent conflict, the players exercising power will manage to thwart the real interests of those weaker players by excluding them from the political or decision-making process. Table 2.3 in Chap. 2 has already illustrated how small states, for reasons mainly related to their size, face certain vulnerabilities which might put them at such risks.

The main gist here is about the bias of a system that can be activated in ways that are not self-evident or consciously selected by all (or some) of the policy players involved in, for instance, EU legislative processes. This differs from the second view of power which is more concerned with:

> … not whether the defenders of the status quo use their power consciously, but rather if and how they exercise it and what effects it has on

> the political process and other actors within the system (emphasis underlined) (Bachrach and Baratz 1970: 35).

The third face of power thus completes the basic power theorem as follows:

> A may exercise power over B by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants. (Lukes 2005: 27) (emphasis underlined)

***

This sub-section explored theoretical conceptions about how power and influence in politics may be defined. It is thus interesting to conceptualize the power theorems highlighted above to the question of small and large states in the EU. In other words, how are these policy players to be conceptualized?

The indentation below illustrates how large and small EU states are generally perceived when applying these power theorems to them, i.e., in the context of their influence in EU legislative decision-making processes:

- the 'A' variable = 'large states' or 'EU institutions';
- the 'B' variable = 'small states'.

What is of interest here is whether, in precise EU legislative spheres, the exercise of influence in EU decision-making processes may also be held by small state governments, therefore, transforming them into 'A' power-holding variables.

3.3 Governmental Strategies: Ways to Exercise Power and Influence in EU Decision-Making Processes

As previously discussed, many authors have devoted themselves to the study of decision-making, power relationships, and member state influence in the EU. These authors (such as Jachtenfuchs and Kohler-Koch 1995; March and Olson 2005) agree that power in the EU is no longer a question of only military capacity or necessarily of size, but of the capacity to influence the EU political agenda and take advantage of the multi-actor, multi-level governance system that characterizes the EU.

Nevertheless, relatively, a little research has been conducted on which strategies EU member state governments adopt to impact on EU policy, especially in the decision-shaping stages of EU legislative processes in Council.

Strategies can be said to be the by-product of a member state government's preferences mixed with its capacity to act. Therefore, logic follows that depending on its preferences and administrative size and expertise, a government selects its strategy/ies in a decision-making process accordingly. However, in the EU, given the heterogeneity of governments' preferences and capacities to influence this process, their strategies may vary greatly (Börzel 2002: 194). As Börzel rightly states:

> …not only do Member State governments pursue diverging and often competing policy preferences. They also differ in their capacity to engage successfully in the European policy contest.

Since all EU member state governments formulate their own policy preferences over specific legislative issues, it is the capacity of these governments to adopt successful strategies to influence EU decision-making which is of relevance here. The gist is that capacities and strategies are intrinsically linked with each other. Small states are usually not advantaged on this front due to certain vulnerabilities which are mainly related to their small size. This issue is tested empirically in subsequent chapters of the book to test whether a lack of small state capacity impacts negatively on strategies that could be used to influence EU decision-making processes.

Literature on state strategies points at a common factor—that countries differ in their strategy/ies to influence EU decision-making. For instance, Börzel (2002: 194) maintains that:

> what kind of strategy a Member State is likely to adopt depends mainly on its level of economic development, which largely influences the degree of domestic regulation and the action capacities of a Member State, particularly in the area of regulatory policy.

The next paragraphs draw attention to a small body of existing literature by authors such as Haverland (2009), Heritier (1996), Liefferink and Skou-Andersen (1998), Börzel (2002) who have identified and developed different typologies of state-strategy. Three main types of strategies are identified, i.e., the 'pace-setting', 'foot-dragging', and 'fence-sitting' strategies.

Table 3.1 below provides the reader with an overview of the three strategies dealt with in this sub-section.

Table 3.1 A typology of EU governmental strategies in Council during EU legislative processes

Governmental Strategies	*Different types of strategies*	*Possible governmental behaviour during decision-shaping and taking*
Pace-setting used by 'leaders'	A. Direct/Pushing pace-setting strategies: 1. Constructive 2. First mover or 'push-by-example'	A.1 & A.2 = If during decision-shaping, a government forecasts that the decision-taking stage is going to be positive for it (i.e., the adoption of EU legislation in line with its preferences), it will continue to pace-set the decision-shaping stage. It will do this by being constructive and will push the Council Presidency (in particular) for a decision to be taken as soon as possible. It will thus call for a quick completion of the process.
	B. Indirect/Forerunner pace setting strategies: 1. Defensive forerunner	B.1 = If during decision-shaping, a government forecasts that the decision-taking stage is going to be a negative one for it (i.e., the adoption of EU legislation not in line with its preferences), it will need to pace-set the decision-shaping stage. In particular, it will lobby and try and convince the Council Presidency, but also MEPs in the EP, for its preferences to be included in the institutions' common positions. A government will, therefore, push for a different outcome to be shaped and adopted, thus defending its preferences.
	2. Opt-outer	B.2 = If B.1 is not possible, the government will then seek concessions such as opt-outs during the decision-taking stage.

(continued)

Table 3.1 (continued)

Governmental Strategies	*Different types of strategies*	*Possible governmental behaviour during decision-shaping and taking*
Foot-dragging used by 'laggards' or 'keepers'	C. Slowing down strategies: 1. Non-constructive	C.1 = Being certain of the negative outcome to be achieved in a process, a government adopts a foot-dragging strategy throughout the decision-making process. It will, therefore, act as a 'keeper' to 'brake and break' the system. Particularly, a government will be non-constructive towards the Council Presidency during decision-shaping that will be pushing for a compromise to be found.
	2. Overall negative + blocking approach	C.2 = If a negative outcome is foreseen during the decision-taking stage and nothing may be done any longer to block the adoption of a draft legislation not in line with its preferences, a government will generally behave in this manner during decision-taking: - Form a blocking minority in Council under QMV rules; - Request for compensation and concessions; - Request for an opt-out, amongst others.

(continued)

Table 3.1 (continued)

Governmental Strategies	*Different types of strategies*	*Possible governmental behaviour during decision-shaping and taking*
Fence-sitting used by 'neutrals'	D. 'Wait and see' approach: 1. Neutral and/or coalition shifting.	D.1 = Uncertain of how the discussion is proceeding, a government will either remain neutral or constantly shift coalitions during decision-shaping. It thus neither sets the pace nor breaks the legislative process. This is generally either because: - The draft legislation is not salient to it; - Other EU governments which are more active than it in the negotiations share similar preferences; - A miscalculation of compliance costs; - A lack of expertise and experience in the policy sphere being discussed.
	2. Shift to pace-setting	D.2 = A government simply benefits from this situation aware that a positive outcome will be achieved from the process. In this situation, a government suddenly becomes more constructive in a similar manner as described under A.1 and A.2 above.
	3. Shift to pace-setting and/or foot-dragging	D.3 = A government becomes aware that a negative outcome will be achieved during decision-taking. It, therefore, shifts to a pace-setting strategy (defensive forerunner) with the scenarios in B.1 & B.2 unfolding. If unsuccessful, it will shift strategy to foot-drag the process (with the scenarios in C.2 unfolding).

Source Table compiled by the author

3.3.1 The 'Pace-Setting' Strategy

An especially promising strategy to influence EU decision-making processes is the 'first mover strategy' (Heritier 1996: 149–167). It is also referred to as 'pace setting' (Börzel 2002: 193–214) or 'constructive pusher' (Liefferink and Andersen 1998: 254–270). According to Haverland and Liefferink (2012), Benson (1975: 229–249), Pfeffer and Salancik (2003), the availability of EU governments' resources, such as money, personnel, and expertise used to pursue this strategy '*is partly conditioned by Member States' domestic institutions, the formal and informal rules that structure the relationship between domestic actors*' (Haverland and Liefferink 2012: 2). Haverland and Liefferink particularly argue that '*domestic institutions shape the availability of resources utilized to 'sell' a Member State's position in the policy process in Brussels*' (ibid: 2). As stated further on, their study on the revision of the Regulation on EU chemical policy (REACH) demonstrated that:

> the differential effect of the Dutch strategy was shaped not only by the dynamics of the political process in Brussels as such but also by the character of the resources available to the Dutch government during the process… (which) were, in turn, determined by the nature of domestic institutions. (ibid: 2)

The pace-setting strategy is about a government's ability to push and transpose national policies and preferences into the policy game in Brussels, which, as will be explained in the subsequent chapter, is part and parcel of the 'uploading' process. Since member states have different constitutional and administrative systems, they compete at EU level for outcomes that conform to their own policies and interests. If successful, this has the beneficial effect of reducing and ironing out implementation costs once EU legislation is enacted. Thus, the successful uploading of national interests into EU legislative processes guarantees reduced costs of adaptation in downloading processes.

However, there are other rewards deriving from pace-setting strategies. As Börzel (2002: 196) observes, '*uploading prevents competitive disadvantages for domestic industry*'. This means that through, for instance, standardization of legislation at EU level, all EU member states are able to compete on an equal footing at the domestic level. For instance, in the EU, the 'green' or high-regulating environmental member state

Box 3.1—A sub-division of pace-setting strategies

Direct/push pace-setting strategies	*Indirect/forerunner pace-setting strategies*
1. Constructive	3. Defensive forerunner
2. Push-by-example	4. Opt-outer

Source Box compiled by the author and based on Liefferink and Skou-Andersen's research (1997, 1998)

governments (mainly Nordic EU states) share a common interest to see harmonization of environmental standards set at an acceptable EU level (i.e., not unacceptably low). Therefore, these governments pace-set legislative negotiations in this sphere, aware that once EU environmental legislation is adopted, all 28 member state governments are obliged to enforce it in their respective national legislation. Thus, EU governments that adopt this strategy and take the lead in the shaping of draft EU law (of salience to them) stand to benefit.

Börzel (2002: 199–200) maintains that:

> pace-setting not only presupposes established domestic policies but also the capacity to push them through the European negotiation process, very often against the opposition of other Member States with diverging policy preferences.

As she points out, this, therefore, does not only have to do with how powerful a government is in relation to voting in Council under the QMV system. Rather, pace-setting is a strategy for all governments (big and small states alike) willing to be leaders in a legislative negotiation in Council.

Leadership may be seen through the lens of how expert-based a government's administration is (one of the 'capacity variables'—variable 2—in this book as is explained in Chap. 5) and active a government is in EU negotiations such as its lobbying efforts with EU institutions and other EU governments. Haverland (2009: 1) observes that it is the '*mobilization of government officials and related experts who possess a high level of content expertise to advance leader states' interest in EU policy-making*' that matters in leadership strategies. In this study, Haverland illustrates how a single leader state, the Netherlands—a medium-to-small state by definition (see Chap. 2) but nevertheless, a leader state in the

EU environment and chemicals policy—adopted a pace-setting, expert-based strategy in the revision of the EU Regulation on Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH), starting from the pre-legislative stage of agenda-setting in 1997 up to its adoption (decision-taking) in 2006. Significantly, Haverland came up with findings demonstrating the effectiveness of the expert capacity and pace-setting strategy used by the Dutch in these particular EU legislative negotiations.

Another study focusing on the same REACH Regulation by Selin reveals that a pro-REACH group made up of the Commission (DG Environment), the EP's environmental committee, NGOs, and the 'green' EU member state governments of Denmark, Finland, Sweden, The Netherlands, Germany, and the UK (all small states except for the latter two), was so successful in the legislative process that they 'effectively strengthened EU chemical policy' (2007: 87). Thus, both studies point to the utility and application of expertise in successful pace-setting strategies.

Besides expertise and the art of lobbying, another relevant factor in relation to pace-setting has to do with 'norm advocacy' or to a government's ability to persuade other parties to the negotiations through the delivery of convincing arguments and the use of diplomatic leverage. Therefore, it is about the power of values, norms, and ideas, which fits with social constructivist ideology. Norm advocacy is described by Annika Björkdahl (2008: 135–154) '*as a potent addition to the traditional strategies of gaining influence in the Union*'. Checkel (2005: 801–826) defines it as '*persuasive argumentation that may be used in order to raise moral consciousness about what constitutes 'the right thing to do'*'. The gist here is that by producing normative convictions of what is right from wrong during negotiations, EU governments aim to alter precise issue-areas *within* a draft legislative proposal rather than seek changes with more wide-ranging effects. Thus, EU member states seek to convince others of their own normative convictions. In this way, governments stand more of a chance to influence and ultimately 'win' adjustments in EU decision-making processes.

Having said this, pace-setting strategies cannot by themselves guarantee success in EU decision-making. This is because, as being stated in Chap. 4, EU decision-making is a fluid process changing rapidly between multi-levels and players. Governments thus cannot 'control' the negotiation dynamics, although they can adopt relevant strategies throughout.

Of key interest here is Liefferink and Skou-Andersen's (1997, 1998) sub-division of pace-setting strategies into four main strategies divided between direct and indirect forms of pace-setting. This sub-division is presented in Box 3.1.

Setting the pace directly has to do with EU member states using ***push*** pace-setting strategies that encourage, for instance, standardization of EU legislation. Such strategies are referred to as "constructive" and "pushing-by-example" types. EU governments employ such pace-setting strategies to push for the adoption of EU legislation, being aware that unilateral action at member state (domestic) level will not achieve the desired horizontal results. A "constructive pusher" strategy is oriented towards seeking a compromise that, however, might see lower standards set at EU level than unilaterally at the domestic level. On the other hand, a "pusher-by-example" strategy is used by those EU member states that look at the national arena '*as a tool to encourage European initiatives*' (Börzel 2002: 203). Here, domestic legislation serves as a form of general experiment to generate innovation at EU level in a given policy sphere. If successful, such EU governments push for legislation to be set at EU level. They are thus usually best allied with the Commission (which initiates the legislative process) and the Council Presidency to seek a compromise.

Indirect pushing has to do with ***forerunner*** pace-setting strategies deployed by 'leader' states in a particular policy sphere that focus on improving their national policy, albeit leaving the door open to the harmonization at EU level of standards in this sphere. Forerunner governments, however, normally disagree with EU legislation that sets lower ceilings than those set domestically. Therefore, if such a case arises, such governments will usually want to remain autonomous in being able to set their own standards and will indirectly put pressure on the Commission (in the beginning) and later the Council Presidency to find a compromise in line with their preferences. This tactic is referred to as a "defensive forerunner" pace-setting strategy used by governments that are '*more concerned with protecting its (their) own environment, rather than that of the EU as a whole*' (Liefferink and Skou-Andersen 1997, 1998). The other type of forerunner strategy is the "opt-outer". This strategy may be deployed because of the impact that will be caused through the adoption of an EU act which, according to the government requesting an opt-out, will have major negative repercussions on national

policy/legislation. Thus, national measures might unexpectedly turn out to be 'out of tune' with EU legislation forcing a government to opt-out.

3.3.2 The 'Foot-Dragging' Strategy

Contrary to pace-setting, foot-dragging strategies are used by member state governments that disagree with the way that draft EU legislation is being shaped in Council. Such governments are aware that a negative outcome awaits them at the end of the process (in the decision-taking stage) if they do not change the draft EU law during the decision-shaping stages. If these governments for some reason cannot alter the draft proposal in line with their preferences, they will have an interest to slow down the process and play for time, even blocking a decision from being taken (either by vetoing if Council voting is held by unanimity or by achieving a blocking minority under QMV Council rules). Such member states are referred to as the 'laggards' or 'keepers' in the negotiations.

However, foot-dragging is also used by governments which try to manipulate legislative negotiations to win compensation in other legislative spheres. As put by Börzel (2002: 205):

> …Foot-draggers tend to show a poor level of compliance with Community law… They are reluctant to accept more stringent measures and hardly ever advance proposals of their own.

There are a number of reasons for an EU government to adopt this strategy. For instance, smaller and newer (having joined the EU fairly recently) EU states might find it more difficult to pace-set legislative negotiations than their larger counterparts. In such situations, these states adopt a foot-dragging strategy to break the process which would have otherwise led to negative outcomes for them. They, therefore, revert to strategies that either block or delay decisions '*hoping at least to gain temporary exemptions (derogations), financial compensation (side-payments), or concessions in other issue areas (package deals)*' (Börzel 2002: 205).

In sum, a low capacity to upload preferences into the process during formation of EU legislation leaves such governments with a daunting situation to download and comply with the EU's *acquis* once the decision-making process ends and the policy cycle moves forward to the

next stages. They, therefore, either try and block a decision or request for compensation as stated above and as illustrated in Table 3.1.

3.3.3 The 'Fence-Sitting' Strategy

This strategy is best defined as the *wait-and-see* approach adopted by governments that are 'neutrals' in a negotiation and that neither '*set the pace nor put the brake on EU policies*' (Börzel 2002: 206). Depending on the policy issue being discussed, fence-sitters are likely to constantly change their coalitions between pace-setters and foot-draggers, since they are aware that their prospects of affecting a policy outcome are remote. This situation may be caused by their low capacity to influence particular EU decision-making processes or because of their lack of interest in the policy sphere being discussed in Council (for instance, Malta's government in EU legislative negotiations on railway transport given that there is none in Malta). Such governments adopt a *laissez-faire* approach during the decision-shaping stage of the process, only engaging in the latter phase of the process when it is time for decisions to be taken.

Börzel (2002: 206–208) identifies a few instances in which fence-sitting strategies are employed during decision-making. First, during the decision-shaping stage of a legislative negotiation, fence-sitting strategies are primarily used by member state governments that are indifferent to the fact that other more active governments, with preferences that are similar to theirs, are injecting these preferences into the EU policy process. Second, fence-sitting may also be used by governments that do not have enough expertise and experience in the particular legislative sphere being discussed in Council. Such governments might mistakenly fence-sit a legislative process, having miscalculated compliance costs that still need to be faced once EU law is enacted. This usually only occurs with EU member states that are new to EU decision-making processes.

In a worst case scenario, if a government realizes late in the process that its preferences are not included in a Council compromise (emerging at that stage in the process), it will need to switch to a foot-dragging strategy to block a decision being taken (see D.3 in Table 3.1). This scenario is an integral part of the case study analysis to be found in Chap. 8. Such a government will then 'scapegoat' Brussels to escape being labeled as having failed in the EU legislative negotiations (and with the consequence of having to implement and enforce new EU legislation going against its interests).

3.4 Conclusion

This chapter has moved the discussion forward by conceptualizing notions of power and influence found in EU decision-making processes. It has done this by focusing on the following questions:

- What makes states powerful and influential in the international community?
- What makes EU member state governments sufficiently powerful to influence EU decision-making processes?
- How do EU member state governments influence these processes and what strategies do they adopt in attempting to do this?

Besides focusing on three power dimensions (i.e., the discussion about pluralism versus power inequality) in relation to governmental capacities (dealt with in Sect. 3.2), this chapter has also illustrated three possible strategies by which EU states may pace-set, foot-drag, and/or fence-sit EU processes.

The importance of this chapter is to be found in the way that the conceptualization of power and influence, in respect to governmental capacities and strategies in EU decision-making, is used by the book's empirical chapters.

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CHAPTER 4

Defining Key Terms in Relation to Decision-Shaping and Decision-Taking in EU Decision-Making Processes

4.1 Introduction

By clarifying key concepts of EU decision-making, this chapter serves to set the background of how EU legislative decision-making processes function and who is involved in them. Particular focus will be given to the three main EU institutions which have a clear role in EU legislative processes—the European Commission, the Council of the EU, and the European Parliament (EP). Of these three institutions, particular attention is afforded to the Council which represents the interests of the member state governments in EU legislative decision-making processes.

As clarified in this chapter, EU decision-making is made up of two main stages—decision-shaping and taking. It is these stages which together constitute the book's framework through which small state governmental influence is studied.

Chapter 4 is divided into six main sections. Section 4.2 begins by discussing the EU as a regulatory arena and points out some distinctive features belonging to EU decision-making processes. Particular focus is given to the role of the Council in the EU legislative process.

Section 4.3 then focuses on EU decision-making as a process made up of different stages. It first provides a framework—that of the policy cycle—to be able to study key aspects about small state governmental influence in the shaping and taking of EU decisions (see 4.3.1). It then explains why the policy cycle model is useful to conceptualize

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decision-shaping and decision-taking dynamics as integral parts of EU processes (see 4.3.2).

Sections 4.4 and 4.5 illustrate key concepts belonging to the stages of decision-shaping and taking. Besides defining them, these sections also illustrate which EU policy players are found in each of them. Section 4.6 provides a conclusion.

4.2 The EU as a Regulatory Arena: The Legislative Process and the Distinctiveness of EU Decision-Making

In order to understand how EU decision-making functions and who is involved in it, it is necessary to take a step backwards to comprehend fully the concept of the EU as primarily a regulatory arena and to clarify certain aspects about the distinctiveness and role of EU decision-making processes.

As cited by Majone (2002: 320), the EU's primary 'organizing principle is not the separation of powers but the representation of interests'. This is an interesting point to depart from, since it confirms that the separation of powers in the EU exists within a complex system of decision-making functions shared between member state governments and supranational EU institutions. All policy players involved have their own interests and preferences which need to be 'uploaded', or better, exported into EU legislative decision-making processes.

Indeed, one of the main characteristics distinguishing the EU regulatory arena from other modes of governance elsewhere around the world is that it is highly complex and unique. Besides being made up of multi-players within a complex multi-level governance system comprising a juxtaposition of supranational and intergovernmental institutions each having their own interests, it is also a process which is fluid with policy goals and goal posts constantly shifting. Peterson and Bomberg (1999: 9) remark that '*EU decision-making is heavily nuanced, constantly changing, and even kaleidoscopic*'.

Wallace and Wallace (2000: 63) metaphorically describe the EU's regulatory arena and the decision-making process as a pendulum to convey its sense of movement. They observe that it swings along the national political arenas of the member states and the EU supranational domain never finding a stationary position. EU decision-making occurs frequently on a daily basis and in various policy/legislative spheres. In addition, as Cini (2007) emphasizes, the EU is a very active regulatory establishment.

All this characterizes EU decision-making processes as being constantly mobile, shifting between multi-levels with different competences. It also implies that such processes vary over time. Thus, such characteristics about the EU (and its decision-making processes) must be kept in mind every time it is addressed. This alone warrants clarification of how it functions and of how it adopts legislation, something which is portrayed in the next paragraphs.

One may safely maintain that the state still remains a very powerful player in today's EU legislative process, even though it is transnational in character and is partly entrenched in supranational institutions. Whereas the Commission and the EP are supranational EU institutions representing European and European party political interests, respectively, the Council of the EU (also referred to as 'the Council' or 'the Council of Ministers') is where member state governments voice their concerns intergovernmentally at multi-levels, i.e., from technical (Working Groups and Coreper) to political (Coreper and Ministerial) levels (see Figs. 4.1 and 4.2). Since this book focuses on small state governmental influence in EU decision-making processes, it necessarily focuses on this last EU institution without forgetting the vital roles played by the Commission and EP in such processes.

Indeed, the Commission maintains a primary role in setting in motion EU legislative processes—through the so-called 'right of initiative'—and is able to shape EU decisions, albeit without the possibility of deciding them, a state of affairs left to the member state governments in Council and to Members of the European Parliament (MEPs). Together, the Council and the EP (the two legislative chambers of the EU) adopt EU legislation (mainly through the 'ordinary legislative procedure'—Article 294 TFEU) in nearly all policy spheres.

Therefore, because the EU legislative process functions in this manner, EU governments in Council must build necessary access points or better, 'policy venues' to feed into it. The word 'builds' is here deliberately used to imply that not all policy players involved have equal access to this process. There are in fact varying degrees of access to the EU's regulatory arena which primarily depends and has an impact on how influential policy players (such as governments) are in this process. Put simply, unevenness of access and influence also exist among EU member state governments themselves which, needless to say, has major ramifications in EU decision-making.

Besides the challenge of creating access points to legislative processes, one finds that co-operation among EU governments in such processes

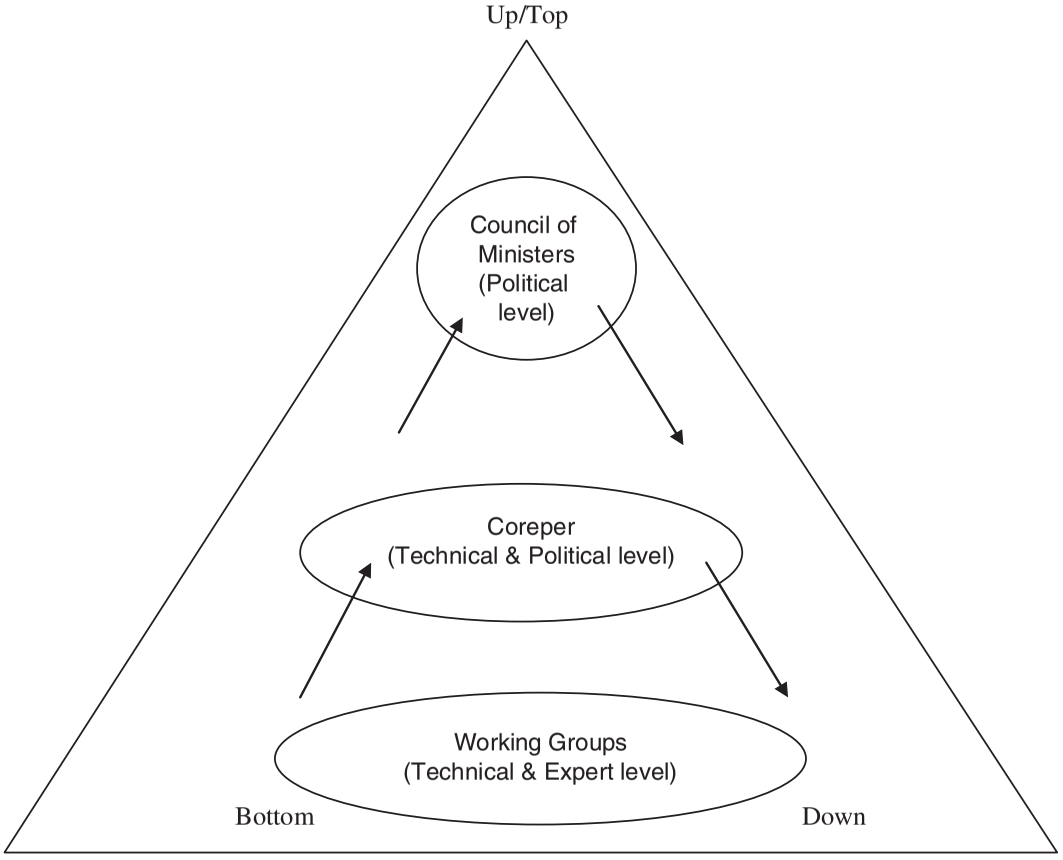

Fig. 4.1 Council's multi-level governance structure in 'Bottom-Up'/'Top-Down' approaches. *Source* Figure compiled by the author

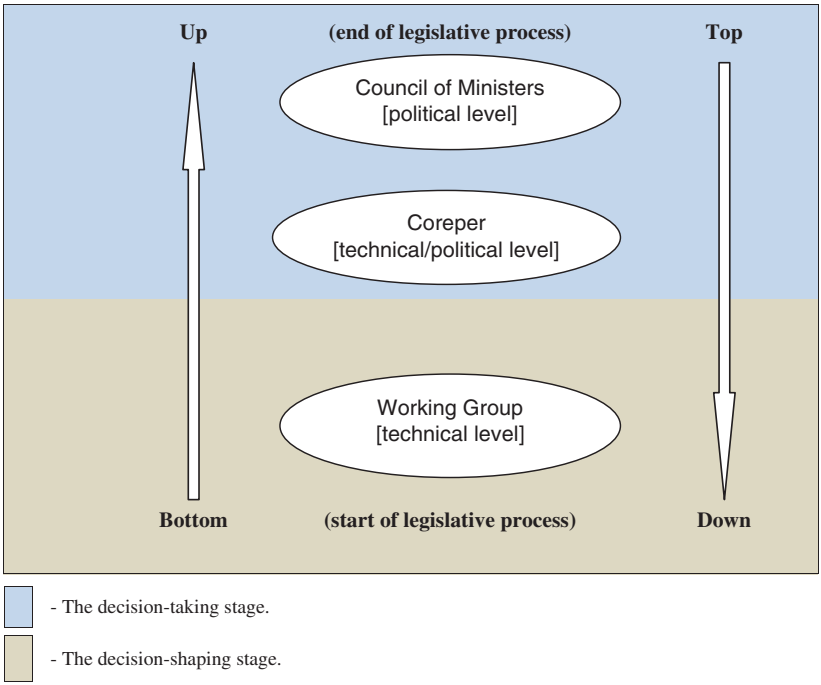

Fig. 4.2 Stages in the EU decision-making process applied to the Council's multi-level governance structure and approaches. *Source* Figure compiled by the author

is crucial and holds wide theoretical connotations worth indicating. Because differences in the interests and preferences of EU governments are an embedded feature in EU legislative processes, co-operation between them becomes a primary means to manage such differences and subsequently (if possible), as a tool for convergence. When treating European integration generally, literature on theoretical foundations brings together, on one hand, an intergovernmental form of co-operation between EU governments (see Hoffmann 1966; Moravcsik 1998; amongst others) and, on the other, EU member state co-operation as a

'tool' for convergence, i.e., a federal or functional (even neo-functional) type of co-operation where supranational institutions and not EU governments become the real drivers for integration (see Burgess 2000; Mitrany 1966; Haas 1968; Lindberg 1963; Stone Sweet and Sandholtz 1998; amongst others). Whichever theoretical camp is preferred over the other (it is not the book's aim to look into this), the fact remains that co-operation and, to a larger extent integration in the EU, takes place for mainly pragmatic reasons that in short could be put as follows: it is better to be in concert than alone in the system.

Reasons for this become evident when one thinks functionally about an ever-growing inter-dependent world. Therefore, from an EU member state governmental perspective, integration and co-operation in the EU should in principle take place for mutual gain and to provide shelter from global undesirable circumstances. As Wallace and Wallace (2000: 63) observe, 'wolves in the pack may bite each other, but they also protect each other'. However, what is even more paramount is that the EU process offers member state governments a platform through which to co-operate and from which opportunities may be derived if exploited properly. As Wallace and Wallace (2000: 63) state, member state responses and participation in the EU political arena vary in relation to their behaviour, actions, and influence in the multi-level governance system of policy and decision-making. Thus, these particular features of the EU have to be taken into account as the point of departure when analysing and theorizing the EU as a regulatory arena.

As mentioned earlier, one main distinguishing feature of the EU is its balance and amalgam of two levels of governance, i.e., on one hand, that which 'belongs' to the EU and the other, the member states. Wallace et al. (2010: 9) observe that 80% of EU policy derives from the national level where one finds national policy-makers preoccupied with domestic concerns. In the EU, these concerns at the domestic level of governance are thereafter transposed to the supranational and intergovernmental EU levels where national representatives seek to influence and 'fight' for their government's interests to be upheld in the legislative outcome adopted. This is, for instance, typical of intergovernmental deliberations in the Council where shaping and taking of EU decisions are determined by a multitude of concerns that national policy-makers (government representatives) have. As a consequence and up to a certain degree, outcomes emerging from EU decision-making processes are characterized by levels of unpredictability precisely because of variations between member state governments and also because power and influence are fragmented and

compartmentalized in such legislative processes. To put it simpler, '*there are numerous 'black boxes' inside the 'black box' of the policy process*' each with its own set of norms, cultures, and preferences which affect policy outcomes in the EU (Versluis et al. 2011: 232).

Thus, it is relevant to emphasize that EU policy processes, involving a mixture of supranational and intergovernmental institutions and players, do not live in a vacuum and that as prime players in legislative processes, EU governments occupy a concoction of symmetries and asymmetries in opportunities, interests, behaviour, and above all, influence, in a multi-level system unique to the EU.

As observed by Peterson and Bomberg (1999: 22):

> the EU depends fundamentally on its ability to forge consensus between a wide variety of decision-makers before policies may be 'set'. It thus requires extensive 'pre-legislative' bargaining over the shape of most proposals before they have any chance of being accepted.

This sums up the difficulty and complexity found in EU decision-making to produce outcomes from such processes. The question of how successful member state governments are in uploading their preferences into the EU's agenda, therefore, emerges from this framework.

In sum, the observation by Wallace and Wallace (2000: 63) about the distinctiveness of the EU policy process cannot be better worded:

> …the EU policy process is not entirely robust and not entirely stable … much hangs on whether the outcomes actually deliver results that meet the context, the functional demands, and the purposes of those involved… the EU policy process has different modes of operating, engages countries with some persistently different characteristics, and is vulnerable to changing expectations and ideas about the role of governance in western Europe.

4.3 Drawing upon Stages in EU Decision-Making

4.3.1 The Policy Process in Relation to the 'Stages' Approach: The Usefulness of the Policy Cycle Framework

As aforementioned, EU decision-making involves a mixture of various elements that together shape, form, and adopt EU policies and legislation. This section focuses on those stages in the policy cycle involved

with uploading processes in decision-making. Thus, decision-making is made up of the uploading stages of decision-shaping (agenda-setting and preference formation) and decision-taking. This clarification of what constitutes decision-making processes permits subsequent sections in this chapter to amplify on how the EU turns complex processes of governmental preferences and choices into issue formation on which decisions are taken marking the end of uploading processes.

Although as discussed below, there is a strand in the literature that criticizes the policy cycle model and its categorization of the policy process in various stages, it, nevertheless, acts as an adequate test-bed providing different stages in the process in which a government's influence may be tested. It thus fits neatly with the aims and overall approach of this book providing it with an ideal framework. The inspiration behind the image of dividing the policy-making process into separate junctures belongs to Harold Lasswell (1956). Farr et al. (2006: 94–120) observe that this was an element of Lasswell's early work on policy studies which he named 'the policy science'. Howlett et al. (2009: 10) define the policy cycle as 'a set of inter-related stages through which policy issues and deliberations flow in a more or less sequential fashion from 'inputs' (problems) to 'outputs' (policies)'. Therefore, the stages are inter-linked which is after all why it is called a cycle signifying that each stage leads to the next. Werner and Wegrich (2007: 43–62) simply name it the 'policy cycle'.

The policy cycle is generally sub-divided into five distinct stages (see Versluis et al. 2011; Howlett et al. 2009) in the following order:

Stage 1—*Agenda setting*	According to works by Brewer (1974: 239–244) and Princen (2009) amongst others, this represents the stage during which problems come to the attention of governments which are then placed on an agenda.
Stage 2—*Preference formation*	This involves choices as to ways of solving an issue problem on the agenda. Policy players thus come up with and formulate proposals on the way forward.
Stage 3—*Decision-taking*	As its name implies, this is the phase in the policy cycle when decisions (or

	non-decisions) are taken by policy players signifying agreement or non-agreement on the way forward as proposed in the second stage. Therefore, it represents the formal embracement/endorsement of the choice to the solution.
Stage 4—*Policy implementation*	This marks the enforcement of the decision on the way forward (this stage has to do with downloading processes unlike the previous three stages which is not focused upon in this book).
Stage 5—*Policy evaluation*	This is about verification of the performance of the policy action undergone (for the same reason as with the previous stage, policy evaluation does not feature in the book).

As previously suggested, although agenda-setting and preference formation are both defined as stages belonging to decision-shaping, this research mainly focuses on the preference formation stage. This is because preference formation is the stage marking the formal start of EU legislative decision-making processes. As stated later in the chapter, when analysing the EU's legislative process, preference formation begins through the Commission's approval of a legislative proposal which is sent to the Council and the EP for adoption. Because the book is about EU governments and their influence in such processes, it necessarily focuses on this stage of decision-shaping without, however, completely omitting the agenda-setting stage. It is thus relevant to highlight that the relevance of the agenda-setting stage is hereby not being ignored and that the author is well aware of its significance and value to studies focusing on the shaping of public policy.

EU decision-making thus has a starting point, or better, a conception stage of an issue problem which spans across a process, whereby preferences are formed (decision-shaping) and decisions adopted (decision-taking).

Before proceeding further, an explanation about the usefulness of the policy cycle approach to the study of EU policy processes merits attention. A policy cycle which is comparable to a life cycle, implying a period

of time which as Schneider (1991) observes, is a key ingredient to baking any 'policy cake'—it is not simply enough to mix the ingredients together, since only time allows it to rise. Besides the time factor, there are other elements to be included in this discussion on 'inputs' in policy-making such as those emerging from policy venues and policy frames discussed further on. In EU decision-making, decision-shaping and taking involve many 'inputs' (or better, ingredients) composed of policy actors, interest constellations, information, and ideas, amongst others. They all play their part in the shaping and taking of EU policy output.

In fact, because of its complexity, one main challenge of analysing policy issues in EU decision-making processes is to determine and narrow down the focus of the research investigation. In this respect, the stages approach of the policy cycle provides a 'helping hand' in which specific aspects of policy issues are separated and analysed allowing the researcher to ask the investigative questions of the *who*, *when*, *how*, *why,* and eventually *what* about a particular issue in a policy's life cycle. Thus, this compartmentalizing approach enables one to understand the logic behind decisions taken in the shaping and taking phases in EU decision-making processes.

For instance, Versluis et al. (2011: 20–21) observe that by '*breaking down a complex process into mini-processes, the task of analysis is more manageable*'. They, in fact, distinguish three main positive aspects about the usefulness of the policy cycle. Primarily, it is a fundamentally forward trajectory of logic of action which allows one to situate a decision within a horizontal continuum of events. Second, the framework allows one to focus on the various interactions and configurations of the policy actors, an aspect which is of relevance when studying EU decision-making which as explained earlier is a juxtaposition of various decision-shapers and takers. Third, as they point out:

> the framework offers a simple way to try to systemize existing knowledge by assuming a roughly chronological series of functional, goal-oriented stages in which multiple actors perform multiple tasks in hot pursuit of their interests, and in accordance with (though not beyond) their own capability to act. (Versluis et al. 2011: 22)

As already implied, many *criticism* about the usefulness of this model exist (see Jenkins-Smith and Sabatier 1993; Howard 2005: 3–13; Stone 1998; Tribe 1972: 66–110; Timmermans and Bleiklie 1999). One main

criticism is that it is too linear in structure. Consequently, deficiencies in one of the stages could eventually unravel the whole structure. For instance, Timmermans and Bleiklie (1999) observe that in reality, the stages of a policy are often compressed or skipped or may happen in a way not recognized by the model.

Likewise, Versluis et al. (2011) observe that in reality, policy does not always occur in such a neat fashion with some stage being able to overlap others. For instance, Kingdon (2003: 205–206) and Salamon and Lund (1989: 22) illustrate occurrences of preference formation preceding agenda-setting. As they state, '*solutions seek problems*' meaning that policies and legislation are at times adopted prior to the problem solving juncture.

Other authors, such as Hogwood and Gunn (1984: 23), agree that the policy process is in reality disjointed and, therefore, not that linear in nature. As they maintain, it is '*a seamless web involving a bewildering mesh of interactions and ramifications*'. As Versluis and her colleagues (2011: 23) state, it is, therefore, more useful to think about *aspects* of policy-making rather than of *stages*. Most importantly, these authors observe that the policy cycle offers '*no indication of the reason for which policy moves from one stage to the next, or why the process speeds up or stalls*' and that policy may be re-steered at the end of the cycle to be amended. Another critique of the policy cycle is found in Sabatier's work (1999: 7) that hypothesizes that it does not form the basis for a causal theory of policy-making that applies across the cycle. This has also been detected by Richardson (2006: 7), Young (2010: 47–48), Scharpf (1997: 19), and John (1998: 195), amongst others, who contend that there is no agreement on a grand theory of policy-making. Rather, it is through the adoption of various analytical approaches that allow for the individual testing of each of the different stages in the policy cycle.

In short, overall criticism about the stages approach is that it is an unrealistic model, since the evolution of a policy cannot be simply perceived and examined as neatly cut into different stages. Policy cycles are hence very fluid with stages overlapping into each other. Indeed, there are times when agendas could be set by problems identified in the implementation stage (and hence the 'downloading' process) which as indicated is the penultimate stage in the cycle. In such circumstances, a policy cycle's final stages re-wind completely the whole process.

However, and in defence of the stages approach, the policy cycle has one unique and distinct feature—that offering a multipurpose and

versatile framework which may be used by research to track down those crucial elements that shape and take decisions. In EU decision-making processes, these are the iterations between policy actors, interests, coalitions, and their interactions within and between EU institutions as decreed by institutional rules of procedure. It, therefore, provides a very useful model that allows clear analysis of different policy players (such as EU governments in Council) and their interests involved in each of the stages.

As Howard (2005: 3–13) puts it, policy analysis at each of the stages signifies problem solving, even though EU decision-making processes are complex involving constant interplay between various actors at various stages and multi-levels (see McCormick 2006: 11–31; and Sabatier 1999: 3–17). The stages are not represented by clear demarcation lines. As seen, it is extremely characteristic of the EU to have levels shade into each other resulting in the order of a cycle's stages being '*reversed, skipped, or (that) show(s) evidence of stalling, braking, and standstill, due to resistance or disagreement*' (Versluis et al. 2011: 236). Thus, McConnell (2010: 232) observes that its usefulness lies in its simplicity and that:

> its utility is limited primarily to being a means of dividing up the policy process into convenient 'stages' as a precursor to deeper analysis, or as an indicator of the idealized rhetoric of policy-makers.

As best observed by Versluis et al. (2011: 236–240):

> …the 'ping-pong' of opinions back and forth between the EP and Council will largely shape the ceilings, quotas, and targets that are central to securing a policy's main aims… Interests are at play at every stage….

In sum and as these authors suggest, there is no single way of looking at the dynamics of the policy cycle in the EU.

4.3.2 Identifying Shaping and Taking Facets of EU Decision-Making Processes

There is a myriad of literature about EU decision-making which generally defines it as the stage in the policy cycle, whereby decisions are made (see Buonanno and Nugent 2013; Peterson and Bomberg 1999;

Wallace 2005; Versluis et al. 2011). However, because EU decision-making is a process, this means that there is a starting and finishing point during which decisions are shaped and eventually taken. It, therefore, implies a course of action, a route, or even better, a progression during which decisions are 'concocted' and 'baked'. In the EU's multi-level system, shaping dynamics at technical level exist and persist until the cycle moves on to the next stage where decisions are taken at a political level. In fact, only once decisions are made do shaping and taking dynamics cease.

An issue worth clarifying here is that the conventional use of the term 'decision-making' is being modified here to 'decision-taking'. This is being done deliberately to mark a precise stage in the cycle of a decision-making process. Crucially, however, the term decision-taking can also be found in Allan McConnell's words when citing Howlett et al. (2009) in their definition of the different stages of the policy cycle (see McConnell 2010: 221) and more precisely on the third stage of the policy process previously illustrated. This means that authors using the policy cycle approach tend to use the term 'decision-making' more generically, leading to misconceptions about the terminology used about this precise stage in the policy process. This means that this distinction between the terms 'decision-making' and 'decision-taking' is necessary for two main reasons.

First, there is a need to be more precise in the terminology used about decision-taking in EU legislative processes. If one is referring to the taking of decisions, this should be worded as decision-taking and not decision-making, the latter term involving wider connotations which also includes decision-shaping. Second and more generically, it is necessary to sharpen terminology when applying it to studies on EU processes given that, as stated before, EU decision-making is in itself a complex matter to analyse. Therefore, there is a need to simplify the study of how EU decision-making functions and what constitutes such a process through the use of clear terminology. Peterson and Bomberg's (1999: 21) statement that policy-shaping decisions do not 'decide' EU policy but rather determine those options that might be considered, therefore, offers clarification on this aspect. It is exactly why EU decision-making should be looked at as a process comprising two distinct, yet complimentary, stages concerned with the uploading of preferences and ultimately of the taking of decisions. Put simply, decision-shaping and taking fit under the wider umbrella of decision-making.

Since, as pointed out earlier, the book focuses mainly (but not exclusively) on governmental influence in the Council of the EU, Figs. 4.1 and 4.2 illustrate where (at which levels) and how (through which approaches) decision-shaping and taking occur in this EU institution.

The EU legislative process in the Council is launched in Working Group meetings where technical attachés/diplomats from a government's Permanent Representation in Brussels and/or national experts from line ministries in a member state's capital discuss technically EU draft legislation. They, therefore, shape decisions before the draft proposal moves up (in a 'bottom-up' style) to the next level in Council—the Committee of Permanent Representatives (better known as 'Coreper').

Coreper may be referred to as the 'glue' in the middle tier. It keeps together the whole system in the Council. It is here that technical aspects at the decision-shaping stage begin to shade, or better mutate, into political compromises for the Council of Ministers to endorse at the next level at the decision-taking stage (see Fig. 4.2).

It is thus the Ministers who adopt legislation terminating the EU decision-making process in Council. In cases where compromises are not possible, the Council of Ministers sends the draft legislation back to the lower levels in a 'top-down' fashion. The relevant Working Group and Coreper then re-examine the contentious issues re-winding the process and clearing the way for the Council of Ministers to adopt the act.

4.4 The Decision-Shaping Stage

EU decision-shaping is made up of two preliminary stages of the policy cycle, i.e., agenda-setting and preference formation. As mentioned in the previous section, this research focuses on preference formation, since this is the stage during which EU governments in Council start becoming involved in the EU's legislative process.

Decision-making is set in motion by shaping processes which interpret a policy problem emerging as an issue that requires addressing. The issue is then set in a policy agenda. Decision-shaping in the Council involves discussions at Working Group and Coreper levels that lead to the formulation of solutions and compromises by the Presidency (which rotates every 6 months among the member state governments). These compromises are 'baked' by ideas and knowledge of policy actors, in this case government representatives of the EU member states and Commission officials sitting around the negotiation table. The main role

of these actors is to upload their preferences into the process and to get the Council Presidency and other delegations to accept and frame their preferred options when funneling choice of solutions. All this occurs between and within the structures of the Council and the EP, the two legislative chambers of the EU. As authors of the new institutionalism theoretical approach emphasize (see Williamson 1985; March and Olsen 1994; Searle 2005), while various actors in a common institution all have their own preferences and interests to promote and defend, they do this in accordance to institutional rules and norms that eventually *shape* outcomes and expectations that needless to say have ramifications on their realization.

4.4.1 What Is Preference Formation?

Preference formation consists of the presentation of ideas and proposals for EU initiatives and legislation to be developed. This, therefore, represents a bridge in the policy cycle between those stages preoccupied with how issues become formalized (agenda-setting) and with what the final compromise looks like (decision-taking). Therefore, minimum understanding about agenda-setting and decision-taking dynamics is required when analysing preference formation.

One should also bear in mind that preference formation stems from policy/legislative choices occurring at national (domestic) levels. EU member state governments form their preferences on a specific draft EU legislative proposal from knowledge and expertise gained domestically in the sector. For instance, a member state government's level of experience in a particular policy sphere might indicate that the government will experience difficulties on a Commission legislative proposal in that sphere being negotiated upon in Council. This will, therefore, require that government to pay particular attention in the legislative negotiations occurring during the decision-shaping and decision-taking stages of the process.

Preference formation represents the second stage in the policy cycle in which '*problems recognized at the agenda-setting stage are identified, refined, and formalized*' (Howlett et al. 2009: 110). This stage in the process is distinct from the next stage of decision-taking where, as stated in Sect. 4.5, an EU legislative proposal is approved by the highest levels of authority at political level—the ministers of the EU member state governments in the Council of Ministers and MEPs in an EP

plenary session. Put simply, preference formation is the stage in the policy process where alternatives are filtered and narrowed down which do not 'make' but rather 'shape' EU policy or legislation. It presents policy options and a course of action to issue problems acknowledged and raised by the agenda-setting stage. Preference formation, therefore, involves identifying and assessing possible solutions to issues arising from an EU draft legislative proposal or, as Howlett and his colleagues observe:

> exploring the various options or alternative courses of action available for addressing a problem. (ibid.)

Thus, policy options are identified at this stage in the policy cycle. In the EU context and as discussed in the next sub-section, these options are negotiated among the governments of the EU and the Commission in Council Working Group and Coreper meetings (refer to Figs. 4.1 and 4.2 illustrated previously). However, the EU legislative process (described at the end of this chapter) also involves the EP, with MEPs discussing EU legislative proposals at technical level in committee meetings in Brussels (and eventually in plenary in Strasbourg where decisions are taken).

Peterson and Bomberg observe that policy-shaping has largely been neglected by academic literature in European Studies (Peterson and Bomberg 1999: 2). This, therefore, represents one of the main driving forces behind this research, i.e., to study how this very crucial stage contributes and influences the policy decision path.

4.4.2 Actors in EU Preference Formation

Preference formation involves the same actors in agenda-setting, but also new ones as a result of the shift in policy venue. For instance, policy issues that have been dealt with by the Commission as the main agenda-setter will move to the Council at this stage where Working Groups and Coreper involve different actors (government representatives) at different levels. As previously observed, Working Group meetings consist of national experts from ministries in the Capitals and/or diplomats/technical attachés from the governments' Permanent Representations in Brussels. Coreper meetings involve an increase in the number of delegates, since they consist of the same government experts participating

in the Working Group meetings together with the Ambassadors—that is the Permanent Representatives (PRs) for Coreper II meetings or Deputy Permanent Representatives (DPRs) for Coreper I meetings. These players meet and try to '*chisel away at a proposal through various rounds of meetings, decisions, reviews, and debates, until they end up with a 'final product'*' which Versluis and her colleagues (2011: 132) term as '*lowest common denominator*'. This means the lowest form of a generally acceptable compromise possible at a given time in the legislative process.

4.4.2.1 European Commission Officials from Directorate-Generals

Being the initiator of EU legislation, the Commission is regarded not only as the prime agenda-setter in the EU. It is also seen to be the nucleus in the EU legislative process, whereby it exploits the 'power of the pen' (or better, its right of initiative) position. In fact, the Commission may be compared to the 'hub of the spokes' in a process that involves many players. As Nugent (1997: 21) observes, the Commission's key role becomes apparent in a process '*directed towards the preparation of the decision-taking ground*.' This does not mean that it does not have its own interests to defend and advance. Nugent, in fact, observes that '*the Commission has many opportunities to play roles and to exercise influence over and above its formal responsibilities*'. Cram (1994: 213) continues on these lines defining the Commission as a '*purposeful opportunist*'. She has, in fact, published work examining how the Commission's resources allow it to shape and exploit the EU process in order to expand its competencies, particularly during the shaping stages of agenda-setting and preference formation.

Given that the Commission is dependent on the Council and the EP as the decision-takers, it attempts to obtain and secure support for its legislative proposals at the initial stages of the policy cycle. As analysed in the book's empirical chapters, this is a similar strategy adopted by small state governments requiring a strong role during the preference formation stage. Hix (2005: 74), however, maintains that although the Commission's role in decision-making is limited, the significant influence which it enjoys in the agenda-setting and preference formation phases allows it to maintain a good degree of influence throughout subsequent stages of the policy cycle, decision-taking included. As already highlighted, the Commission participates in Council negotiations (at every level) and is able to intervene during discussions, albeit without the possibility to vote (if and when voting occurs). This situation is mirrored

in the EP's hierarchical working structures, with a participatory role granted to the Commission.

Nevertheless, there are times when the Commission shapes policy in a certain direction due to internal rivalry. Due to its compartmentalized structure (made up of various Directorate-Generals (DGs) responsible for specific policy spheres), the Commission often has difficulties speaking with one voice. It is not uncommon to hear about variances in a Commission position in the formulation stage of a legislative proposal, such as during an inter-service consultation process in the agenda-setting stage (a process during which the DGs may place their observations on the particular piece of EU legislation being proposed, i.e., before the Commission's formal adoption of a proposal).

One last important feature about the Commission is its '*cabinet'* network. Each Commissioner has a secretariat known as a '*cabinet*'. It is headed by a '*chef de cabinet'* who meets up with other *chefs* in an inter-cabinet consultation meeting which precedes meetings of the College of Commissioners. For small states, in particular, this network provides a fundamental resource to tap into in order to exercise influence very early on the shaping phase of EU legislative decision-making processes. The case study chapters look into this network as a factor determining a small state government's influence in EU decision-making (see the methodology's variable 4 on pace-setting through lobbying the Commission).

4.4.2.2 EU Government Representatives in the Council

It is in the Council that EU legislative shaping work is performed by EU governments. Council Working Groups and Corepers, chaired by the 6 monthly rotating Presidency, shape draft EU legislation at technical level to such an extent that it is generally only cosmetically altered by the Council of Ministers at political level. According to Hayes-Renshaw and Wallace (2006), Working Groups (at technical level) are even more fundamental than either Coreper or Council of Ministers levels, since they alone account for the shaping of around 90% of draft EU legislation. In fact, by the time that a legislative file moves upwards to the other levels in Council (see Figs. 4.1 and 4.2) for review and final adoption (decision-taking), EU draft law would have generally already been informally agreed to (or at least, a general common position accepted) by government representatives at Working Group level. The Working Group level is thus fundamental for decision-shaping in this EU institution.

As previously highlighted, whereas Working Groups view proposals from a technical or expert level, Coreper is more of a political 'animal', cementing expertise with politics (it is, in fact, the nucleus of the Council's multi-level system). One of the main reasons for this is that PRs in Coreper II meetings (or DPRs in Coreper I meetings) dispose of a horizontal view across various EU policy/legislative spheres falling under their remit unlike experts attending Working Groups which only discuss one particular policy sphere (and accompanying EU legislation). This makes collusion of different aspects occurring in different policy spheres more possible at Coreper level.

In Coreper, the experts involved in the Working Group liaise directly with and sit next to the PRs/DPRs. Therefore, expertise is at hand, and although preparatory meetings are held by each delegation prior to Coreper, the PR/DPR can always turn to the expert for more information on a given matter. This demonstrates that Council decision-shaping is largely performed by the same officials meeting in different venues at different levels.

Therefore, decision-shaping performed at Working Group level is fine-tuned by the PRs/DPRs in Coreper that 'even out' a proposal. Coreper either comes up with a common position (a compromise may be found by the Council Presidency at this stage) or alternatively, shapes the draft legislation further (with the Presidency forming it into an acceptable compromise proposal) that, nevertheless, requires further discussion (appearing as a 'II' or 'B' point in the Council of Ministers agenda) before a decision may be taken by ministers.

4.4.2.3 MEPs in EP Committees

As put by Versluis and her colleagues (2011: 141), the EP presents a challenge in '… *loose and unpredictable 'politicking'… as it may be difficult to obtain first-hand data about how influence and interests have been exerted or acted upon 'behind the scenes'*'. As Raunio (2000: 239) maintains, '*EU deputies not only meet in the assembly but also as national party delegations, with national party meetings often preceding the meetings of the full political group*'. In addition, Mather (2001: 192) observes that '*it is left to the individual representative to determine his/her stance on every issue*'. These comments only confirm how difficult it is to understand influence dynamics in the EP. However, as Hix (2007) points out, party politics generally reveals much of how decisions about shaping policy proposals occur within the EP.

Decision-shaping in the EP occurs in 22 committees in Brussels that discuss individual legislative proposals each presided over by a '*rapporteur*'. The groups are sectoral in nature, with membership divided among the 751 MEPs making up the Parliament. The aim and working plan of these committees are to draft a report on a Commission's legislative proposal sent to it for the adoption of the act. A committee's report thus reflects discussions held in the committee, with MEPs usually following their respective political group lines and, sometimes, the preferences of their government. It is thus not surprising that MEPs push for their national government's position which requires an uploading in these committee meetings in a similar manner as that done by government representatives in Council. Needless to say and as analysed empirically in subsequent chapters, MEPs are an invaluable resource for governments, especially those of the smaller states, to invest in and tap into. In Malta's case, with only six seats available in the EP, it is not surprising that a Maltese MEP may end up supporting the position held by the (national) political group in government in Malta of which the MEP is not a member. This last issue is entered into in more detail in the empirical chapters of the book.

4.4.3 Theorizing Decision-Shaping

As stated earlier, the EU preference formation stage is about the selection and fusion of interests with preferences. As Versluis and her colleagues (2011) observe, policy network and sociological studies provide an ideal framework to understand and organize a better preference formation, since it is made of various players which compete for their interests, often resulting in a collision course. Thus, the following pages focus on the importance of policy networks and policy venues at this stage in the decision-making process.

4.4.3.1 Policy Networks

This section has already examined the relevance of the main EU institutions (the Commission, Council, and the EP) in which decision-shaping occurs. However, as Versluis et al. (2011: 146) observe, the notion of 'institutions' should not stop at those main EU institutions but should also extend to cover in a more theoretical sense, informal or formal

practices, rules, and norms which are themselves intervening variables in shaping EU policy. Policy network analysis is useful, because it goes beyond the study of the main EU institutions (as autonomous networks in EU decision-shaping containing their own administrations) to embrace the importance of other factors which also impact the behaviour and preferences of policy players, such as member state governments, in shaping EU legislation.

In the EU decision-shaping process, intrastate and inter-institutional bargaining takes place in policy networks. As logic dictates, the bigger the networks, the more participation of various stakeholders able to influence policy at the shaping stage. As Peterson and Bomberg (1999: 23) state:

> policy networks spring up around specific EU policy sectors, marshalling technocratic expertise, and seeking to shape policy options which are likely to be endorsed by political decision-makers.

As Heclo (1978) observes, policy networks capture various 'communities' that are preoccupied by precise issues present on the EU's agenda. The crux of the matter here is that in contrast with national networks, the EU domain consists of complex, congested, and volatile networks. Within such networks, the participants rotate around issues of particular interest to them. Hence, a small state's government might support another government on a particular issue but might disagree with it on another.

Policy network literature, to be found in the works of Peterson and Rhodes amongst others, mainly classifies the different types of relationships between public and private entities into two groups. Those that are firmly embedded in 'policy communities' and others are looser in nature and which are referred to as 'issue networks' (Peterson 2004: 120). Authors, such as Olson (1965), Lindblom (1977), Rhodes (2006), and Sabatier and Jenkins-Smith (1993), reveal three main types of actors involved in such networks–producers, epistemic communities, and advocacy coalitions.

Having said this, Young (2010) states that there are criticisms of the usefulness of the policy network approach that is particular to the EU. Because EU decision-making processes are made up of many factors converging together (such as the convergence of various interest

constellations by a myriad of policy actors), such processes cannot be captured by the network concept. However, more importantly, Young observes that because the EU policy domain is made up of different actors with different views of how to address a problem, it becomes impossible for groups to draft common positions. He, therefore, concludes that '*it is relatively rare to find policy communities at EU level… Policy formulation is a relatively open process in the EU…* ' (Young 2010: 55).

However, the literature in favour of the policy network concept perceives it as a valuable tool to understand the process of the shaping of EU policy/legislation. In fact, one of its greatest assets is in its capacity to draw and advance knowledge and expertise in EU processes within which policy solutions are formed to solve given issue problems. This is because policy networks bring together 'other' participants in EU processes (other than for instance EU governments), such as 'private actors' (including 'epistemic communities') with specific expertise and interests involved particularly before the official launch of an EU legislative process, i.e., before the adoption of draft EU legislation by the Commission. Private actors combine and inject interests into the EU process that could be diverse from those held by the member state governments, thus contributing to the legislative discussion in the long run (see Hawkins 2004: 779–804). The usefulness of such actors being involved in decision-shaping is affirmed by Kohler-Koch (1997: 49) who asserts that governments should be encouraged to acknowledge private actors being drawn into policy networks, '*because they provide necessary expertise and because effective implementation depends on their support*'.

Besides, governments take advantage of policy networks to acquire knowledge about specific issues that could possibly arise later in EU legislative negotiations. This, therefore, proves to be an extremely crucial network particularly for small state governments. It is thus not surprising to hear that Permanent Representations of the member states in Brussels, for example, '*often designate advertised access points for firms 'requiring information' or 'advice'*" (Wallace and Young 2003: 239–240). As stated, this is particularly useful for smaller administrations with few administrative resources and expertise.

However, policy network actors themselves have only a limited impact on exercising influence in policy processes, with Peterson and Bomberg (1999: 29), suggesting that influence in EU decision-making processes is mainly held by the member state governments at all levels in all sectors.

Therefore, '*…most EU policy outcomes are the ultimate products of overtly political choices taken by Ministers or MEPs*'. However, having said this, one must not undermine the important role of policy networks during shaping phases of EU legislative processes. Policy networks can prove to be important for governments to 'invest in' and 'exploit', particularly during the technical preference formation stages.

4.4.3.2 Policy Venues

In the same manner that policy networks are important intervening variables in EU decision-shaping processes, so are the venues where EU legislative discussions are held. As Versluis et al. (2011: 147) observe, policy venues provide for processes of 'socialization' (in the formation of EU legislation) occurring within specific venues afforded by the EU institutional set-up.

Policy venues are not all the same. As Baumgartner and Jones (1991: 1047) observe, policy venues differ in terms of their '*…decisional bias, because both participants and decision making routines differ*'. Issue problems are perceived according to actor preferences and ideas. However, they are also shaped according to the peculiarities to be found in institutional structures or venues where policy issues are discussed and formed. As these authors maintain '… *committees often represent, in gross terms, different approaches, or perspectives toward the issue: they are institutionalized frames*' (Baumgartner and Jones 2002: 299) which, therefore, compartmentalize processes. This forms a protective safety net for policy players to discuss issues at different venues and decide independently on them, thus inhibiting a confusing state of affairs typical of sole venues consisting of several decision-shapers and makers. In fact, the multi-level structure which is so typical of the Council is a living example of how different policy venues, containing degrees of autonomy from each other, discuss, shape, and, eventually, decide policy issues.

Nevertheless, while one of the main attributes of policy venues is structure and predictability of policy choice and interests in EU decision-making processes, the reverse can apply too. As Simon (1973: 270–271) notes, when policy problems emerge high on the EU agenda and exhibit a certain degree of sensitivity for the member states, '*parallel processing capacities become less easy to provide without demanding the coordination function that is a primary responsibility of these levels*'. As a result, when issues which require reconsideration on the part of the policy actors shift from one policy venue to another, influence levels change dramatically

affecting policy choices in the process. This is, indeed, a relevant point. As Radaelli (1995: 158) points out:

> EU initiatives that fail under one policy frame can become feasible under a different frame. The question of how the structure and flow of policy issues drive this process and shape the ways in which policy choices unfold in the EU, therefore, requires more systematic attention.

As may be inferred from the above paragraphs, the policy venue perspective is, in fact, linked to a most prominent approach in contemporary EU studies known as new institutionalism (NI). NI has emerged as a relevant theoretical approach in contemporary mainstream European studies to understand institutional effects on EU decision-making (see, for example, Stone Sweet and Sandholtz 1998: 1–26). For instance, Armstrong and Bulmer (1998) state that it offers powerful diagnostic tools for understanding systemic level EU decision-making, while Peterson and Bomberg (1999: 17) believe that it '*shed(s) light on bitterly fought battles for institutional advantage between the Council, EP, and the Commission*'. Of relevance, they assert that:

> …above all, a new institutionalist analysis of the EU reveals that the Union's common institutions are often more than mere arbiters in the decision-making process and have become key players in their own right.

In fact, EU member state governments, aware of this, lobby the EU institutions as much as they do each other, something which is empirically examined in subsequent chapters of the thesis. This last point is particularly important for smaller state governments that recognize the importance of lobbying EU institutions, such as the Commission and the EP, to gain more influence in decision-making processes in Council. As is stated in the next chapter (when examining issue-specific power and policy frames), EU institutions provide governments with opportunities to widen legislative discussions, particularly in the formation stages.

As Aspinwall and Schneider (2011) note, institutions involve the use of rules, norms, and practices that influence the behaviour of policy players in EU decision-making processes. In the EU, this may be illustrated clearly through examination of the Council's QMV decision-making rule (explained in Chap. 3). Member state governments must build coalitions under such a voting mechanism if their interests are to prevail

in a legislative process. This means that the Council's QMV regime '*has turned out to have a profound impact on the strategic behaviour of national governments in EU policy-shaping*' (Versluis et al. 2011: 146). Pollack (2003: 85) also states that under QMV, a Commission's legislative proposal is easier to adopt than to amend (although in reality, it is extremely rare if not fictitious to think of the Council and the EP adopting a Commission proposal without any changes having been made first), unlike with unanimous voting where member state governments can veto and block the adoption of a legislative act. The gist here is that EU governments in Council are, of course, aware of such institutional rules which have a direct impact on their strategic behaviour during negotiations.

The new institutional approach has undergone various forms of mutations. In fact, theoretical study of institutions now comes in various strands which, according to Versluis et al. (2011: 93), include the following:

- Historical institutionalism (see Pierson 1996),
- Rational choice institutionalism (of which a main derivative is the 'principal- agent' approach; see Farrell and Héritier 2005),
- Social constructivist institutionalism (see Checkel and Moravcsik 2001; Zürn and Checkel 2005), and
- Actor-centered institutionalism (see Scharpf 1997).

4.5 The Decision-Taking Stage

4.5.1 What Is Decision-Taking?

Decision-taking marks the end of shaping elements in EU decision-making. In the EU's legislative process, it thus symbolizes the stage where decisions are taken to adopt new or amending EU legislation. As Howlett et al. (2009: 139) maintain:

> it involves choosing from among a relatively small number of alternative policy options identified in the process of policy formulation in order to resolve a public problem.

In the EU, decisions are taken at the end of the EU's legislative process, or as Richardson (1996) states, when the EU arrives at a 'policy *decision*

point'. Decision-taking may be thus described as the consequence of formation processes leading to the approval of choices. Therefore, in the same manner as choices about viable courses of action in preference formation are made, this stage is blunter and presents a level of formality. In other words, once taken, an actual decision on policy choices (brought to it by the formulation decision-shaping stage) becomes official, making it irreversible and path-dependent unlike in the previous stages. The decision-taking stage may be distinguished as being intrinsically political. It is, therefore, set apart from agenda-setting and preference formation which are technical in nature.

Since policy cycles are generally fluid and because the various stages are intertwined, it is extremely difficult to demarcate the decision-taking stage as one commencing and ending at precise points in time in the process (even though decision-taking is clearly characterized by the taking of a decision, i.e., the adoption of EU legislation). Having said this, the start of decision-taking may be identified by the end of the shaping stage, or more precisely, when issues emanating and processed by shaping dynamics are pushed up for decisions to be taken.

The problem here is that because of the disjointed nature of and manner by which the policy cycle functions—with EU draft legislation moving up and down the multi-level ladder structure—this is not a simple task. As emphasized earlier through Wallace and Wallace's metaphor depicting the EU policy process as a swinging pendulum, it is normal for EU decision-making to experience a swinging movement which bounces the process up and down between the stages of decision-shaping and decision-taking. This means that in the EU, it is rare (but not impossible) to come across a neat systematic process in which draft legislation is sent to the decision-taking stage for a decision to be made in one instance. There is a lot of 'coming and going' of a draft legislative proposal requiring amendment and revision before a decision, acceptable to most parties in the negotiations (and to all parties if voting is by unanimity), is possible. As stated before, this may explain the 'lowest common denominator' consensus-style of decision-taking which is so typical of the EU as a result of multi-level bargaining and horse-trading between member state governments in Council and the other relevant EU institutions. In fact, as Joerges and Neyer (1997: 609–625) and also Risse (2002: 601) observe, bargaining many times replaces 'constructive arguing'. This means that although constructivist argumentative rationality is recognized to be salient at all stages of the policy process (in order

to achieve something superior to a bargaining-type decision), the way which decisions are taken ultimately depends on whether the players have enough political will to be open to persuasion and to the 'common good' rather than to the maximization of their perceived interests. This is, however, something which is rather foreign to EU decision-making.

Decisions are defined by Peterson and Bomberg (1999: 4) as:

> choices or solutions that end some uncertainty or reduce contention… when any choice is made, the result is a decision.

As Brewer and De Leon (1983: 179) observe, once the preference formation phase comes up with alternatives:

> one or a select few (must be) picked and readied for use … most possible choices will not be realized and deciding not to take particular courses of action is as much a part of selection as finally settling on the best course.

This last quote introduces the topic of different decision-types emerging from EU decision-taking. 'Positive' decisions allow for the altering of a situation. For instance, the EU could decide in favour of the establishment of new EU legislation in a precise policy sphere to address certain shortcomings in the EU's *acquis communautaire*. Decisions of this sort have the ability to change the *status quo*. However, there might be other instances when decisions, such as non-decisions, are taken to maintain the *status quo*. These types of decisions are considered as 'negative', since they do not alter anything. However, one main difference between a non-decision and a negative decision is that the former never surfaces onto the decision-taking stage, because non-decisions are averted by agenda-setting and preference formation processes which do not consider alternatives to the current state of affairs. The alternatives to a policy problem that would lead to a negative decision taken are the result of deliberate decisions taken by decision-takers not to move forward with the policy process. In such cases, the policy cycle terminates at this stage (see Van der Eijk and Kok 1975: 277–301).

Moreover, further distinctions exist between decision-types which illustrate that some decisions are more decisive in nature than others. For instance, EU Treaty reforms require monumental decisions which are hard-fought and made at the highest level (by Prime Ministers and/or Presidents of EU member state governments in the European Council)

at 'super-systemic' level (Peterson and Bomberg 1999: 4). They transcend 'ordinary' choices about what action (or inaction) is to be taken. Such decisions are also referred to as history-making decisions taken at the highest levels in a political system. As already emphasized, this book focuses on EU small state governmental influence in the EU legislative process and does not get into decision-making processes occurring in the European Council (at 'super-systemic' level). This is because as already stated, it is the Council and not the European Council which is, together with the EP, the main EU legislator involved in day-to-day EU legislative processes. The European Council is only involved only in so far as it may be an *endorser* of decisions already taken by the Council.

4.5.2 Actors in EU Decision-Taking

Contrary to agenda-setting and preference formation, decision-taking sees a decrease in the number of policy actors involved. Policy decisions are, in fact, made by actors that are formally empowered and have the authority to be able to take such decisions. They are, therefore, few and are usually 'high' state officials, i.e., mainly politicians and/or other top ranking civil servants delegated with high levels of authority (such as PRs who normally replace ministers or parliamentary secretaries (junior ministers) in a Council if they cannot attend).

This, however, does not mean that the other players, who are engaged in earlier stages of the legislative process, do not exercise influence on decisions taken. For instance, junior diplomats in a Permanent Representation following and participating in a policy negotiation at his/her level will be in a position to feed information to the higher levels, ministers included. Therefore, although these 'low key' players mainly involved in agenda-setting and preference formation stages do not participate directly in a voting exercise (in Council this is done mainly by consensus), in the final stages of the legislative negotiation, they do play an important role (equally crucial to that of voting) to influence outcomes. As Woll (2007: 57–78) observes, these players lobby, drive, and try to persuade their superiors, at times successfully, to select a preferred option from another. The empirical chapters examine how governmental influence in the previous phases of the policy cycle spills over to these levels and at this stage of the policy process to achieve end-games.

In EU legislative decision-taking processes, the main actors are: government ministers (and to a lesser degree PRs/DPRs in Coreper) in the

Council in Brussels and the MEPs at EP plenary level in Strasbourg (the Commission is not a decision-taker, although, as discussed earlier, it has an extremely vital role during the formation (decision-shaping) stages). This explains why the remaining parts of this section focus on these two main EU decision-taking players. Therefore, similar to the preference formation stage, decision-taking in the EU is mainly characterized by compromises, ad hoc agreements, and other forms of bargaining among the member state governments in Council and the MEPs in the EP. The Commission is also involved in this process, for instance, in 'trilogues' (this is explained further on). However, one must bear in mind that as stated above, the Commission is not a decision-taker, since it does not adopt EU legislation.

4.5.2.1 EU Government Representatives in the Council

Traditionally, decision-taking behaviour in the Council has been studied from the way that Council votes are taken. This is in order to determine the bargaining influence and strength that member states hold in EU processes. One is able to cite studies by Hosli (1994) and Felsenthal and Machover (1997: 34–47), amongst others that have established elaborate Council voting models that showcase behaviour of member states, especially when QMV applies. Since 1 November 2014, the Council's amended QMV rule (through Article 16(4) TEU subject to the derogations set out in Article 238(2) and (3) TFEU that were delayed until this date) now provides for majorities of actual numbers of member states in favour. It also necessitates a double, and at times, a triple majority, i.e., 55% of all members of Council (or 72% if Council does not act on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy) together with a minimum of 15 member states and the overall sizes of their populations, i.e., a minimum of 65% of the total EU population. The amended QMV rule does not provide any longer for weighting of votes (a system phased out after 31 March 2017). However, apart from this, majority voting in Council is only useful in so far as predicting how EU member state governments might act in future decision-making processes in the same policy sphere. Of more relevance, however, is the fact that member state governmental behaviour is never constant with changes occurring in parallel with domestic interests and concerns at a given point in time. As Sandholtz (1996: 404) observes:

> the fact that many EU decisions look like inter-state bargains … tell us nothing about how the institutional context shapes preferences and EU decision-making.

Rather, work such as that by Young (2010) is valuable in proving that member state interests, irrespective of their voting weight, are decisive in EU decision-making. Indeed, Young (2010: 58) maintains that:

> …governments with preferences close to the centre of the range of preferences on a given issue are more likely to be in a winning majority independent of their formal voting weight, while other governments may be 'preference outliers', and, therefore, more likely to be isolated in EU decision-making.

One further issue about voting in Council is that it occurs mainly by consensus, reflecting the practical nature by which decisions are taken by ministers. In fact, as Young (2010: 59), Schneider et al. (2006: 299–316), Haynes-Renshaw and Wallace (2006), and Naurin and Wallace (2010), amongst others observe, the Council of Ministers nearly always reaches a decision by consensus. Therefore, even when QMV applies, consensus is always preferred whenever possible '*so that models of procedures, such as minimum-winning coalitions, appear to provide a poor guide to understanding day-to-day practice in the Council even in those policies in which voting occurs*' (Young, 2010: 59). As Schneider et al. (2006: 304–305) suggest, bargaining models are more suitable to the study of EU decision-making than procedural models, because the latter are blind to iteration. As Keohane (1969) observes, bargaining implies a degree of *diffuse reciprocity*, or better, expectations of favourable returns sometime in the future when for instance a member state government returns a favour to another state for supporting it on a given issue. Many strategic games of this sort are played in the Council with such strategic games not confined only to the decision-taking stage.

The Council Presidency is another important element having a direct impact on EU decision-taking. The Presidency is a tool which provides the member state government hosting it more influence in deciding which issues should be placed on the EU's agenda and also in the general manner with which deliberations at every level in the Council are to be steered. Thus, analysing EU decision-making could take the form of a different type of study aimed at determining influence levels of a member state government when holding the Council Presidency role and

on whether EU legislative outcomes are in line with its preferences (see Bunse 2009).

Nevertheless, one should not overlook the fact that in Council, much of the work occurs through informal channels. It is true that Council voting and other institutional arrangements such as the Presidency are vital aspects of EU decision-taking, but it is also true that there are many 'behind the scenes' processes that are crucial in thrashing out differences between all the EU governments, thus making outcomes possible.

4.5.2.2 MEPs in EP Plenary Sittings

As aforementioned and as indicated by studies of EP decision-making processes, there is a high degree of cohesion of MEPs 'towing the line' in the EP of the national political group of which they are members (see Kreppel 2001). Hix et al. (2007), in fact, state that decision-shaping and taking in the EP are characterized by MEPs voting from a two-dimensional setting: on one hand, the national-supranational perspective, while on the other, the domestic and traditional left versus right platform.

Earlier, in the chapter, it was observed how decision-shaping in the EP occurs in committee meetings in Brussels. When a report on a legislative proposal is agreed by the committee's MEPs, it is then moved to the decision-taking stage for approval in a plenary session in Strasbourg. In plenary, all 751 MEPs are able to discuss further and/or vote for or against (or abstain on) the legislative proposal. As is observed in the next paragraphs describing the EU legislative process, in cases where the Council's common position on draft EU legislation clashes with that of the EP at second reading of the legislative process, a conciliation committee (composed of an equal number of Council members and MEPs and presided over by the Commission) is established to seek a compromise at the third reading that will allow the adoption of the legislation in question. If a compromise is, indeed, found, the decision-taking stage in the EP will end through the adoption of the draft legislation by a simple majority vote.

4.5.3 Theorizing Decision-Taking

The next pages examine some of the major theoretical variants that may be classified under this stage of the policy cycle. It must be made clear that there is an extremely large number of existing approaches about EU decision-taking processes and it is not the book's aim to cover

them all here. The following sub-sections, though brief and concise, are designed to offer sufficient information for an understanding of the main approaches on decision-taking.

4.5.3.1 The 'Irrational' Approach

Until recently, theoretical discourse on decision-taking was 'hijacked' by the perspectives of two main approaches, the rational and irrational (or incrementalist) models. They were the product of studies conducted in the mid-1950s by students of public administration on intra-governmental bargaining and bureaucratic politics.

The rational model depicts and assimilates decision-taking in political processes to that found in a market. As Howlett et al. (2009: 144) state, decision-taking in the policy process may be compared to the market economy where the behaviour of producers and consumers depends on minimizing costs and maximizing benefits. This model sees decision-making as a process, whereby problems are identified, solutions and various alternatives found and listed, and predictions of each alternative and their probable consequences approximated. This means that for the rational model, decision-making is a sequential and neat process in which every variable of a decision is to be calculated finely. Therefore, EU policy players such as member state governments want to be certain about the maximization of the results that their choice will bring with outcomes reflecting an exact and rational course of action. They will thus follow their objectives guiding them in the manner on how to behave when making choices and taking decisions. At the end of this process, the alternative with the highest probability of achieving their calculated goal is to be selected.

In contrast to the rational model, another approach (largely attributed to Charles Lindblom) was developed to better describe the way that decisions are taken in an international setting. The 'incremental', or the 'irrational' approach, was widely recognized as being able to describe better decision-taking processes. Lindblom (1959: 81) and his contemporaries held that decisions should be arrived to by '… *continually building out from the current situation, step-by-step, and by small degrees*'. Therefore, decisions that change current state of affairs should be incremental and should 'spill-over' to future decisions. This in itself is similar to neo-functionalist thinking about EU integration more generally.

Incrementalism maintains that decision-taking completely belongs to the political domain rather than the technical one where bargaining,

negotiation, and compromise between decision-takers are what determines outcomes rather than finite and knowledge-based analysis (see Thomson et al. 2003: 5–14). As put by Howlett and his colleagues (2009: 147), in this model:

> decisions eventually made represent what is politically feasible rather than technically desirable, and what is possible or 'optimal' rather than 'maximal' in the rational model's meaning of getting the most output for the least cost.

However, critics of this approach such as Forester (1984: 23–31), Dror (1964: 154–157), Lustick (1980: 342–353), Weiss and Woodhouse (1992: 255–273), and others, maintain that incrementalism lacks in goal orientation besides encouraging short-termism due to its antipathy towards systematic and proper analysis of the technical decision-shaping stage. Other criticism brands it as being an undemocratic way of taking decisions, since it only caters for a select decision-taking group. Besides, as Gawthrop (1971) maintains, it is difficult to conclude what presents an actual improvement or increment from the decision adopted.

Therefore, by the mid-1980s, it became apparent that this approach did not offer a prototype of decision-taking processes (Howlett et al. 2009: 149). This, therefore, made way for newer approaches that, in the eye of international and EU scholars, presented more accurate characterizations of how decisions are taken in today's political environment.

4.5.3.2 Newer Approaches: the 'Mixed-Scanning' and 'Garbage-Can' Approaches

The 'mixed-scanning' model can be said to have emerged as an attempt to merge the rational and incremental models together. This was the view of Etzioni (1967) whose mission was to try and salvage these models by extracting their positive elements into something that is more up-to-date and realistic about decision-taking processes. This model speaks about a search, or better as its name implies, a 'scan' through various alternatives to a problem issue. This means that a process of careful scrutiny of the alternatives takes place which, as previously discussed, merges the shaping phases of agenda-setting and preference formation (which identify, assess, and frame a problem) with the decision-taking phase. At the end of this process, the potentially viable alternative is chosen. This 'theoretical compromise' allows for '*more innovation than permitted by the incremental model, without imposing the unrealistic demands prescribed by the rational model*' (Howlett et al. 2009: 150).

However, although this model was commended by public policy academics, it was quickly set aside for other models that were considered closer in their approach to the realistic nature of decision-making processes (see Walker and Marchau 2004: 1–4). One such approach is the so-called 'garbage-can' process which mainly believes in a degree of improvisation on the part of policy actors in the decision-taking stage of the policy process. Contrary to the rational view, proponents of this model (March and Olsen 1979; Cohen 1972) held that when political problems or issues emerge, there is not enough time for mature reflection and calculation of one's ideas and interests. In fact, many times, new issues cannot be linked with pre-existing interests. As already stated, this requires decision-takers to improvise. Decisions are thus taken on an ad hoc basis and are too random to be rational or incremental. Peterson (2001: 305) maintains that:

> it is frequently impossible for actors to stockpile all necessary information, process it in real time, and accurately calculate the probabilities for different likely outcomes in a process … that is often highly unpredictable.

Cohen et al. (1972: 1–25) compare decision-taking processes with:

> a garbage can into which various problems and solutions are dumped by participants. The mix of garbage in a single can depend partly on the labels attached to the alternative cans, but it also depends on what garbage is being produced at the moment, on the mix of cans available, and on the speed with which garbage is collected and removed from the scene.

This approach had been praised as a bold model to illustrate that there is nothing scientific about decision-taking as such, something that earlier models implied, and that decision-takers more often than not enter negotiations without any end-goals set:

> actors simply define goals and choose means as they go along in a policy process that is necessarily contingent and unpredictable. (Howlett et al. 2009: 152)

This book, although agreeing with this statement up to a certain degree, maintains that member state governments bargain over issues through pre-set preferences which, during the shaping phase of EU

decision-making, start to perceive possible positive end-games for themselves (to be achieved during decision-taking). It is a credible hypothesis that EU governments with such aptitude and propensity should be in a better position to influence EU decision-making uploading pre-set preferences into EU processes. This last argument might be good news for the administrations of the smaller member states which, due to a lack of resources, generally require more time than their larger counterparts to evaluate the impact of legislative shifts in EU negotiations.

4.5.3.3 Modern Approaches: 'Decision Accretion' and 'Decision-Making Styles'

As stated, the EU is a very complex venue of how decisions are shaped and made, and it is thus extremely difficult to come across a single approach that heuristically illustrates decision-making in the EU. However, the 'decision accretion' model offers another very close-to-real depiction of decision-making processes in the EU.

The strong point of this model is to be found mainly in its reliance on the nature of the decision itself and on the institutional set-up in which decisions are made. That is, contrary to other models already referred to, it rests lightly on bargaining theory which as seen occurs to the detriment of constructive arguing. Weiss (1980) observes that decisions are mainly the fruit of unclear processes which do not occur simultaneously in the same venue. In the manner, a pearl is formed in an oyster, i.e., through various layers being accrued and deposited over a certain period of time, the same could be said about decision-taking in the EU. As argued earlier in the chapter, decision-making in the EU encompasses several policy players at multi-levels and in multiple venues, each having interests which comply or conflict with those held by others and which ultimately need to decide over a policy/legislative issue (see Scharpf 1997; Naurin and Wallace 2010; Hooghe and Marks 2001). This is also known as multi-level governance.

As Wallace and Young (2003: 239–240) observe:

> iteration of policy-making between levels and phases is typical in the EU making it difficult at times to visualize a clear cut-off point between the explicitly more pluralist forms of participation, evident in the shaping of agendas and in pre-negotiation in and around the Commission, and the more exclusivist predominance of mandated national representatives in the Council, in an 'intergovernmental' phase of negotiation and decision.

> Instead, the two phases shade into each other, with persistent variations in participation and activity by a range of actors, and with opportunities recurring to shape and to reshape the definition and resolution of issues.

Besides, Weiss (1980: 399) maintains that very often, due to the complexity of the issue and the amount of decision-makers involved, individuals do not even apprehend when decisions are actually taken. She states that:

> many people in many offices have a say, and when the outcomes of a course of action are uncertain, many participants have opportunities to propose, plan, confer, deliberate, advise, argue, forward policy statements, reject, revise, veto, and re-write.

This means that in the realm of EU decision-making, there are many opportunities for players to influence and strategize ways of pulling a decision towards their preferences.

Forester's 'decision-making styles' are another approach that can be seen to have moved beyond the traditional approaches discussed earlier. According to this model, '*what is rational for administrators to do depends on the situations in which they work*'. Forester (1984: 23–31) observed that there are five types of decision-making styles which he named as follows: optimization, satisfying, search, bargaining, and organizational. According to him, only once all of these distinct styles of decision-making are met is a decision rational.

Nevertheless, while Weiss's and Forester's work marked key innovations, they were only a primary move away from earlier models of decision-making. In fact, as March (1994), Beach and Mitchell (1978), and Bendor and Hammond (1992), amongst others observe, it is the complexity of the policy subsystem, made up of various policy players in various policy venues, that affects the manner that decisions are made. This means that decision-shaping and taking stages are intrinsically linked in a decision-making process as defined earlier. Indeed, the decision-taking stage is thus impacted by various aspects emerging from the preference formation stage which are rolled-over to decision-taking. However, it is also affected by other complexities with which decision-takers operate. Forester (1984: 23) maintains that decision-takers depend:

> on the situations in which they work…what is reasonable to do depends on the context one is in, in ordinary life no less than in public administration.

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The next few paragraphs describe the main legislative procedure used today in the EU. The 'ordinary legislative procedure' (Article 294 TFEU), formerly known as the 'co-decision procedure', is characterized by successive readings in the Council and the EP (of up to a maximum of three readings) which also includes a role for the Commission throughout this process. The procedure is triggered off with the Commission submitting a legislative proposal to the EP and the Council.

At the first reading, the EP and the Council may adopt the Commission's proposal without proposing amendments. In this case, the draft act may be adopted. The EP may alternatively propose changes to the proposal which are sent to the Council. If the Council agrees with the EP's amendments, the draft legislation may be adopted at first reading. However, if the Council does not agree with the EP's amendments or with the original Commission proposal, the Council will adopt its own position (with justifications explaining why it does not agree with the text) which will need to be sent back to the EP for scrutiny. The Commission is also involved in this process, since it will need to inform the EP with its own position on the matter. Since the entry into force of the Treaty of Amsterdam, around 60% of legislative proposals are agreed at the first reading (see Judge and Earnshaw 2008: 232; Nugent 2010: 318).

At the second reading of the legislative process, the Council's position may either be approved (in which case, the act is adopted) or rejected by the EP (in which case, the act is not adopted). Alternatively, the EP may adopt further amendments and send back the legislative proposal to the Council. Once again, the Commission will need to give its position on the matter. If the Commission's position on the EP's amendments is negative, the Council must act unanimously to be able to approve the amended common position. If, on the other hand, the Commission's position is positive, the Council may adopt by QMV. Since the Treaty of Amsterdam, 30% of legislative proposals are agreed at this stage in the legislative process (Judge and Earnshaw 2008: 232; Nugent 2010: 318).

In the case where the Council does not approve the amendments to the common position, the Council President, with the agreement of the EP President, must convene a conciliation committee to settle the differences at the third reading of the legislative procedure. The committee has 6 weeks to come up with a joint text on the basis of the two positions of the EP and the Council (or 8 weeks if an extension has been agreed). If not, the act is not adopted. The two institutions vote

separately on the joint text as its stands without the possibility of further amending it. If it succeeds, the Council and the EP may adopt the act (at third reading) by a majority vote. However, if either fails to do so, then the act cannot be adopted and the procedure stops there. The procedure may only be re-started through a new Commission proposal. Returning to the figures given above, only the remaining 10% of legislative proposals require a conciliation committee to be convened (Nugent 2010: 318). This means that a third reading in the EU legislative process is not a common occurrence.

One must also bear in mind that reconciliation of positions of the EU institutions involved in the legislative procedure may be possible at any stage of the process. This may occur through informal inter-institutional negotiations known as 'trilogues'. Trilogues are chaired by the EU legislative institution hosting the meeting (i.e., either the Council or the EP) with the Commission having a moderating role. In the trilogues, the Council and the EP put forward their main arguments and justifications, while the Commission facilitates the reaching of an agreement between the other two institutions. The participants in trilogues operate on the basis of negotiating mandates bestowed to them by their respective institutions—the relevant committee group or plenary in the EP, Coreper in the Council, and by the College (through inter-institutional meetings by the *Groupe des Relations Inter-institutionnelles* (GRI)) in the Commission. Any agreement in trilogues is informal and *ad referendum* and has to be approved by the formal procedures applicable within each of the three institutions.

Needless to say, the EU legislative procedure (as well as trilogues) itself impacts on EU inter-institutional relations with continuous consultations occurring between the member state governments in Council, MEPs in the EP, and also members of the Commission. However, as observed in this chapter, it is ultimately the Council and the EP that take decisions adopting legislation in EU legislative decision-making processes.

4.6 Conclusion

This chapter has clarified key concepts of EU decision-making processes. It has revealed how the EU exists within a complex system of decision-making processes shared between the EU member state governments in

Council and other supranational EU institutions, particularly the EP and the Commission.

This chapter has also provided the book with a framework of how to examine EU decision-making as processes involving various stages. As seen, the policy cycle model assists to divide EU decision-making processes into sub-stages of decision-shaping and decision-taking. As emphasized in this chapter, this allows one to focus on key aspects of small state governmental influence during these precise stages in EU legislative decision-making processes. It is relevant to bear in mind that this framework is also utilized by the empirical chapters.

Besides defining the sub-stages, this Chapter has identified and described the relevant EU policy players to be found under each of them. As seen, this chapter has particularly focused on the Council of the EU as the venue in which EU member state governments are involved in EU legislative decision-making processes. As emphasized, this is because the book focuses on the influence of the EU member state governments and particularly, that of the smaller ones.

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CHAPTER 5

Establishing the Methodology

5.1 Introduction

This chapter describes the methodology used in this book and is divided into four main sections. Section 5.2 describes the book's research design and Sect. 5.3 discusses different methods of data collection. This last section is sub-divided further into five sub-sections. Sub-Sects. 5.3.1 and 5.3.2 deal with the qualitative and quantitative techniques used, whereas sub-Sects. 5.3.3, 5.3.4 and 5.3.5 offer clarification on the sources used, the difficulties encountered, and positive aspects deriving from this research. Finally, Sect. 5.4 provides a brief conclusion.

5.2 Research Design

5.2.1 Establishing the Hypothesis and Research Questions

This book sets the following questions:

– ***Are*** EU small member state governments influential in EU decision-making processes? In other words, do they exercise influence in these processes? And if so, ***how*** and at ***which stage*** do they do this?

As observed in Chaps. 1 and 2, it advances the hypothesis that 'small state' does not mean 'weak state'. However, because of potential size-related difficulties common among small states, the main thrust of the book's hypothesis is that such states need to possess certain capacities

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and employ certain strategies in order to exercise influence in EU decision-making processes.

The book is thus not only concerned with which *strategies* are used or whether different strategies are more successful than others in EU decision-making, but equally important, whether a government contains the necessary *capacities* (i.e., appropriate core domestic characteristics). Together, these determine whether an EU government is likely to exercise influence in such processes. As empirically analysed in Chaps. 7 and 8, this last argument is crucial for small state governments in the EU.

5.2.2 *Establishing the Independent Variables for Small State Governmental Influence*

This research contains an element of 'causality' instilled in it with causal explanations for EU small state governmental influence in EU decision-making processes. In fact, causes of small state governmental influence are to be found in the very nature of the independent variables selected. As shown below, these variables are divided between governmental capacities and strategies.

When linking these variables to the research questions (described earlier) on whether small state governments are able to influence EU processes, the manifestation of influence does not only depend on a small state's **capacities** to enter early in EU processes with proper levels of expertise in its administrative structures (i.e., on how to co-ordinate and form national preferences) and on its capacity to prioritize. It also depends on a government's **strategies**, i.e., its behaviour during EU decision-making processes. For instance, a small state government may pace-set and thus lobby for its interests and/or employ other strategies (such as foot-dragging and/or fence-sitting according to circumstances present in EU legislative negotiations) which might be more effective than those used by other small state governments in the EU process.

Drawing upon the discussion in Chaps. 2 (see Sect. 2.6) and 3, this book selects six independent variables (from the literature on small states reviewed in those chapters) which are set into two distinct groups.

The first three variables deal with a government's capacities (referred to as 'indicative-type' variables—see sub-Sect. 5.3.2 for clarification on

this term) about government's core domestic characteristics. The second group of variables deal with government's strategies and behaviour in EU legislative decision-making processes (referred to as 'action-type' variables—see sub-Sect. 5.3.2 for clarification on this term). They are listed as follows:

Table 5.1 Presenting the independent variables

Independent variables	Explaining the variables
Governmental capacities [indicative-type variables] **Variable 1**: the capacity to enter the decision-making process early. • Sub-variable 1.1 —the capacity to participate effectively in the decision-shaping stages; • Sub-variable 1.2 —the capacity to adopt an affective national position early in the process.	In order to participate effectively in an EU legislative process, a government must establish its preferences early. It must, therefore, co-ordinate efficiently and interpret correctly draft EU legislation during the early stages of a legislative process.
Variable 2: the expert and administrative capacity. • Sub-variable 2.1 —the expert capacity: training, work experience and technical knowledge in an EU policy sphere; • Sub-variable 2.2 —the administrative capacity: size of the government's administration in the Capital and at the Permanent Representation in Brussels.	A government must be knowledgeable about particular issues in a given legislative sphere. A government needs to maintain expertise on a given issue throughout EU legislative negotiations which depends on how trained, qualified, and experienced its civil service is in EU matters. A government must also have enough human resources to play an effective role in EU legislative decision-making processes.
Variable 3: The capacity to prioritize. • Sub-variable 3.1 —the salience of the policy sphere for the government.	The salience of a policy sphere is a relevant indicator about a government's behaviour in an EU decision-making process. Therefore, the higher the salience, the higher the policy sphere is placed on a government's agenda. The capacity to prioritize is thus particularly relevant for small state governments with a general lack of resources and which need to participate effectively in an EU process to achieve positive outcomes.

(continued)

Table 5.1 (continued)

Independent variables	Explaining the variables
Governmental strategies [action-type variables]	
Variable 4: The pace-setting strategy. • Sub-variable 4.1 —Pace-setting through lobbying. • Sub-variable 4.2 —Pace-setting through norm advocacy and effective intervention in Council deliberations.	Pace-setting is a strategy about lobbying and engaging effectively with other players in EU decision-making processes. It is also about how a government persuades other players, for instance, through moral convictions and diplomatic leverage allowing it to intervene effectively in the Council of the EU.
Variable 5: The foot-dragging strategy. • Sub-variable 5.1 —Foot-dragging through delaying tactics. • Sub-variable 5.2 —Foot-dragging by requesting for compensation. • Sub-variable 5.3 —Foot-dragging due to low levels of compliance.	Foot-dragging is a strategy on delaying the approval of EU outcomes—a tactic which a government might use to influence the slowing down of an EU process. In such circumstances, a government needs to ensure that it forms part of a majority or blocking minority in Council. If outvoted, a government will then request for temporary exemptions, financial compensation, or concessions in other EU policy spheres.
Variable 6: The fence-sitting strategy. • Sub-variable 6.1 —Fence-sitting by altering coalitions. • Sub-variable 6.2 —Fence-sitting due to similar national positions. • Sub-variable 6.3 —Fence-sitting due to a miscalculation of EU outcomes. • Sub-variable 6.4 —Fence-sitting due to a lack of benchmarks during implementation.	Better known as the 'wait-and-see' approach, this strategy is used by a government which needs to 'buy time' in a negotiation to evaluate properly the situation emerging before being able to intervene. For instance, a government might decide to alter its coalitions (as compromises shift during the course of a negotiation) in its attempt to influence EU legislative negotiations.

Source Table compiled by the author
Note The above variables are operationalized into measurable indicators in Boxes 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6

Governmental Capacities:

Variable 1 The capacity to enter early into EU decision-making processes (see Box 5.1)
Variable 2 The expert and administrative capacity (see Box 5.2)
Variable 3 The capacity to prioritize (see Box 5.3)

Governmental Strategies:

Variable 4 The pace-setting strategy (see Box 5.4)
Variable 5 The foot-dragging strategy (see Box 5.5)
Variable 6 The fence-sitting strategy (see Box 5.6)

The six independent variables are presented in a table format in Table 5.1. They are then explained separately and in more detail in boxes which cover the next few pages (see Boxes 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 below). The boxes provide an understanding of how each variable may be operationalized into sub-variables and measurable indicators, since they are eventually empirically applied to the case study chapters. The method of empirically weighting and scoring these variables is explained in more detail in the next sub-Sect. (5.2.3) and also in Sect. 5.3 on methods of data collection (see sub-Sect. 5.3.2).

Box 5.1 on Variable 1—The capacity to enter early into EU decision-making processes

In order to participate effectively in the decision-shaping stages of an EU legislative process, a government must establish its preferences early in the process. Therefore, it must possess the capacity to interpret correctly EU legislative proposals (i.e., the consequences that the draft act will have on the national level once it is adopted) and be able to co-ordinate a national position as early as possible.

This variable is divided into two sub-variables (1.1 and 1.2) each containing a weighting of **5%** (a score of '0'–'5' in the quantitative method used to score variables in the empirical chapters—see sub-Sects. 5.2.3 and 5.3.2 on the 'decision weights and measures' approach):

Sub-Variable 1.1—A government's capacity to participate effectively in EU decision-shaping

Measurable Indicator 1.1.1: The capacity to *co-ordinate swiftly its preferences*

This indicator concerns a government's capacity to swiftly co-ordinate a national position among various ministries and/or departments. The quicker a government does this, the earlier it would be able to participate effectively during decision-shaping.

Sub-Variable 1.2—The capacity to adopt an effective national position early in the process

Measurable Indicator 1.2.1: The capacity to *interpret draft EU legislation*

This indicator is about a government's capacity to fully understand, as early as possible, the subtleties existing in draft EU legislation. This allows a government to adopt an effective national position during the crucial early stages of an EU legislative process.

Source Box compiled by the author

Box 5.2 on Variable 2—The expert and administrative capacity

Literature on small states (reviewed in Chap. 2) maintains that a government's expertise and administrative capacity are synonymous with whether it is able to influence EU decision-making processes. This variable, therefore, warrants closer examination. Variable 2 is divided into two sub-variables (2.1 and 2.2). As in Variable 1, the sub-variables each have a weighting of **5%** (a score of '0' – '5'). They are divided as follows:

Sub-Variable 2.1— The expert capacity

Measurable Indicator 2.1.1: The *expertise* of a government's administration

This indicator concerns the training, work experience, and technical knowledge of a government's administration in EU matters. It is relevant to find out whether a government's administration is knowledgeable and has relevant experience in a particular EU policy sphere and whether training (if required) is conducted on a constant basis. One should ask: Is it possible to expect positive or negative scores (scores of '0' – '5' in the quantitative method used to score variables—see sub-Sect. 5.3.2) about a government's expertise in a given EU policy/legislative sphere?

Sub-Variable 2.2— The administrative capacity

Measurable Indicator 2.2.1: The size of a government's administration in the *Capital*

This indicator concerns the number of ministerial officials involved in forming a government's position. A small state has

a lack of human resources to do this. It is, therefore, relevant to find out whether with such deficiencies, small states are still able to exercise influence in EU processes.

Measurable Indicator 2.2.2: The size of a government's administration at the *Permanent Representation*

This indicator concerns the number of governmental officials employed at the Permanent Representation in Brussels. Small states consist of smaller representations with less attachés and/or diplomats (than larger representations) to cope with entire EU policy spheres. It is relevant to find out whether in such circumstances, one is able to furnish positive or negative scores for a small state government in a given EU legislative sphere.

Source Box compiled by the author

Box 5.3 on Variable 3—The capacity to prioritize

Due to their small administrative size, small states need to select some policy spheres over others. The main question is on how relevant a policy sphere is for a government when compared with other EU spheres. This leads a government to rank EU policy/legislative spheres with the most relevant being placed on top of a government's priority list.

This variable is sub-divided into only one sub-variable with a measurable indicator of **5%** (a score of '0'–'5'):

Sub-Variable 3.1— Salience of a policy sphere

Measurable Indicator 3.1.1: *The importance given to a particular policy sphere by the administration*

This indicator reveals whether an EU policy sphere is relevant to a government. One will, therefore, expect a government to be active in an EU legislative negotiation of relevance to it.

Source Box compiled by the author

Box 5.4 on Variable 4—The pace-setting strategy

As discussed in Chap. 3, pace-setting strategies are used by governments that take the lead in the shaping of EU legislative proposals

of relevance (and priority) to them. Variable 4 is divided into 2 sub-variables.

Lobbying is one facet (sub-variable 4.1) of pace-setting and is divided into four measurable indicators (with eight respective sub-indicators all marked in alphabetical upper case letters, i.e., A – D) on government's lobbying efforts with EU institutions and other member state governments. It is logical to presume that effective lobbying does matter and does impact a government's success rate in EU legislative decision-making. Therefore, the higher the success rate of government's lobbying efforts, the higher is its probability to exercise influence in EU decision-making.

Governments also pace-set through norm advocacy and through interventions in the Council of the EU (at every level as explained in Chap. 4). This is sub-variable 4.2. A government will, therefore, intervene during Council negotiations whenever necessary and in order to 'sway' the discussions over a legislative proposal in line with its national position.

As explained in sub-sect. 5.2.3 in this chapter, all of the measurable indicators and sub-indicators have a weighting of **5%** (a score of '0' – '5' in the quantitative method used to score variables in the empirical chapters). This means that ten measurable indicators and sub-indicators at 5% each consist of an overall weight of 50%. Variable 4 is sub-divided as follows:

Sub-Variable 4.1— Pace-setting through lobbying

Measurable Indicator 4.1.1: Lobbying the *Council*

This indicator examines whether a small state government lobbied the Council **Presidency** (A) and the **Secretariat** (B) and if so, at which stage of an EU legislative decision-making process. It is interested to find out whether lobbying the Council was crucial for a small state to be successful in a given EU legislative process.

Measurable Indicator 4.1.2: Lobbying the *European Commission*

As in 4.1.1, this indicator reveals whether a small state government lobbied the Commission and if so, where (in terms of which DG) and at which stage of the process. Since the Commission generally holds a lot of influence in EU legislative processes, it is logical to expect governments to lobby the Commission at various stages of the processes:

A—Whether a government used 'its' **Commissioner network** (mainly his/her *cabinet*) and how often did it do so (during decision-shaping or taking or both);

B—Whether a government 'uploaded' successfully its national position (preferences) onto the relevant **Commission Directorate Generals** (during the decision-shaping stage only—this is not applicable to the decision-taking stage);

C—Whether a government 'used' **seconded national experts (SNEs)** to the Commission to spread argumentation (uploading of its preferences) within this vital EU institution (during decision-shaping or taking or both).

D—Whether contact was made through bilateral meetings with the **European Commissioner**—the political level—to overcome any differences which could not be resolved by the experts at technical level.

Measurable Indicator 4.1.3: Lobbying *large state governments (a heterogeneous relationship)*

This indicator examines a heterogeneous type of relationship, i.e., small states lobbying their larger counterparts with similar interests in EU legislative negotiations. This type of relationship is based on similarities that are 'issue-specific'.

Measurable Indicator 4.1.4: Lobbying *small state governments (a homogeneous relationship)*

This indicator is similar to 4.1.3, albeit with an examination on a homogeneous type of relationship, i.e., the lobbying between states of a similar size sharing similar interests in an EU process.

Sub-Variable 4.2—Pace-setting through norm advocacy and effective intervention in Council deliberations

Measurable Indicator 4.2.1: A Government's capacity to *persuade through moral convictions*

Governments also try to pace-set by convincing other parties to the negotiations through moral convictions. As already stated in Chap. 3, norm advocacy is about persuasive argumentation to raise moral consciousness about what is 'right' from 'wrong' (see Checkel 2005) or 'fair' from 'less fair' during the shaping of draft EU legislation.

Measurable Indicator 4.2.2: A Government's *diplomatic leverage and capacity to engage effectively*

A government may influence negotiations through the effective use of language and style as a tool to attract and win support for its arguments. For instance, clear and effective interventions that link issues together and that are singled out when compared with those of other governments in Council negotiations. A government might also intervene numerous times to persuade other delegations that a particular issue is of crucial importance to it (and that it will, therefore, not be flexible on any compromise which does not include its preferences). Such issues represent a matter of survival for small state governments which tend to have a smaller list of preferences than those of larger states.

Source Box compiled by the author

Box 5.5 on Variable 5—The foot-dragging strategy

Foot-dragging refers to government's delaying tactics to slow down an EU decision-making process. This strategy is used by governments which realize that they will lose out from the process (through a negative outcome not matching their preferences). This variable is broken down into three sub-variables:

Sub-Variable 5.1: Foot-dragging through delaying tactics;
Sub-Variable 5.2: Foot-dragging by requesting for compensation; and
Sub-Variable 5.3: Foot-dragging due to low levels of compliance.

Unlike sub-variables 5.1 and 5.3, sub-variable 5.2 is the only one with three sub-indicators (marked in alphabetical upper case letters). All the sub-variables have a weighting of **5%** (a score of '0' – '5') which amount to an overall weight of **30%** (three measurable indicators + three sub-indicators × 5% = 30%).

Sub-Variable 5.1 —Foot-dragging through delaying tactics

Measurable indicator 5.1.1: Failure to advance own proposals due to *similarity of preferences with other active delegations*

This indicator denotes a government's lack of initiative ('laggard' as stated in Chap. 3) in EU legislative negotiations, because its preferences reflect (mirror) those of other delegations which are active in attempting to delay a legislative outcome. Therefore, by simply supporting these delegations (and by not advancing its own

proposals directly in Council), a government is aware that its interests are being covered by other delegations in the negotiations. In such circumstances and if need be, this government would support other governments holding similar interests to it in Council negotiations. This government may also try to block decisions being taken either by placing a veto (under unanimous voting in Council) or by joining a blocking minority under QMV voting in Council.

Measurable indicator 5.1.2: Delaying and/or circumvention of an outcome through *argumentation* and *voting*

This indicator depicts a government which is knowledgeable about a future legislative outcome with negative implications for it. It, therefore, attempts to detail an outcome from being taken in Council by persuading other delegations either to block a decision from being taken (vetoing under unanimity voting or voting against under QMV) or to amend the EU legislative proposal in line with its preferences. Like in pace-setting, this will involve lobbying other delegations to form a blocking minority or to amend the proposal in line with its preferences. For this to happen, a government must exert considerable effort and play for time—something which a Council Presidency will not support given that it will push for a compromise to be reached to close the process in Council. This last point exacerbates the position of those member states that are not in line with the Council's common position during negotiations (and especially towards the end of the decision-taking stage when decisions need to be taken).

Sub-Variable 5.2 —Foot-dragging by requesting for compensation

Measurable Indicator 5.3.1: Making *compensatory-type requests*

A government that foot-drags the decision-shaping stage is aware that it will request for compensation if a negative outcome is obtained during the decision-taking stage of the negotiations. Such a government will request the following:

A—**Temporary exemption(s)/derogation(s)**—If granted, the approved EU legislation will not apply to the member state in question. Permanent derogations are extremely hard to achieve and this is not common EU practice.

B—**Financial compensation**—Governments that 'lose out' from the process will request for compensatory measures in the form of side-payments or financial 'top-ups' (for instance, this occurs every time that the Council adopts the EU's financial perspectives).

C—**Concessions in other issue areas**—Governments that 'lose out' from the process will request for a 'trade-off' in another EU policy sphere.

Sub-Variable 5.3 —Foot-dragging due to low levels of compliance

Measurable Indicator 5.3.1: Evaluating *adaptation costs*

As stated by the literature on this strategy (see Börzel 2002), foot-draggers tend to show a poor level of compliance with EU law, i.e., during the 'downloading' processes of implementing and enforcing EU law. High costs of adaptation together with a low capacity to implement EU law could, therefore, cause a government to adopt a delaying strategy during negotiations to maintain the *status quo* (i.e., the non-adoption of an EU act).

Source Box compiled by the author

Box 5.6 on Variable 6—The fence-sitting strategy

A government fence-sits during most of the process constantly altering its coalitions between pace-setters and foot-draggers according to shifts in Council negotiation dynamics.

It is vital to point out that unlike the variables on pace-setting and foot-dragging (which are mutually exclusive), fence-sitting could complement either of the previous two strategies. This is because a government might start participating more actively in Council negotiations at a later stage, at first only studying the situation by listening to other delegations' interventions. Once enough information is achieved, a government might then decide to switch to a more proactive strategy. This is usually the case with the smaller states that do not manage to evaluate at first all the subtleties in an EU legislative proposal (i.e., once the Commission sends the proposal to the Council in the early stages of a legislative process). However, a government might decide to fence-sit a whole decision-making process (therefore, both decision-shaping and taking). Therefore, depending on the salience of the draft EU legislation being discussed, a government may adopt a fence-sitting strategy (as a stand-alone strategy) without the need to either pace-set or foot-drag at some point in the process. This variable is divided into four sub-variables with an overall weighting of **20%** (four indicators at 5%).

Sub-Variable 6.1 —Altering coalitions

Measurable Indicator 6.1.1: *Frequency of coalition shifting*

This indicator shows government fence-sitting negotiations and altering coalitions between pace-setters and foot-draggers depending on the issues at stake.

Sub-Variable 6.2 —Similar national positions

Measurable Indicator 6.2.1: *Preferences of other governments matching their own*

This indicator is similar to a previous indicator (5.1.1), whereby governments are aware that their preferences are being injected into an EU legislative negotiation by other governments sharing similar interests. A government adopting this strategy will, therefore, wait and see how negotiations develop. It will only intervene if the situation changes, for instance, if it becomes marginalized and cannot accept any longer the amended proposal. In such circumstances, this government will need to intervene directly.

Sub-Variable 6.3 —Miscalculating EU outcomes

Measurable Indicator 6.3.1: *Miscalculation of compliance costs*

A government that fence-sits a negotiation might have genuinely miscalculated the compliance costs associated with the enforcement of the legislative proposal being negotiated.

Sub-Variable 6.4 —Lack of benchmarks during implementation

Measurable indicator 6.4.1: *New member states with no compliance to base evaluation on*

A government may be new to the EU decision-making process and to the EU generally. It, therefore, lacks experience and/or expertise in EU legislative negotiations. For instance, such a government will not have EU legislative compliance benchmarks on which to base its arguments. Governments with experience and efficient levels of implementation are more likely to understand fully the complexity/ies of an EU legislative proposal being negotiated. This is because EU negotiations on draft EU law are highly based on a government's previous experience implementing EU legislation.

Source Box compiled by the author

The book hypothesizes that the higher the levels of each of the six variables manifesting themselves for an EU member state government, the higher the probability that it will exercise influence in EU legislative negotiations.

5.2.3 Qualitative and Quantitative Approaches: A Holistic Research Design

As Burnham and his colleagues (2008) observe when discussing the meaning of research design, a key question is about the research method used to provide the best evidence to test the research hypothesis and answer the research questions. This forms the basis of the discussion in this sub-section presenting two main methodological approaches—a qualitative and quantitative one—to empirically examine, test, and eventually determine whether Malta's government manifested influence in the selected EU legislative decision-making processes.

Together, qualitative and quantitative approaches complement each other to bestow a holistic research design. They bring together different insights to provide a method of how to measure member state governmental influence in the EU. This is because although the nature of the topic is a qualitative one, the research, being interested with measuring governmental influence, needs to incorporate a method of quantification of operationalized variables (see Boxes 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6). Thus, a quantitative method is useful in assisting to quantify the qualitative. Both methods are eventually and empirically cross-checked in Chap. 9 in a process known as 'triangulation' (see Burnham et al. 2008: 40).

Since the book makes use of a mixture of qualitative and quantitative methods, this sub-section is divided into two main parts: Parts A and B presenting the qualitative and quantitative designs, respectively.

5.2.3.1 Part A: A qualitative approach—the usefulness of the case study design

This book uses different qualitative techniques, notably process-tracing and documentary analysis besides case studies. The techniques are discussed in more detail in the next section on the methods used to collect data. The next paragraphs provide a discussion on the usefulness and validity of the case study design and draws upon the relevant literature about this subject matter.

In general, qualitative techniques are used to understand behaviour of policy actors in a process. They are, therefore, appropriate to study and investigate the 'why' and 'how' of decisions made and to gather data in 'word' format from participants and policy players involved in a process.

In this book, the key merit of the qualitative approach is that it facilitates the production of information specific to the selected cases. However, as is common with qualitative techniques, any more general conclusions deriving from such techniques are normally in the form of propositions. This thus warrants the use of a mixed-method approach (also known as 'eclectic' approaches) which combines qualitative and quantitative methods. As Diriwächter and Valsiner (2006) observe, by also using quantitative methods, one is able to give precise and testable expression to qualitative ideas. As stated in Part B below, the quantitative approach is thus used to complement and seek empirical support for propositions (or better, research hypotheses) produced by qualitative methods. Hence, they complement rather than oppose each other.

Referring to the research question posed earlier, Yin (2009: 4) observes that the more a question seeks to explain the 'how' factor of how some social phenomenon works—in this case, *how* small state governments influence negotiations—the more that the case study method becomes relevant. Simons (2009: 21) defines the case study as one that involves an:

> in-depth exploration from multiple perspectives of the complexity and uniqueness of a particular project, policy, institution, program, or system in a 'real-life' context. (ibid)

She observes that the case study design is research-based involving various methods and is evidence-led with the aim of obtaining a solid understanding of whatever is being researched.

However, what makes the case study approach a relevant design for research of this kind? According to various authors (see Shavelson and Townes 2002: 99–106; Cook and Payne 2002: 150–178), one of the case study's main assets is to remedy and ease the fundamental problem of causal inference, or better the impossibility of controlling the research environment as is natural to do in a science laboratory. Robert Yin (2009: 15–16) in fact observes that there have been traditional prejudices against the case study method arising from its alleged impossibility to capture causal relationships (as Yin states, '*whether a particular*

"treatment" has been efficacious in producing a particular "effect") as in a 'true experiment'. These authors (and Yin in particular), however, maintain that to the contrary, case studies may be utilized to provide valuable explanations of whatever is being investigated. In fact, Yin speaks strongly about the value of the case study design when compared with, for instance, the experimental one:

> experiments, though establishing the efficacy of a treatment (or intervention), are limited in their ability to explain "how" or "why" the treatment necessarily worked, whereas case studies could investigate such issues. (Yin 2009: 16)

One very important aspect of a good case study is in the proper selection of the cases to be examined. Similar to that found in the comparative design, Burnham et al. (2008: 73) observe that:

> the most important aspect of formulating either a'most similar' or a 'most different' research design is to select cases that make it possible to conclude something interesting about one's research question.

In a similar vein, Peters (1998: 31) establishes three main criteria for case study selection: the maximization of *experimental variance*, the necessity of reducing as much as possible *error variance*, and to control *extraneous variance*. What this means is that through experimental variance, the effect of certain factors producing an outcome is isolated for analysis. This can only be done if one maintains the possibility of error variance (which according to Burnham et al. 2008: 73, entails a careful selection of cases that '*are representative and not one-off or unusual*') at a bare minimum. Besides, careful case study selection also involves curtailing undesired variance, or better the effect/s of extraneous (any other) factors.

This book features a case study on Malta's government and its level of influence in three specific EU legislative decision-making processes encompassing different legislative spheres. The case studies are thus based on carefully selected multiple policy spheres as opposed to a single case in a single policy sphere. The advantage of this design is that it provides more of a basis to test a small state government's exercise (or non-exercise) of influence in EU legislative negotiations. Besides, the legislative spheres have been selected with a fundamentally important element in mind: that of being representative of Malta's needs in extremely relevant policy spheres to it providing a wealth of information specific to Malta in EU decision-making. They are, therefore, not

'one-offs' and 'unusual': they thus fit Peters criteria on case study selection mentioned above.

Naturally, concentrating on Malta's case has eliminated several policy players representing other governments that could have featured in this research. However, let it be clear that every effort has been made by the author to reconcile this 'deficiency' by being rigorous in the selection of vital official EU and government documents and in the selection and manner by which government and EU officials were approached and eventually interviewed.

Besides, the book also incorporates the comparative design to complement that of the case study. In fact, Chap. 9 empirically compares the case studies presented in Chaps. 7 and 8 to extract similarities and/or differences between them.

5.2.3.2 Part B: A quantitative approach—the usefulness of constructing a performance matrix design

The next paragraphs discuss the merits of using the quantitative approach—mainly the usefulness of descriptive statistics and levels of measurement and spread. This method is elaborated further in a subsequent section in this chapter (see sub-Sect. 5.3.2).

As Howlett et al. (2009: 7) maintain, the study of public policy is complex and as such should not solely involve a qualitative approach such as accessing official records of an EU decision-making process (for instance, draft legislative working documents or reports). As they state:

> Although these are a vital source of information, public policies extend beyond the record of formal investigation and official decisions to encompass the realm of potential choices, or choices not made. The analysis of such choices necessarily involves considering the array of state and societal actors involved in decision-making processes and their capacities for influence and action. Policy decisions do not reflect the unencumbered will of government decision-makers so much as the evidence of how that will interact with the constraints generated by actors, structure, and ideas present at a given political and social conjuncture.

This means that quantitative techniques provide a fundamental connection between empirical observation of data collected and data in a mathematical expression in numerical form such as statistics. Thus, as already stressed, quantitative analysis should be viewed as complimentary and

not contradictory to qualitative methods. Merits of using quantitative techniques could point at its utility in collecting a sample of numerical data from participants to answer specific questions. This book has, in fact, collected data through a questionnaire used during interviews, with participants' replies tabulated in a performance scoreboard (this process is being called the 'decision weights and measures' approach). In short, quantitative techniques are used to act as a layer on top of data gathered through qualitative means.

The quantitative elements of this research are based on a particular technique known as 'descriptive statistics' with 'levels of measurement and spread'. Descriptive statistics is a technique made up of a range of basic statistical tools which, as its name implies, describe data. Here, it is being used to describe and determine whether Maltese governmental influence existed in certain EU decision-making processes.

Making sense of the 'weighting' part of the 'decision weights and measures' approach requires clarification and understanding of which techniques are used to arithmetically quantify the variables.

This study spreads out three main categories of weights ranging from 'High' to 'Medium' to 'Low'. Next to each category, one will see the corresponding arithmetic scale with a ratio from 0:5. It looks like this:

High = **5**
Medium = **2.5**
Low = **0**

However, the level of measurement has to allow for a more accurate spread, since there might be cases, whereby scoring might fall in between the above listed scale. Therefore, it is necessary to establish a sharper and more precise spread of 0:5 by including middle categories as follows:

Extremely High = **5**
High = 4
Medium to High = 3
[**Medium** = **2.5**]
Low to Medium = 2
Low = 1
Extremely Low (or none) = 0

The level of measurement, a basic component of descriptive statistics, is labeled by literature on descriptive statistics as that of interval-level

measurements. Burnham and his colleagues (2008: 142) observe that interval-level measurements have one distinguishing feature, that of ordered categories and equidistant intervals. However, the decision-weights and measures approach used by this book goes one step further than simply identifying the level of measurement. It makes out something meaningful from each variable (or measure) to be able to rank their importance in relation to Malta's government's influence levels in EU decision-making processes. For instance, the government's intensity levels to pace-set discussions by lobbying the Commission. Only in this way will one be able to actually measure a government's influence in a process. Therefore, it is necessary to make use of another special subset of this technique (levels of measurement and spread) referred to as 'ratio data'. Burnham and his colleagues maintain that:

> Ratio data meet the general criteria of interval data, and in addition, ratio data have a meaningful zero point… If a variable has no meaningful zero, then it does not belong to this subject of interval variables. (Burnham et al. 2008: 142)

In other words, if one were to take the same indicator of 'lobbying the European Commission', what these authors suggest is that for those governments that do not lobby (a '0' weighting), this means quite simply not being able to possess and exercise influence in the process, which is, indeed, a significant statement.

Such techniques may be considered useful tools to identify levels of measurement for each variable and their respective indicators (see Boxes 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 above), thus proving to be extremely beneficial to determine EU governmental influence during legislative decision-making processes.

These techniques are returned to in sub-Sect. 5.3.2 that clarifies the method used by this research to quantify the empirical data collected.

5.3 Methods of Data Collection

Two main methods were used to examine Malta's governmental influence in EU legislative negotiations: first, a qualitative approach encompassing the process-tracing technique by means of documentary analysis accompanied by elite interviews; second, a quantitative method consisting in the aforementioned 'decision weights and measures' approach (as

stated, this technique is known as descriptive statistics with levels of measurement and spread). Here, data were collected through a questionnaire conducted with research participants during interviews. Data collection, therefore, encompassed both qualitative and quantitative elements.

5.3.1 The Process-Tracing Technique Through Documentary Analysis and Interviews: A Qualitative Approach

Process-tracing is a valuable method to make confident within-case inferences about mechanisms (see Beach and Pedersen 2013: 2) existing in EU decision-making processes. By tracing the causal process from the independent to the dependent variables, the process-tracing method enables one to eliminate other potentially intervening variables, for instance in imperfectly matched cases, allowing for more confident arguments attributing causal significance to the remaining independent variables. George and Bennett (2005: 206–207) define process-tracing as:

> attempts to identify the intervening causal process—the causal chain and causal mechanism—between an independent variable (or variables) and the outcome of the dependent variable.

Beach and Pedersen (2013: 1–2) strongly maintain that '*process-tracing methods are arguably the only method that allows us to study causal mechanisms*', since it enables the researcher to make strong within-case inferences about the causal process from which outcomes are produced. As they observe, this facilitates and strengthens the confidence that a researcher may hold in the validity of a theorized causal mechanism.

Crucially, Beach and Pedersen emphasize that the process-tracing technique has more value added than other techniques, such as comparative cross-case methods, to gather a strong understanding about the nature of causal relationships existing within a system or process and which are case-specific. This is because while congruence investigates correlations between independent variables, the process-tracing technique investigates the '*workings of the mechanism(s) that contribute to producing an outcome*' (ibid: 5). The gist here is that process-tracing goes beyond correlations to trace the theoretical causal mechanism(s) linking such variables.

This technique is used here to verify whether Malta's preferences form part of the selected and adopted EU directives. This means that the

government's position is traced in Council Working Group documents and eventually, as discussions progress in the Council, to documents at the political level, i.e., Coreper and the Council of Ministers. However, it must be clearly stated that such documents only form a sample of all the Council documents issued during a specific legislative negotiation. This is mainly because it is impossible to access all Council working documents pertaining to a legislative file due to their sensitivity and inaccessibility to the public. There are thus constraints present. Having said this, the author was able to access those Council and Commission documents of most relevance to the case studies to comprehend Malta's behaviour in the EU processes selected for analysis. Use was mainly made of the footnotes in Council working documents that record EU member state interventions during legislative negotiations over every legislative article. This technique was, therefore, useful to trace and capture Malta's position (besides that of other delegations) throughout all the stages of the negotiations.

As previously stated, this has a bearing on the testing of the government's influence exposing its strategies—whether any changes in Malta's actions may be traced as a result of an emerging situation occurring in Council. As a result, process-tracing allows one to better understand the dynamics occurring during legislative negotiations and in this research, to take account of Malta's exercise (or not) of influence in Council discussions.

Therefore, the process-tracing technique does not only reveal any changes in, for instance, wording of the draft legislative proposals of those Council and/or Commission documents relevant to the legislative cases (reviewed in the empirical chapters). It also determines shifts in governmental actions and strategies as a response to such changes. However, in order to be able to validate propositions emerging from the documentary analysis, process-tracing is hereby beefed-up with interviews held with research participants.

On this last point about interviews, there are a number of arising issues. First is the point on the anonymity of participants during and after the research conducted. Since EU decision-making processes involve sensitive data (even if the selected processes involved past cases, i.e., the adoption of EU directives which have already occurred (in recent years) and which were not ongoing during the research), the disclosure of information by Maltese and EU officials required a level of protection being afforded by anonymous participation. Second, it is relevant

to point out that in addition to interviews that were conducted in Malta, there was also a study trip held in Brussels in January 2014 to interview the main EU officials having participated directly in the legislative negotiations examined later on. As stated in Chap. 1, this was relevant to stir away from possible bias which could have been created by sole participation in the research of the main Maltese government officials. In other words, it was necessary to collect data about Malta's behaviour in EU processes from relevant sources independent from the government and who were also parties to those EU legislative negotiations analysed in Chaps. 7 and 8. Third, the necessity for interviews to be conducted was dictated by the quantitative approach (described in more detail in the next sub-section) to score the variables.

5.3.2 The 'Decision Weights and Measures'—A Quantitative Approach

The 'decision weights and measures' is an approach made up of three steps and consists of a performance matrix to score the six variables presented earlier on governmental capacities and strategies.

Step-one of the approach incorporates the 'indicative-type' variables, i.e., variables 1 – 3 on **governmental capacities** (see Table 5.1 and Boxes 5.1, 5.2 and 5.3). These variables have the task of only 'indicating' (hence the name-type of these variables) and not 'identifying' whether a government exercised influence in Council legislative negotiations. Therefore, not actual influence—and whether this has been exercised or not in a negotiation—but rather the **capacity** to influence. As emphasized in Chap. 2, this has, in fact, marked the way in which smallness has previously been studied in IR, i.e., in terms of capabilities, whereby assumptions of having capacities imply pending action (see Morgenthau 1972: 129–130). For instance, Walt (1987) examined how the capabilities of large states brought alliances, while other authors like Wivel (2000) have studied how and why small states would want (or not) to join them. In short, the task of determining whether a government actually exercised influence or not is left for other variables (referred to as 'action-type' variables below) found in the second step of the approach. Each indicator for variables 1 – 3 (see Boxes 5.1, 5.2 and 5.3) is scored according to a positive mark or a negative mark (explained before) that

presents the research with an indication about a government's capacity of possessing appropriate tools to exercise influence.

Step-two of the approach consists in scoring 'action-type' variables (variables 4 – 6) on **governmental strategies** by using the same 0 – 5 scale. It is relevant to note that the first two steps of the approach are empirically conducted in Chaps. 7 and 8 with data presented in tables in these chapters and in the conclusion (Chap. 9).

Once the first two steps are completed, step-three (see Tables 9.1 to 9.3 in Chap. 9) adds up the data collected. Therefore, step-three of the approach cross-checks the total ratings of steps-one and two, and determines an overall positive or negative rating for the Maltese government's level of influence in each of the book's legislative cases. For instance, if the total average score for step-one is '3' (and thus, a positive rating according to the previously illustrated 0 – 5 scale) and that for step-two is '4' (another positive rating), then the overall result arrived at in step-three is positive (having achieved a '3.5' average). In this example, the separate results for steps-one (3 out of 5) and two (4 out of 5) correspond with each other being both positive.

The logic behind this is that negative or positive categories indicated for variables 1 – 3 in step-one usually lead to similar scores (signifying a low degree or a high degree of governmental influence) for variables 4 – 6 in step-two (although it must be said that there could be cases when this does not occur). Therefore, step-three indicates a government's level of influence and whether it was exercised during EU legislative negotiations. In this book, it determines quantitatively whether Malta, the smallest EU member state government, exercises influence to punch beyond its weight and possibly over-achieve in the EU legislative decision-making processes examined later.

In brief, the approach may be illustrated as follows:

Step-1	Indicating **indicative** governmental influence capacity levels
+	
Step-2	Indicating **actual** governmental influence levels in EU negotiations
Step-3	Determining influence or no influence [weighting total averages + comparing results of steps-1 and 2]

Thus, the motive behind this approach is that in order to validate and justify the hypothesis—that small state governments in the EU can influence EU decision-making even if they are hampered by certain vulnerabilities—and be able to answer the research questions about whether an EU small state government did or did not exert influence in the decision-shaping and taking stages of EU legislative negotiations and if in the affirmative, how and at which stage it did so, this must involve a series of steps that will eventually lead to a conclusion about a government's influence in such processes.

One last point worth noting is that the 'decision weights and measures' approach is being advanced by this research because of the inadequacies of existing approaches that do not provide an ideal 'test-bed approach' for this kind of analysis. This said and as explained earlier, the approach finds inspiration from elements present in other models, with its main strength being that of allowing explanations about governmental influence in EU decision-making. As aforementioned, EU decision-making processes involve a myriad of policy actors with preferences to defend and upload into such processes. Besides, EU decision-making itself is a slippery process with policy goal posts continuously shifting. Therefore, it is extremely difficult to extract findings from such a process about a specific government's influence and relate it to a positive outcome or a negative outcome being achieved by the government. To this end, the 'decision weights and measures' approach proves to be appropriate and useful, besides being a rigorous and accurate tool to achieve findings for this sort of study.

In practical terms, this method of measuring influence could also prove useful to EU small state administrations to predict which strategies ought to be adopted prior to the start of legislative negotiations in the Council and the EP. As re-emphasized in Chap. 9, there is no doubt that this factor will definitely equip small states address and make amends for major deficiencies related to their size.

5.3.3 Sources for the Empirical Research

Whereas the reference section at the end of the book lists all the sources used for this research, this sub-section only focuses on the sources used in researching the empirical chapters: that is, the case studies.

These sources are mainly working documents issued by Malta's government and by the EU institutions, particularly those of the Council,

Commission, and the EP. Some of these documents were available and downloadable from the EU's official portal (http://www.europa.eu). For instance, the EUR-Lex portal provided access to EU legislation and other related documents as well as to the EU's Official Journal and legislative procedures, amongst others.

The primary sources mainly referred to in the empirical research are Council Working Group and Coreper documents. The research also made use of Council conclusions and their respective press releases, EP committee, and plenary reports, and Commission working papers such as Commission impact assessment reports and draft legislative proposals. (Many of these documents are not in the public domain, but were made available to the author during interviews with officials from Malta's government and the EU institutions.) It is relevant to point out that these officials participated directly in the EU legislative negotiations examined subsequently and, therefore, represent the main players that could have been interviewed by the author. The interviews themselves thus constituted a primary source of information during which the participants were asked to complete a questionnaire and respond to questions produced by the author. Other primary sources used were the Maltese government's official portal (www.gov.mt)—which provided information about amongst others, the government's structures, and contact persons—and newspaper articles (both local and foreign).

For the empirical chapters, use was also made of various secondary sources (mainly books and academic journals) of which the complete list is found in the book's reference section.

5.3.4 Difficulties Met by This Research

As evidenced by a multitude of methodological literature, political science is faced with major stumbling blocks when testing and experimenting cases. This is because the discipline is unable to control the research environment in the same manner as the natural sciences in a laboratory.

Burnham et al. (2008: 71) observe that:

> the experimental method normally has a better ability to generate this type of explanation than the statistic and comparative methods. However, in political science, such explanations are rare, because the research environment is impossible to control fully.

Literature calls this situation (see King et al. 1994) the 'fundamental problem of causal inference'. Burnham et al. (2008: 71) note that:

> it is a very fundamental problem, because without experimental control, it is impossible to say with complete certainty that one's conclusions are correct.

Even though the design of this research does not incorporate the experimental method, it is still relevant to note that the author is well aware of certain kind of deficiencies common to qualitative research of this sort. Indeed, the mixture in the design of both qualitative and quantitative methods was selected to make up for such difficulties in a way that best suits this type of research.

Besides the difficulty of how to test and determine the exercise of governmental influence, there were another couple of intricacies in relation to the 'decision weights and measures' approach described earlier. In the empirical chapters, the scoring of indicators for the first three variables on a government's capacities was necessarily performed by Maltese government officials and not those of other EU governments or EU institutions. This was because it is Maltese public officers that have certain knowledge of how the country and its administration work. However, indicators for variables 4 – 6 were scored by both Maltese and EU officials who participated directly in the legislative negotiations examined in the empirical chapters. The gist here is that there might be criticism leveled to a certain degree of 'unevenness' in the method used to weight the variables present in steps-one and two of this method. However, in reply, it would have proven difficult to escape the obvious bias-trap which would have been created that had all the six variables about the Maltese government's capacities and strategies been weighted by officials from that government. Thus, as the method stands, government and EU officials are involved.

A different issue has to do with the actual ratio data, or more precisely, the weighting (or scoring) consisting of a 0 – 5 scale (explained previously in sub-Sect. 5.2.3) to show different intensity levels for each of the independent variables. Possible criticism could point towards the vulnerability of adopting such a thorough scoring mechanism to quantify aspects (governmental influence) belonging to the socio-political world. One might argue that a simpler scoring device such as an approximate 'high'-to-'low' indicator without ratio data could have constituted a better or preferred option. In other words, the book could have settled for

a simpler mechanism without the need to distinguish between different scores—for instance, one might ask why has an indicator scored '3' not '4' and another '2.3' instead of '2.5'? Indeed, the author is aware about the risky business that small differences in these values could impact the overall conclusions. This argument could be countered by first pointing at the literature, dealt with previously, arguing in favour for using such techniques (such as ratio data in descriptive statistics). Second, asking government and EU officials to score the variables during interviews conducted with them permitted the data collected to be accurate (this having been derived from reliable sources holding relevant and expert knowledge on the subject). Besides, there has been a great effort at all times and as best as possible to keep at bay the bias-trap. However, this has already been discussed earlier.

One last difficulty related with this last argument has to do with the subjectivity of scoring itself. The scores themselves may vary among different individuals (officials), even if representing the same institution or government. In simpler words, one person may value the weights differently from another. Moreover, the method of assessing or weighing up influence requires one to make do with the judgements and choices of officials who might have built preconceived ideas about factors to influence EU decision-making. This means that research of this kind could be seen by critics as running the risk of being value-driven making the whole exercise in identifying and measuring influence obscure and extremely difficult to pronounce confidently. One of the best ways to counter this is to refer to relevant literature (see Hogwood and Gunn 1984; Bovens and 't Hart 1996; Marsh and McConnell 2010) faced with this problem and that reacts in this manner:

> any credible framework for policy success *(or influence)* needs to recognize the realities and difficulties of studying complex phenomena. To do otherwise would be a disservice to political analysis, and would gloss over crucial issues of power and politics (emphasis added in parenthesis). (McConnell 2010: 81)

In its own way, this research tries to respond to the above drawback by analysing each of the scores of each interviewee against the nature of the question being asked, thus ensuring that scores are truthful to the question posed. Besides, scores were tested and compared with those of other participants. As previously stated, scores were eventually given averages avoiding any unnecessary and excessive imbalances in each of the replies, thus minimizing value variance.

As aforementioned, such difficulties outlined above are very common among research and literature of this type. McConnell, in his study on identifying and measuring success, sheds light on how complex and problematic this can be. He comes up with a list of problems which he calls 'complicating factors' and states that:

> identifying success is bedevilled by assessing phenomena, such as partial achievement of objectives, contradictory objectives, and unintended consequences', *and that* 'success for one actor/group might be failure for another. (McConnell, 2010: 7)

Like the previous authors mentioned earlier (such as King et al. 1994) preoccupied with the fundamental problem of causal inference, McConnell also points to the difficulty of isolating policy outcomes from other societal factors that might have had an impact on the outcomes, as well as problems related to time and spatial context. Most importantly, he states that 'judgements are inescapable' when stirring ones research through the complexities found in a topic.

As a final note, it is also worth indicating difficulties encountered by the qualitative method in this book. The key issue here was whether to opt for a single country case study as against a multivariate one. As already stated, the research adopted a single case study framework with the justification for this choice having already been indicated earlier. Consequently, there might be some form of criticism pointing at the inadequacy of generalizing findings that are valid to a particular small state being applied to EU small states generally. Although there is a valid point here, one must bear in mind that an element of comparative analysis with other member states exists as 'passing passages' throughout the empirical research, particularly in Chap. 9, which counters in part this criticism. Furthermore, Sects. 5.2 and 1.2 (in Chap. 1) have, in fact, already justified the usefulness and selection of a case study design, emphasizing that Malta's exercise (or non-exercise) of influence is examined empirically in multiple legislative settings (i.e., multiple spheres in multiple processes).

5.3.5 Positive Aspects Deriving from This Research

As already pointed out and in relation with the book's quantitative design, a questionnaire to score the 'decision-weights and measures' scoreboard was used during interviews with various governments and EU officials. They have all reacted positively to it and have recognized

in it a practical way of determining governmental influence in the decision-making process—as already emphasized, by no means an easy task. This thus adds value to the justifications for the questionnaire's use (see sub-Sect. 5.2.3). Particularly, Maltese government officials have been recorded as stating that it is a practical method that could be employed by the government and by other EU states (particularly the small states) in EU decision-making processes.

Another positive aspect worth indicating here concerns the book's qualitative design. This research has brought together a number of factors that up to now have been dealt with separately by literature on decision-making and governmental influence in the EU. What is meant here is that governmental strategies are featuring prominently together with core facets of governments' capacities to influence decision-shaping and taking. It thus links directly different strands of literature that are normally dealt with separately in studies of this kind.

Most importantly, this book links different methods and techniques, in this case qualitative and quantitative methods—the process-tracing technique through documentary analysis and interviews with the 'decision weights and measures' approach—to test and analyse the Maltese government's influence in EU decision-making processes. It, therefore, relies on different methods to provide the research with more tangible and concrete findings about such a complex phenomenon.

5.4 Conclusion

This chapter has focused on all the methodological aspects found in this book. It has explained the methodological design, made up of both qualitative and quantitative approaches, linking it with the main research questions and hypothesis. This chapter has also described at length the book's methods of data collection.

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CHAPTER 6

An Introduction to the Empirical Research: Malta and the EU Decision-Making Process

This chapter describes Malta's relations with the EU, with the intention of allowing the reader to place in context the three legislative case studies found in Chaps. 7 and 8.

Section 6.1 begins with a brief overview of Malta's key geographical, economic, and political characteristics. It also gives key dates in Malta's EU membership process and its first few years of EU membership.

Section 6.2 deals with Malta's post-EU membership reality. It examines the government's *modus operandi* when preparing and co-ordinating a national position for uploading processes in EU decision-making. In short, it highlights the government's administrative machinery, i.e., the role played by various governmental ministries and departments and in their co-ordination to cope with the vastness and complexity of EU legislative decision-making processes.

Section 6.3 provides a brief conclusion.

This chapter is necessary to enable the reader to fully grasp how Malta's government functions internally when dealing with EU matters. It thus constitutes a necessary background to the case studies presented in the next chapters.

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6.1 An Overview of Malta in Its Historical Path Towards EU Membership and as a Member of the EU

6.1.1 Geography

With a population of around 425,384 inhabitants [see Malta National Statistics Office (NSO) 2014 figures: vii] with density levels at 1346 persons per km^2 and a surface area of 316 km^2 (122 square miles), Malta is the smallest (followed by Luxembourg with a population of 550,999 inhabitants as of April 2015—see http://countrymeters.info/en/Luxembourg) and the densest (after the Netherlands) EU member state in the EU (NSO 2014: vii) (Table 6.1).

6.1.2 Economy

Malta's economy has developed from the mid-1960s from one that was tailor-made to the needs of the British colonial administration to an open market-driven economy. Today, emphasis is given to higher value-added economic activities in services, above all financial, aviation and information technology services, tourism, and the gaming and pharmaceuticals sectors. Its economy is also linked to its maritime status, notably the ship building and repair industry as well as fishing. The main challenges to Malta's economy are linked to its small size (a relatively small domestic market) and to the fact that it is an open economy, meaning that it is prone to external shocks. Other disadvantages, such as transport costs, manifest themselves due to it being an island and its insular location on the periphery of the EU. Malta's main assets are its pleasant and attractive climate, an optimal regulatory regime, and a qualified, skilled and hard-working labour force (NSO 2014: iii). Since achieving EU

Table 6.1 Profile of Malta's geography

Area	316 km^2 (122 square miles)
Shoreline Malta	200.0 km
Shoreline Gozo and Comino	71.2 km
Situated	Central Mediterranean at 93 km south of Sicily and 290 km north of Libya
Capital city	Valletta

Source National Statistics Office, Malta (2014), 'Malta in Figures 2014', p. iv

Table 6.2 Profile of Malta's economy in the US $ (2017 estimates)

Monetary unit	Euro (€) (since 2008)
GDP	$11.2bn
Real GDP growth	3.4%
GDP per capita-PPP	39, 886 International Dollars
Inflation	1.5%
Unemployment rate	4.9%
Public deficit	-0.7% of GDP
Public debt	59.7% of GDP
Credit rating	*Standard & Poor's*: A– *Moody's*: A3

Source Global Finance Magazine—Malta GDP and Economic Data (Country Report 2017)

membership, Malta's GDP growth rate for the years 2014–2017 (latest year with available statistics) stood at 3.5, 6.2, 4.1, and 3.4% respectively and as at April 2017, Malta had the third lowest unemployment rate (at 4.1%–Eurostat figure) in the EU (Table 6.2).

6.1.3 The Political System

Malta's political system is based on a parliamentary representative democracy with the President of Malta as the constitutional head of state. Executive authority is held by the President but with the general direction and leadership of the government and cabinet held by the Prime Minister.

Legislative authority is vested in the Parliament of Malta consisting of the President and the unicameral House of Representatives with a speaker presiding over it. Parliament is elected by universal suffrage through a single transferable vote system (a variant of the proportional representation electoral system) for a 5-year mandate. In normal circumstances, 65 parliamentary seats are filled by members of parliament (MPs) elected from 13 multi-seat constituencies each returning five MPs.

Judicial power rests with the Chief Justice and the Judiciary of Malta.

Over the years, Malta has been dominated by two major political parties, namely the *Partit Nazzjonalista* (PN) (Nationalist Party in English)—a Christian democratic and conservative party—and the *Partit Laburista* (PL) (Labour Party in English)—a social democratic party.

Table 6.3 Profile of the 3 June 2017 general election result in Malta

Parties	*Votes*	*%*	*±(from the previous editions)*	*Seats*	*±(from the previous editions)*
Labour party	170,976	55.04	+0.21	37	-2
Nationalist party	135,696	43.68	+0.34	30	0
Democratic alternative	2564	0.83	-0.97	0	0
Moviment Patrijotti Maltin	1117	0.36	New	0	New
Alleanza Bidla	221	0.07	New	0	New
Independents	91	0.03	+0.02	0	0
Invalid/blank votes	4031	1.3	0	/	/
Total	**314,696**	**101.31**	-0.40	**67**	-2

Source Table compiled by the author and based on Malta Electoral Commission data

The last general election held in Malta to date took place on 3 June 2017. Similar to the previous election at 9 March 2013, the PL won this election by over 35,000 votes (representing 55% of the votes) which represented the biggest electoral victory ever experienced by a political party in Malta. If one were to take the total number of general elections held in Malta since gaining independence in 1964—that is twelve general elections—the PL and PN won six each[1] (The PN achieved an absolute majority of the votes cast in the 1981 general election despite not obtaining a parliamentary majority). Table 6.3 gives the results of the 3 June 2017 general election.

6.1.4 The Pre-EU Membership Scenario

Starting from Malta's most recent political history, it gained independence from the UK on 21 September 1964 and joined the United Nations (UN) that the same year. A year later, it joined the Council of Europe (CoE). Its relationship with the EU (at the time the EEC) began with the signing of an Association Agreement in 1970 which was the third agreement of this type to be negotiated between the EU and non-EU countries.[2] Malta applied for EU membership for the first time in 1990.

This last issue stole the local political agenda for more than a decade, with the main two political parties at loggerheads over it—with the PL opposing EU membership and preferring a free trade area agreement as an alternative and the PN in favour of EU membership. Domestic events that followed in 1996 did not help Malta's EU membership bid with a return of the PL in government and a reassessment of its foreign policy with the EU. The PL government, in fact, decided to 'freeze' Malta's membership application shortly after returning to power [besides suspending Malta's participation in NATO's Partnership for Peace (PfP)].

However, Malta was back on track for membership when, in 1998, the PN was returned to government (due to an early election as a result of the PL losing a vote of confidence in parliament the same year). The PN government re-activated Malta's EU membership application which was accepted by the Vienna European Council of December 1998. The Council conclusions stated:

> The European Council welcomes Malta's decision to reactivate its application for European Union membership and takes note of the intention of the Commission to present at the beginning of next year an updating of its favourable opinion of 1993 [European Council Conclusions (1998): point 61]

During the Finnish Presidency, in December 1999, the Helsinki Summit confirmed the EU's commitment to start pre-accession negotiations with Malta in February 2000.

In 2002, Malta finalized pre-accession negotiations with the Commission and held a national referendum on 8 March 2003 with 53.6% of the electorate in favour of EU membership and the remaining 46.4% against (with a turnout of 91%). Of the nine referenda occurring in acceding countries at that time, Malta's referendum resulted in both the highest turnout and the tightest result (The Today Public Policy Institute 2014: 21). Since the PL refused to accept the referendum result, this issue dominated the general election held only a month later in April of that year with the electorate reconfirming the PN to power, hence paving the way to EU membership. Malta signed the Accession Treaty in Athens on 16 April 2003 and joined the EU on 1 May 2004. Malta eventually joined the Euro zone on 1 January 2008.

6.2 The Co-Ordination of EU Affairs Post-EU Membership

6.2.1 The Post-EU Membership Scenario

Following EU membership, successive PN and PL governments focused on turning Malta's EU membership accomplishment into a success. The current PL government has openly declared that it intends accomplishing excellence in the EU and has managed a successful Council Presidency in the first half of 2017. It did, in fact, reverse its position on the EU soon after the 2008 marginal general election defeat and managed to secure the majority of EP seats in two of three European elections held in Malta since 2004.[3]

Just over a decade, since Malta became an EU member, it is still coming to terms and adapting itself to cope with the immense pressures that EU membership brings—such as coping with the vast EU agendas and participation in as many EU decision-making processes as possible. Malta has had many challenges to face so far and it has also achieved positive results.

For instance, adopting the euro as a national currency in 2008 was a major challenge. However, it has enabled Malta, as the smallest EU member state, to lock itself to one of the strongest currencies in the world and attract investors through security guarantees and risk reduction. This has proved priceless in both the financial and economic crisis and in the ensuing economic recession that Europe has recently faced. Contrary to other small EU and euro member states (such as Ireland, Greece, and Cyprus), Malta emerged unscathed from this situation. As maintained by Malta's former Prime Minister, Lawrence Gonzi, it managed to weather the storm:

> We have weathered the storm so far, but I keep saying, no complacency, the trouble is still there, all our major markets are having to implement some severe austerity. If they suffer, we suffer and it is important to remain nimble, fast, and responsive to what is happening around us. (interview held by Global with Malta's former Prime Minister, Lawrence Gonzi, in 2011)

This can be largely attributed to certain unique characteristics of Malta, in particular, its insular and lower bank exposure to the sovereign debt of peripheral European countries (CIA World Factbook 2013). This

situation may also be attributed to successive Maltese governments which in the past took difficult decisions such as those on austerity measures to make the country less vulnerable to financial shocks.

Other challenges which Malta faced as an EU member state were changes to EU budget legislation which previously had existed for years but which worked against Malta as the most densely populated country in the EU, the re-shaping of the EU's policy on illegal migration ensuring that the need for solidarity (due to the great burden placed on Malta by this phenomenon) became not just part of the EU vocabulary but also part of EU policy, negotiating a sixth Maltese seat in the EP, and as stated above, Malta's recent Council of the EU Presidency.

6.2.2 Co-Ordination of EU Affairs

As a result of EU membership, Malta has had to adapt its administration and co-ordination to deal with two new processes. First, its right to fully participate in EU decision-making uploading processes. More specifically, Malta's co-ordination process was devised to ensure that the government has 'clout' in the EU decision-making process and that, whenever possible, it punches above its weight—especially in the Council of the EU. For Malta's government, the co-ordination and changes needed in its structures to be able to effectively upload its preferences into EU decision-making processes were a new reality in the immediate pre–post-membership period.[4] Second, its obligation as a member state to comply with, implement, and enforce EU legislation—a process better known as the downloading process.

These necessary changes were devised before 2004, on the basis of careful studies of other EU member state national systems being undertaken to provide Malta with a model that it could learn lessons from. In fact, Finland's co-ordination system was seen as most suitable, since it was believed that it '*mirrored the domestic needs of the administration in Malta (those of the Netherlands and the UK were considered possible but necessitated substantial structural changes)*' (Harwood 2009: 132).

Partly due to its British legacy and because it already adopted this approach post-independence (1964 onwards), Malta maintained a highly centralized co-ordination system, albeit with new structures created as a direct result of EU membership. This ensured an efficient and proper

degree of legislative scrutiny by various levels in the government's hierarchical structure.

The list below presents these (main) new developments in Malta's governmental structures:

- The Permanent Representation of Malta to the European Union in Brussels;
- the EU Secretariat [within the Ministry for European Affairs and Equality];
- an Inter-Ministerial Committee;
- EU Directorates within each of the line ministries;
- a Standing Committee at the House of Representatives: the Standing Committee on Foreign and European Union Affairs (SCEFA)—established on 8 October 2003 (see *Parlament Malti* 2003, motion 67); and
- the *Forum Malta fl-Ewropa* within the Ministry of Foreign Affairs—later replaced by the Malta EU Steering and Action Committee (MEUSAC) responsible for ensuring strong involvement of stakeholders and social partners and informing the public about EU affairs generally (MEUSAC is now within the Ministry for European Affairs and Equality.

As a result of a change in government in March 2013, a new ministry for European Affairs—the Ministry for European Affairs and Implementation of the Electoral Manifesto (now renamed the Ministry for European Affairs and Equality following the 2017 general election was established). Previously to this, EU affairs fell under the remit of the Ministry of Foreign Affairs. However, as stated further on, this change in ministerial responsibility for EU affairs in the government's structures did not impact significantly on its co-ordination system, which has been left largely unchanged, since it was first devised and implemented.

6.2.2.1 The Permanent Representation of Malta to the European Union

The Permanent Representation of Malta to the EU represents Malta at official level in all EU negotiations taking place in EU structures, notably the Commission, European Council, Council, and the EP (although proceedings occurring in other EU institutions and bodies are also monitored). The Representation is headed by a Permanent Representative (PR) (and Deputy Permanent Representative (DPR) with remit over

Coreper I issues) who ensures '*an informed and coordinated advancement of Malta's position in all EU discussions*' (DOI, Press Release 2012/07) and who takes part mainly in Coreper II meetings but also in Ministerial Councils and European Council meetings (EU governmental summits at head of state and/or government levels). The Permanent Representation of Malta is made up of a total of 46 officials (divided between diplomats and technical attachés—this number increased drastically with senior policy officers and policy officers being added to the Representation's component due to its Council Presidency in 2017)—which includes the PR and the DPR (organigram of the Permanent Representation accessed on 4 October 2013). This number is exceptionally large for a small state of the size of Malta.

Besides representing government in these fora—mainly in the Council's multi-levels, i.e. in Working Groups, Coreper and Council of Ministers; and in Commission committee meetings—the Permanent Representation has the crucial role of reporting to the capital about the current state of play of legislative EU decision-making discussions with policy/legislative implications for Malta. Reporting in a timely manner is essential for governmental ministries to prepare for the next Council Working Group or Coreper meeting (on average, they take place once to twice a week). Once reporting takes place, the ministries are able to draft a national position (with a line to take) which first need to be scrutinized and approved (as explained further on in this chapter and as illustrated in Fig. 6.1) by other entities in the system before being used by the government's representatives in uploading processes in Council.

6.2.2.2 The EU Secretariat

The EU Secretariat is an integral part of the co-ordination system, because it channels the government's position on an EU legislative proposal (being discussed in Council in Brussels) to and from the Permanent Representation and the EU directorates in the various ministries. Importantly, the EU Secretariat co-ordinates the preparation of the government's position ensuring that 'draft memoranda' (i.e., the government's position on EU legislative proposal/s drawn up by the ministries) are cleared by the Inter-Ministerial Committee (IMC)—dealt with in the next sub-section—before being sent to the ministerial cabinet and eventually parliament.

Similar to the Permanent Representation, the EU Secretariat consists of policy officers each responsible for a particular EU policy sphere.

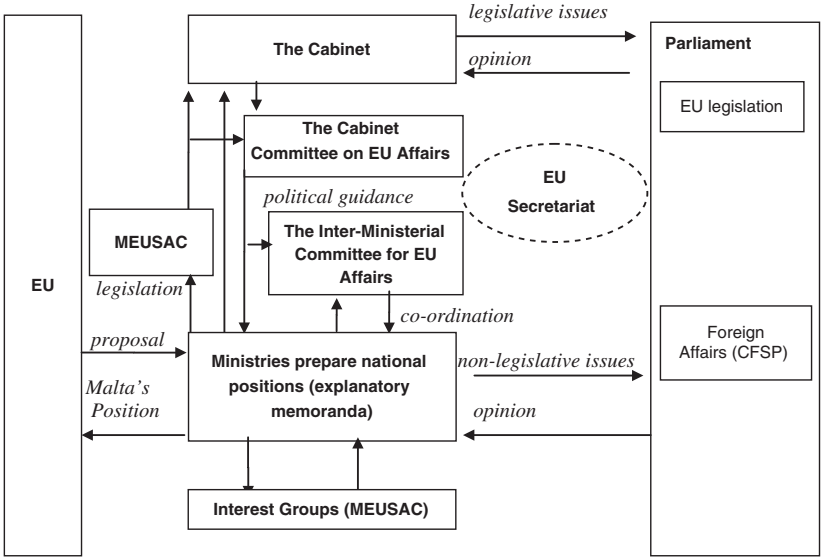

Fig. 6.1 Co-ordination of EU affairs in Malta. *Source* Government of Malta document, 'Malta as a Member of the EU: Structures and Decision-Making Processes', last updated on 15 March 2004

As just stated, it is these officers that are in constant contact with their counterparts at the Permanent Representation in Brussels and with the line ministries.

Harwood (2009: 136) sums up in list form the EU Secretariat's key functions (which go beyond co-ordination of EU uploading processes) as follows:

- ensuring the development of a timely and co-ordinated position through the Permanent Representation;
- receiving, examining, and distributing EU documentation to the relevant ministries as well as co-ordinating the formation of internal documentation to be used at national and EU levels;
- monitoring the implementation of adopted EU legislation; and
- referring proceedings and decisions of the Court of Justice of the EU to the Attorney General's Office and the Court Registrar.

6.2.2.3 The Inter-Ministerial Committee (IMC) for EU Affairs

In a similar vein to that of the EU Secretariat, the IMC also has a central role in Malta's co-ordination system and, as explained in subsequent paragraphs, serves as an advisory and mediatory body in the system. As Nugent (2017: 285) points out, it is mainly made up of senior civil servants, i.e., Permanent Secretaries heading their respective ministries at administrative and technical levels. It is also made up of the Heads of the Secretariats of the Prime Minister, Foreign Affairs Minister, and European Affairs Minister, as well as a policy officer and senior legal officer from the EU External Affairs Directorate, and a representative of MEUSAC (Harwood, 2009: 134). At the time of writing, this committee has been widened to include all senior government players having a major role in Malta's Council Presidency (for instance, the PR and DPR).

6.2.2.4 How Does Malta's System of Co-Ordination Function?

Once the Commission adopts a proposal, Malta's line ministry drafts an 'explanatory memorandum'. The memorandum defines the main contractual, legal, economic, and political aspects of a Commission's draft legislative proposal or non-legislative initiative, and includes a relevant preliminary governmental position (Times of Malta, 24 March 2011). This is discussed within the IMC that also ensures that national stakeholder interests in the sector (i.e., non-governmental entities) are included. Based on the explanatory memorandum, Malta's interests and preferences are discussed in depth, and therefore, it is at this stage that Malta's position is truly formed. Once approved by the IMC, the draft memorandum is sent to Cabinet which, after agreeing to it, forwards the memorandum for scrutiny and final approval to Parliament's Standing Committee on Foreign and European Union Affairs. After this stage, the memorandum is converted into an 'Instruction Note' which is sent by the EU Secretariat to Malta's Permanent Representation in Brussels.

The other key administrative structure not mentioned in the preceding paragraph is MEUSAC. It first started off as a decentralized stream in the internal consultation process. MEUSAC, in fact, represents the interface with civil society, in general (in the form of interest groups). It did have its own problems, since it was criticized as maintaining a very low level of consultation and was replaced by *Forum Malta fl-Ewropa* (Forum Malta in Europe) falling under the remit of the Ministry of Foreign Affairs. However, in 2008, the government decided to place

MEUSAC under the OPM's remit and thus within a reinforced centralized process. Subsequently, it was part of the Ministry for Social Dialogue, Consumer Affairs, and Civil Liberties and is today found within the Ministry for European Affairs and Equality.

In sum, the system of co-ordination described above is still used by today's government, albeit with some adjustments affected during preparations for the country's Council Presidency. For instance, the European Affairs Ministry was established to have overall responsibility of Malta's Presidency.

One of the main reasons for pointing out these changes has to do with the timeline of the EU decision-making processes of two (of the three) case studies forming part of the book's empirical research. In fact, these cases concern EU legislative acts adopted before the government change in Malta in March 2013 when changes to Malta's co-ordination system were made. However, it must be said that although a third case on a recast EU directive on pyrotechnic articles (see Sect. 7.3 of Chap. 7) was adopted by the Council and the EP in June 2013 and hence after these changes were made in government, the outcome of this decision-making process was largely a result of the formation stages occurring before March 2013.

6.3 Conclusion

This chapter has served to establish a context behind Malta as the book's country of study. Knowledge of the co-ordination system explained in this chapter is, therefore, relevant for the empirical chapters that follow.

Notes

1. The PN won the absolute majority of votes in 1981 (not elected to office), 1987, 1992, 1998, and 2003. It has also won a relative majority of votes in 1966 and 2008. The PL won the general elections of 1971, 1976, 1981 (it won a parliamentary majority and not a majority of the votes), 1996, 2013 and 2017.
2. The first association agreements were signed with Greece in 1961 and with Turkey in 1963. Immediately following the one signed with Malta, the EEC signed association agreements with Cyprus in 1972 and with Spain and Portugal in 1985.

3. The 2004 EP elections saw the PL win three out of the five seats available for Maltese MEPs, while the 2009 elections saw that the PL maintain the majority of seats, i.e., four of the six EP seats allocated to Malta once EP seat allocations were revised by the entry into force of the Treaty of Lisbon. The last EP election of 24 May 2014 resulted in a draw of three seats each held by the PN and PL.
4. One must not forget that before 1 May 2004, Malta and the other EU candidate states were only given observer status in the EU decision-making institutions.

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CHAPTER 7

Malta's Government in the Legislative Decision-Making Processes of Two Directives on the Placing on the Market of Pyrotechnic Articles: Case Studies 1 and 2

7.1 Introduction

It is appropriate to start this chapter by asking why pyrotechnic articles (the words 'pyrotechnic articles' and 'fireworks' are used interchangeably throughout this chapter) and their production are such an eminent matter for some countries in the EU, particularly for Malta. It is because fireworks in Malta are not only important in economic terms, but also have socio-cultural, traditional, and religious connotations. These connotations find their origin in a centuries-old legacy brought about by the Order of the Knights of St. John, in the period when Malta was administered by the Order between the sixteenth and eighteenth centuries.[1]

Indeed, this cultural heritage has lived through history and pyrotechnics are still very popular in Malta. Today, they are widely used in religious and cultural village feasts mainly during the summer period.[2] This means that they enjoy considerable popularity across the entire national socio-political stratum and, hence, the Maltese community in general. This aspect must be kept in mind to understand the Maltese government's position in the EU legislative negotiations presented in this chapter.

This chapter focuses on two legislative cases concerning the placing on the EU market of pyrotechnic articles. The first case examines the decision-making process which led to the adoption of EC Directive 2007/23/EC on 23 May 2007 (**Case 1**), while the other examines the legislative process leading to the adoption of EU Directive 2013/29/

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EU (recast) on 12 June 2013 (**Case 2**).[3] The aim of this chapter is to focus on the Maltese government's capacities and strategies adopted to exert influence in these legislative processes.

Case 1 is treated in Sect. 7.2. Sub-section 7.2.1 sets the background to this EU decision-making process, highlighting that this was the first time that the EU adopted legislation to harmonize and regulate the pyrotechnic industries of its member states. Sub-section 7.2.2 focuses on the Maltese government's position in this legislative sphere and offers a background to its preferences requiring an 'uploading' into the EU's process. The strategies used by the government to do this are analysed in Sub-section 7.2.3 which deals with the decision-shaping stage of these EU legislative negotiations in the Council and the EP. Finally, Sub-section 7.2.4 focuses on the decision-taking stage of the negotiations.

Case 2 is presented in Sect. 7.3. The sub-sections found in this section follow precisely the same structure for Sect. 7.2.

Finally, Sect. 7.4 provides an overall assessment of whether Malta's government was successful in these EU legislative decision-making processes. It thus offers an initial cross-analysis of the main factors highlighted in the legislative cases, something which is further elaborated upon in Chap. 9.

One last point worth mentioning here is about the overall focus of this chapter. The chapter focuses mainly on the EU negotiations leading to the 2007 Directive (Case 1), since they represented the first opportunity for Malta's government, after attaining EU membership in 2004, to intervene directly in this legislative sphere. But of equal importance, there was also a real need to ensure that this book includes a study on the most recent EU decision-making process in this EU legislative sphere on the placing on the market of pyrotechnic articles. Therefore, there was a need to focus also on Council and EP negotiations leading to the EU legislation currently in force, i.e., Case 2 on the Directive 2013/29/EU of 12 June 2013 which superseded EC Directive 2007/23/EC.

7.2 Malta's Government in the 2005–2007 EU Legislative Negotiations Adopting Directive 2007/23/EC on the Placing on the Market of Pyrotechnic Articles: Case Study 1

7.2.1 Background

This sub-section presents the background to why the EU, particularly the European Commission, decided to propose legislation in this precise policy sphere.

Therefore, before delving into analysing the subtleties of the negotiations on Directive 2007/23/EC and its successor (Directive 2013/29/EU (recast)), it is vital to take a step backwards to understand the *rationale* behind these EU legislative acts, particularly the Commission's thinking and aims for the necessity of such directives.[4]

It must be said that the Commission made its intentions clear about its ambitions to regularize and harmonize the market of such articles as far back as 1993 when a Council Directive (93/15/EEC of 5 April 1993) on explosives was adopted. In that instance, the Commission pushed for the inclusion of pyrotechnic articles to be incorporated in that directive which would have effectively meant the regularization of the EU pyrotechnic industry as early as that date. This did not happen, and therefore, the Commission was adamant that future legislation should cover such products. As is explained in Sub-section 7.2.3 of this chapter, this process was launched in 2003 when the Commission started preliminary talks and consultation meetings with the relevant stakeholders in this industry.

The aims behind the Commission's adopted legislative proposals (COM (2005) 457 of 11.10.2005 and COM (2011) 764 of 21.11.2011) were mainly twofold. It first wanted to ensure that pyrotechnic articles, i.e., the market in fireworks[5] and also that of the automotive industry,[6] move freely in the EU's Internal Market (IM) as established under competition and internal market rules, notably the 'four freedoms'. However, it also wanted to ensure that besides the trade aspect being respected, there was a new body of minimum standards[7] set to safeguard the health and safety of consumers and professional end-users alike, thus reducing the frequent number of accidents occurring in the EU. New legislation was, therefore, necessary to regulate not only the production of

fireworks, but also their use. One must bear in mind that fireworks are not only let-off during shows or festivals. They are also used for theatrical purposes of entertainment and on-stage use, and for the labeling of automotive pyrotechnic articles (as mentioned above) which includes the circumstance of sales being made to professional users.

Indeed, the overall aim was to establish a single market for pyrotechnic articles (through the enactment of a single directive harmonizing safety requirements), thus replacing the complex legal and administrative framework which at the time consisted of 25 parallel national approval procedures (and with future EU accessions about to materialize increasing this number). Needless to say, the lack of harmonization existing before the adoption of the 2007 directive was also proving to be detrimental to the EU producers of such articles themselves. Having to trade and adhere to different requirements set by each EU member state was extremely burdensome and costly. For instance, prior to the adoption of the 2007 directive, it was very often necessary to test these products—which was estimated at €25, 000 per approval (EP Report 19.9.2006: 44). Therefore, most EU member states and their respective industries (Malta included) indicated that they supported a Commission proposal for a directive on pyrotechnics during consultation talks which the Commission held with them before its adoption of the draft proposal. Only the authorities of the UK and Sweden believed that harmonized rules were not needed (interview held with a Commission official on 13 January 2014 in Brussels—this information is confirmed in an internal Commission background note for a bilateral meeting between the Commissioner and Malta's Minister of Foreign Affairs held in Brussels on 30 January 2006).

The words of the then European Commissioner for Health and Consumer Policy, Markos Kyprianou, during an EP plenary session held on 29 November 2006, best illustrate this situation:

> The directive will create an internal market and thus uniform and better framework conditions for pyrotechnic articles, which comprise fireworks but also airbags and seatbelt pretensioners… It does not make sense for 27 Member States to prescribe different technical regulations for pyrotechnic articles, while their citizens within a Europe of open borders can easily shop for fireworks in neighboring countries. The protection of consumers will therefore be decisively improved because pyrotechnic articles sold to

> consumers anywhere in the European Union must in the future fulfill the essential safety requirements of the directive and will be subject to conformity assessment.

In short, there were two main sector-based aspects involved in the Commission's legislative proposals, one being trade and the other consumer health and safety.

As stated in the chapter's introduction, Sect. 7.2 examines the EU decision-making process on the adoption of Directive 2007/23/EC. In its first reaction to the Commission's adopted proposal of 11 October 2005, the EP observed that it included a number of controversial issues in the proposal that were linked with the market in fireworks, such as a definition of a minimum age for handlers, individual member states' freedom to set rules and, of crucial importance for Malta, specific marketing processes arising from cultural or religious traditions, amongst others (EP Report, 19.9.2006: 37). Malta's main concern in this negotiation was highlighted by this report which observed that according to the Commission's legislative proposal, certain fireworks created for personal use (in Malta's case, to satisfy certain cultural, traditional, and religious festivities) would be caught under this law, precisely under draft Article 2(2) which defined what is meant by 'the placing on the market' for the application of this directive (COM (2005) 457: 12).

The next sub-sections of the chapters (7.2.2, 7.2.3, 7.2.4) deal specifically with the Maltese government's requirements and priorities during the 2005–2007 legislative negotiations and how the government set about to upload its interests in this decision-making process. Figure 7.1 illustrates the timeframe of these negotiations with the main key dates and events being indicated. This figure also distinguishes, by means of color shades, between the two stages of decision-shaping and taking. It, therefore, displays the decision-shaping stage, starting from the Commission's adopted proposal on 11 October 2005 to the decision-taking stage culminating in the adoption (by QMV and at first reading of the co-decision legislative procedure—as it was called at the time of these negotiations, i.e., before the entry into force of the Treaty of Lisbon on 1 December 2009 which renamed it the 'ordinary legislative procedure') of Directive 2007/23/EC on 23 May 2007 by the Council and the EP.

Complementing Fig. 7.1 is Table 7.1 which lists the Council Presidencies with the main events occurring in these negotiations.

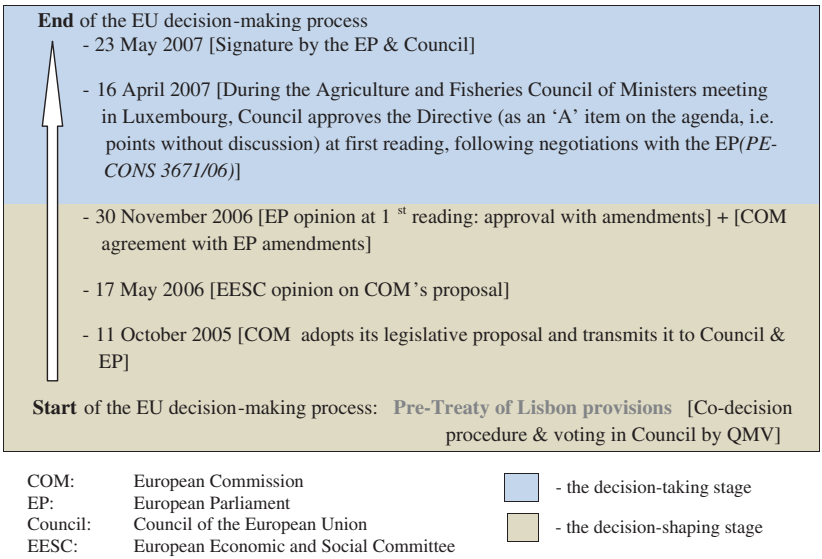


Fig. 7.1 Key dates in the 2005–2007 EU legislative negotiations to adopt Directive 2007/23/EC. *Source* Figure based on the PreLex database on inter-institutional procedures: http://ec.europa.eu/prelex/apcnet.cfm?CL=en (accessed on 13.02.2014)

Table 7.1 EU Council Presidencies and events in this process

Timeline and stages	*EU member state*	*Events*
July–December 2005	United Kingdom	European Commission Proposal on 11.10.2005
January–June 2006	Austria	None
July–December 2006 [decision-shaping]	Finland	- 4 & 10 July 2006: the start of discussions in the Council at working group level; - EP opinion (1st reading) on 30.11.06
January–June 2007 [decision-taking]	Germany	- Council of Ministers approval (1st reading) on 16.04.07; - Adoption of legislative act on 23.05.07

Source Table compiled by the author

7.2.2 Malta's Objectives

From the outset, the Maltese government's objective for the negotiations on the placing on the market of pyrotechnic articles was that of achieving an exemption for local pyrotechnic manufacturers—by no means a simple feat to achieve in the EU—from falling within the scope of the proposed directive.

As seen, the Maltese government had problems with the Commission's proposal in the early stages of the decision-making process, i.e., the decision-shaping stage, since it enforced restrictive requirements in relation to the manufacture of pyrotechnic articles in the local market. Since, unlike other member states, Malta had longstanding national legislation in force (Chap. 33 of the Laws of Malta, 'Explosives Ordinance' of 15 July 1904 as successively amended through various Legal Notices) that regularized the local pyrotechnic industry, the government had to ensure that the Commission's proposal for a new directive in this matter would not dilute national legislation. Besides and of paramount importance, the government had to avoid the imposition of any EU legislation with the effect of creating new approval registration procedures and an increase in production costs for the local industry. In short, the government had to strive to maintain the 'status quo' domestically.

It must be stated from the outset that had EC Directive 2007/23/EC been adopted as initially proposed by the Commission, the Maltese pyrotechnic industry, made up of artisans who produce fireworks as part of the country's cultural and religious tradition and not for commercial purposes,[8] would have been badly affected, primarily due to added costs related to the imposition of health and safety requirements. Ultimately, this would have made fireworks production too costly for the few local manufacturers to sustain.[9] Thus, local producers were rightly concerned that the conformity assessment procedures as proposed by the Commission would have resulted in large costs making firework production a problem in the short-term and unsustainable in the medium-to-long term. This would have effectively marked the death of the local industry (interview with government official, Valletta, 13 November 2013).

Thus, although agreeing with the noble aims of the directive (as stated, Malta's industry was already regulated under national law), the Maltese government disagreed with the Commission over the principle of linking the process of manufacture of pyrotechnic articles with their actual use. It was, therefore, imperative for the government to cut any

link that existed in the Commission's proposed Article 2 on 'definitions' about the term 'manufacturer' and about the 'use' of such articles by the same manufacturer. In Council, the government thus intended to press for an amendment to the legislative text to delete the wording: 'for his own professional or private use' from draft Article 2(5) of the Commission's proposal (COM (2005) 457: 12). This would have had the effect of excluding local firework producers manufacturing such products for their own use (such as in festivals or village feasts) from being caught within the directive's scope. In other words, and as asserted in the next section of this chapter, the government argued that this directive should not go beyond its scope, which was simply that of regulating the placing of such articles on the market and not on their use, the safety of which was already provided for in domestic legislation.

In short, the manufacture of fireworks plays a dominant role in Malta and its slow death due to a rise in production costs would have been problematic for Malta's government to explain and justify to its electorate. The government, therefore, had to ensure that this situation would not materialize and that the imposition of uniform Europe-wide testing and licensing procedures for pyrotechnics had to be prevented. It, therefore, set out immediately to influence legislative negotiations in the Council and in the EP too.

7.2.3 The Decision-Shaping Stage

7.2.3.1 Malta's capacities and strategies in the Council of the European Union

– Malta's capacities (variables 1–3):

The Maltese government's administrative capacity was quite weak in quantitative terms, i.e., the number of public officials working on the dossier. In fact, there were only three main players involved in the technical legislative negotiations during the decision-shaping stage, i.e., at Council Working Group level [besides the deputy Permanent Representative (DPR) who was also involved in the decision-shaping stage in Coreper I—see Chap. 4]. These were the following:

– the technical attaché at the Permanent Representation of Malta to the EU in Brussels;

- the policy officer at the EU Secretariat (at the time within the office of the Prime Minister);
- the national expert from the Malta Standards Authority (MSA).

As already explained in Chap. 4, a technical attaché is a government official who follows the dossier and represents the government mainly at Council Working Group level in Brussels. The attaché's prime responsibility is to report back to the capital and to lobby within the Council's structures and also with other EU institutions, such as the Commission and the EP. With direct reference to the Council's hierarchical structure (see Chap. 4), technical attachés in Council are not only involved in Working Groups, but also in Coreper meetings to assist PRs (or DPRs depending on the legislative sphere—for instance, the pyrotechnic dossier falls under the EU policy spheres of consumer and health and the internal market which are both Coreper I issues and, therefore, under the remit of DPRs). Technical attachés also form part of governmental delegations participating in the Council of Ministers.

As observed in Chap. 6, policy officers within the EU Secretariat only have a co-ordinating role in the government's 'uploading' process in EU decision-making. This is to ensure that communication between the capital and Brussels takes place and that the national position is approved by the relevant domestic administrative and political structures before government intervenes in Council. In this particular dossier, the EU secretariat official had to ensure that the relevant information was being sent from the MSA to the government's line ministry—at the time, the Ministry for Competitiveness and Communications (MCMP)—and eventually to the attaché at the Permanent Representation in Brussels. Once Council meetings end, the EU secretariat ensures that a report on the proceedings of the meeting attended is sent to the relevant ministry ensuring rapid communication and early preparation for the next Working Group meeting.

Whereas other EU member state governments benefited from larger teams of experts,[10] Malta's government only had one national expert from the MSA. However, as explained further on in this section and contrary to what one might have expected due to the government's small administrative capacity when compared to other delegations, Malta's government was technically coherent and was able to 'speak' with one voice in these negotiations. As illustrated by this case, the small administrative structure in Malta may be said to constitute a strength rather than

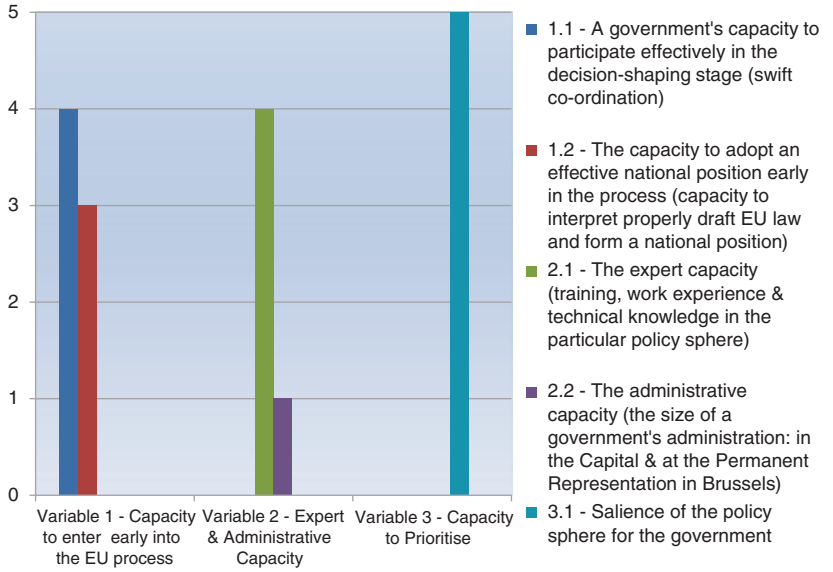


Fig. 7.2 Data on Step 1 variables of the 'decision weights and measures' approach for the Maltese government.[12] *Source* Figure compiled by the author with data collected from interviews with Maltese government officials

a weakness. This may be explained through certain characteristics found in the government's structures, such as direct access and communication between the technical and political levels in the government's structures. In this case, the national expert had direct access not only to the technical attaché and the deputy permanent representative in Brussels but also to the minister himself. Thus, the channels of communication were characterized by a direct, and rather informal, way of working together that helped the government's coherence and overall performance in these negotiations.

Even though in this case, Malta's government had a minimum number of policy players involved, and it did not lack expertise. As stated, this EU policy/legislative sphere represents an area of salience to the government which is demonstrated in Fig. 7.2. As may be observed (the methodology of which has already been discussed at length in Chap. 5—see Sect. 5.3), Fig. 7.2 indicates positive or negative ratings (according to a 0–5 ratio with 0–2.5 representing a negative rating and 2.5–5

representing a positive one) for the government's capacities to influence EU decision-making processes which the book classifies into three main variables[11]:

- **Variable 1**: the capacity to enter the EU legislative process as early as possible;
- **Variable 2**: the expert and administrative capacity;
- **Variable 3**: the capacity to prioritize.

Figure 7.2 indicates positive ratings for all these variables (they are all above the 2.5 mean and, therefore, are rated as positive) except for Sub-variable 2.2 on the government's administrative capacity in relation to its very small administrative base (Sub-variable 2.2 is below the 2.5 mean having scored 1). As stated in Chap. 5, these data (which is also found in 'Step 1' of Table 9.1 in Chap. 9) have been collected through interviews held with the relevant government officials (having worked on Malta's interests in these EU legislative negotiations) and represent an overall average of the data gathered.

- Malta's strategies (variables 4–6):

The start of Malta's response to the Commission's intentions to propose legislation in this policy sphere may be identified in a letter sent to the Commission by Malta's Permanent Representative on 3 May 2005—this letter represents the start of the formation process of the government's national position on this subject matter. The letter was a response to the Commission's consultation process with stakeholders (the agenda-setting stage as explained in Chap. 4) that took place mainly during 2003 as part of its internal preparations to adopt a legislative proposal, something which materialized on 11 October 2005 (see Fig. 7.1). Malta's government, not having participated in the consultation process, was still on time to put forward any 'problems' that it may have foreseen in the Commission's draft text.[13] A Maltese government official (interview conducted in Valletta on 13 November 2013) who participated in these negotiations confirmed that the government's review on the Commission's consultation process occurred truly by coincidence and as soon as the government, having achieved EU membership on 1 May 2004 (and hence after the Commission's adoption of the legislative proposal) was able to access an internal online directory giving access to the complete list of planned forthcoming EU legislative proposals (referred

to as pipeline *acquis communautaire*). Thus, Malta was about to miss the crucial and fundamental stages of agenda setting, where its preferences could begin being uploaded early in the process.

Malta's letter of 3 May 2005 thus had the effect of precisely doing this—that of highlighting the government's main issues and preferences to the Commission, making it aware of its concerns prior to the adoption of the proposal (which occurred in October 2005). These concerns were reflected in a Commission Impact Assessment issued by the Commission's Chemicals unit (within the Enterprise and Industry Directorate-General) on the same day as the adoption of its legislative proposal (these documents are presented together to the Council and the EP). On page 11 of the impact assessment, one is able to find Malta's concerns:

> Malta in principle supports the Directive, but has requested exemptions for handmade fireworks used at religious festivals and which are not sold on to consumers. The Commission should be prepared to discuss this issue during the meetings in the Council working group following the adoption of the draft proposal. (European Commission Impact Assessment 2005a: 11)

This paragraph is crucial for Malta's government, because it demonstrates that the Commission was made aware of Malta's concerns and that it was ready to discuss this issue further. It also sent a signal to the Council Presidency and other EU member state governments that they should expect a proper discussion to emerge on this issue once Council negotiations begin at Working Group level and hence, at technical level. This, therefore, eased the way for the government to be able to introduce its arguments by uploading them into the EU's agenda *before* the start of legislative negotiations in Council.[14]

The above argument about Malta's government having uploaded its concerns before the start of legislative negotiations in Council may be confirmed by referring to recital (7) of the Commission's adopted proposal (COM (2005), 457 final, recital 7, p. 10). The wording of the draft legislative text is more or less extracted from the wording of the impact assessment cited above. Both paragraphs (found in the separate documents), therefore, very closely match each other, albeit without the legislative proposal explicitly mentioning Malta:

> The use of pyrotechnics and in particular the use of fireworks, is subject to markedly different cultural customs and traditions in different Member States. This makes it necessary to allow Member States to take national measures to limit the use or sale of certain categories of fireworks to the general public for public security or safety reasons.

This recital demonstrates how crucial the government's strategy of feeding its position to the Commission before the adoption of the proposal was and how it managed to sow seeds for success in the negotiation to follow. Recital (7) of the Commission proposal was eventually amended during the course of the negotiations in Council and the EP with the gist of Malta's position (emphasis added in bold text below) featuring under recital (8) of the adopted legislative act:

> According to the principles set out in the Council Resolution … **In view of religious, cultural and traditional festivities in the Member States, fireworks built by the manufacturer for his own use and which have been approved by a Member State for use on its territory should not be considered as having been placed on the market and should not therefore need to comply with this Directive**. (Directive 2007/23/EC, pp. 1–2)

Having said this, the government was not satisfied with the recital's broad wording on the use of fireworks which is subject to differing customs and traditions among EU member states. Thus, while pushing the Finnish Council Presidency (as shown above) for its amendments to the recital to be taken on board, it simultaneously tabled new amendments to be effected to the body's text and hence to specific legislative articles of the proposed directive. This was done to ensure that Maltese manufacturers would not be caught by the scope of this law.

Malta's government thus aimed for amendments in line with its position to be effected to the legislative article on 'exclusions', i.e., Article 1(4) of the Commission's proposal. The government's interventions in the Council Working Group ran parallel to its recommendations in the aforementioned letter to the Commission. Thus, Malta's main preference was to amend Article 1(4) of the draft legislation by inserting a new clause half way through the article's list [a new point (c), emphasized hereunder in underlined text] that would practically exclude all local fireworks manufacturers:

4. This Directive shall not apply to:

(a) Pyrotechnic articles intended … the police or fire departments;
(b) Equipment falling … Directive 96/98/EC;
(c) Fireworks manufactured by 'registered/licensed' artisans in a traditional way, intended to replicate original and historical pyrotechnic articles, built predominantly with the original materials and labeled as such by the manufacturer, and intended for own use, provided that they are not subsequently placed on the Community market during a period of 'X' (to be established) years;
(d) Pyrotechnic articles … industry;
(e) Percussion caps … safety of toys;
(f) Explosives falling … Directive 93/15/EC;
(g) Ammunition … guns and artillery.

Even though the government made its position extremely clear on this point from the very start of the process, i.e., in the agenda-setting consultation stage, it, however, failed to convince the Commission enough for this to be included in Article 1(4) of its adopted proposal [i.e., Malta's point (c) is not to be found in the Commission's proposal of 11 October 2005]. Therefore, the government had to insist on this point once discussions began in the Council's Working Group on 4 July 2006 and request the Finnish Council Presidency to insert a new sub-point to paragraph 4 (as illustrated above). The government's justification for this was that its situation was indeed unique in the EU and that the exclusion of its extremely small number of firework manufacturers from the directive was not going to affect in any way the declared Commission's objective of creating a single market in pyrotechnic articles with a high level of consumer protection.

Malta's government, therefore, had to take a pro-active role throughout the negotiations for this to occur. It, therefore, adopted a pace-setting strategy (variable 4 as explained in Chap. 5) to engage pro-actively with other parties to the negotiations. Therefore, the government lobbied the Commission and the relevant Directorate General, i.e., DG Enterprise and Industry (Sub-variable 4.1). A senior government official emphasized (interview conducted in Valletta on 13 November 2013) that Malta used all resources at its disposal to try and convince primarily the Commission—which was singled out as the main opposing camp in these negotiations, as illustrated in Table 7.2—since most other EU governments in Council were sympathetic with Malta's position (even though they did not share exactly the same concerns or, in the case of

other Mediterranean states sharing similar firework traditions with Malta, were not aware of the potential benefits that the Malta amendments, explained later on, would have on their industries).

Malta's lobbying efforts can be demonstrated quantitatively in Table 7.3 and Graph 7.1 (see also 'Step 2' in Table 9.1 of Chap. 9)—the decision weights and measures scoreboard (discussed in Chap. 5)—which includes data revealing extremely high intensity levels on the part of the Maltese government lobbying the Commission and its services [except for seconded national experts (SNEs) working in the Commission] and low-to-medium levels for the lobbying of the Council Presidency and the Secretariat. The extremely low levels ('0' out of '5')

Table 7.2 Overview of delegations' positions in relation to Malta's amendments in Council

Malta issues (Legislative articles)	*Delegation/s*	*Status (For or against Malta's amendments)*	*Justification/s*
1. Article 1(4)	1.1 The Commission	1.1 Against	1.1 The Commission was against Malta's request to add a new point (c) to this draft article. It was against extending the scope of the article on exclusions
2. Article 2(2)	2.1 The Commission	2.1 In favour	2.1 The Commission could live with Malta's amendment on Article 2 on definitions since the safety of pyrotechnic production would continue to be regulated by the national provisions of the member states
3. Article 2(6)	3.1 The Commission	3.1 In favour	3.1 Same as 2.1 above

Source Table compiled by the author with data collected during interviews with Maltese government and EU officials.

Note Other delegations do not feature in this table since they did not pronounce themselves (intervene) in Council on these specific paragraphs of the draft legislative articles

Table 7.3 Independent Variable 4: Sub-variable 4.1 on the pace-setting strategy (Like Table 7.2, data for this table has been collected through interviews with Maltese government, Commission and Council Secretariat officials with results representing an overall average.)

Sub-variable 4.1—Pace-setting through lobbying
Scale: [5=successful/+ve; 2.5=medium; 0=not successful/-ve]
5 = Yes, at extremely high levels of intensity;
4 = Yes, at high levels of intensity;
3 = Yes, but at medium-to-high levels of intensity;
2 = Yes, but at low-to-medium levels of intensity;
1 = Yes, but at extremely low levels;
0 = None
Measurable indicator 4.1.1: Lobbying the Council
• 4.1.1.A – Lobbying the Council Presidency [0] [1] [2] **[3]** [4] [5]
• 4.1.1.B – Lobbying the Council Secretariat [0] [1] **[2]** [3] [4] [5]
Measurable indicator 4.1.2: Lobbying the European Commission
• 4.1.2.A - Lobbying the Commissioner network [0] [1] [2] [3] **[4]** [5]
• 4.1.2.B - Lobbying the Commission Directorate-Generals [0] [1] [2] [3] [4] **[5]**
• 4.1.2.C - Lobbying SNEs in the Commission **[0]** [1] [2] [3] [4] [5]
• 4.1.2.D - Lobbying the Commissioner responsible for the dossier [0] [1] [2] [3] [4] **[5]**
Measurable indicator 4.1.3: Lobbying large state governments **[0]** [1] [2] [3] [4] [5]
Measurable indicator 4.1.4: Lobbying small state governments **[0]** [1] [2] [3] [4] [5]

Source Table compiled by the author

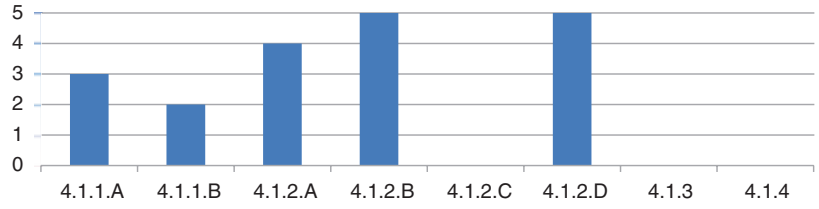
for the lobbying of other member states may explain why other governments, unaware of the potential benefits that Malta's amendments to Articles 1(4), 2(2), and 2(6) would have had on their respective pyrotechnic industries, did not intervene in Council Working Group meetings to support Malta's position on these articles. As explained in the conclusion, other Mediterranean states, such as Spain, Portugal, Italy, Greece, and Cyprus, could have been potential allies to Malta's cause in these negotiations, since they too share a similar cultural heritage as that of Malta. Therefore, the Commission's proposal was also going to affect their pyrotechnic industries negatively. As emphasized by a Commission official:

> the support of other Mediterranean states with similar traditions would have made life easier for Malta during the negotiations. (interview held in Brussels on 13 January 2014)

However, even though the Commission was lobbied quite strongly on this issue with bilateral meetings taking place at both political[15] and technical[16] levels, the Commission was a 'hard nut to crack'. A Maltese government official (interviewed in Valletta on 13 November 2013) observed that the Commission was viewing this issue through a totally different lens from Malta. The Commission wanted to regularize and diminish the rate of fireworks related accidents occurring in the EU, many of which were fatal:

> … the Commission official even brought along with him a very thick file of fatal and serious accidents that happened in Malta over the years to ask whether the government was in favour of reducing and terminating such pitiful situations happening. They therefore made their research very well and were trying to mix this issue up with the placing on the market of these articles. This is the policy line Malta stressed 'ad nauseam' at all times … that even though Malta wishes to mitigate as much as is technically feasible and through all possible sorts of measures the frequency of incidents occurring during fireworks production, this should not be confused with their placing on the market… they are completely separate issues… The Commission was therefore moving out of the remit of the proposed directive….

Malta's government was in fact interpreting the Commission's proposal as one solely introducing minimum safety requirements to protect both the general public and professionals while eliminating or avoiding any barriers to trade and preventing distortion of EU competition rules due to differing national regulatory systems. The focus was, therefore, on the protection of *users* while improving conditions for the well functioning of the EU's internal market. The government, therefore, argued that the



Graph 7.1 Columns indicating the scores emerging from Table 7.3 for Sub-variable 4.1. *Source* Graph compiled by the author

Commission was incorrect to interpret its adopted proposal as one that *directly* addresses accidents involving fireworks, especially those occurring during the process of their manufacture.

To this end and as illustrated in Table 7.4 (and Graph 7.2), the government adopted another pace-setting strategy besides the one on lobbying, i.e., pace-setting through norm advocacy and effective intervention in Council deliberations (Sub-variable 4.2, as discussed in Chaps 3 and 5). The government, therefore, used its diplomatic capacity, such as in the use of clear and effective language and style as a tool to attract and win support for its arguments in Council negotiations. As illustrated in Table 7.4, the Maltese government's strategy to pace-set by engaging effectively with other parties to these negotiations scored 4 out of 5 (see measurable indicator 4.2.2 in Table 7.4). It also used its diplomatic capacity to put forward moral arguments to persuade other delegations that the issues at stake were of fundamental importance to it. In this latter case, Malta's government scored 3 out of 5 (see measurable indicator 4.2.1 in Table 7.4). In fact, as soon as the government comprehended that the Commission was not ready to accept its amendments to Article 1(4) of the proposal, the government increased its persuasiveness in Council Working Group meetings about the genuine nature of its request, primarily that fireworks manufacturers producing fireworks for their own use should be excluded from falling within the scope of the proposed directive.

Therefore, since the negotiations were still at the decision-shaping stage (with many amendments also being requested for by other governments to other draft articles of the legislative proposal), the Maltese government likewise put forward its requests. However, unlike before, the government requested for amendments to be effected no longer to Article 1(4) on 'exclusions' but to Article 2 on 'definitions'.

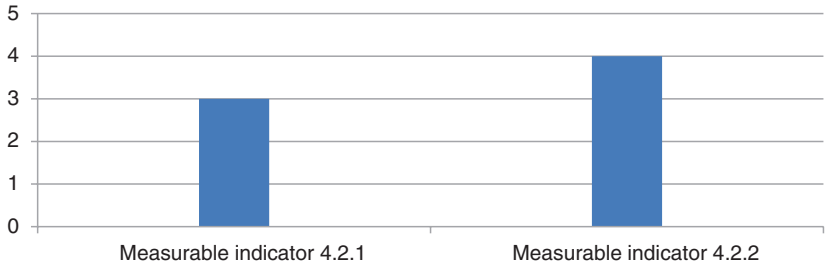
As just stated, Article 2 of the Commission's proposal dealt with the directive's 'definitions' with one of its paragraphs defining the term 'manufacturer'. The government thus put forward the argument that the definition of 'manufacturer' found in Article 2(5) of the proposal was unclear and not in line with the principles of the 'New Approach' on European standardization found in the Commission's (blue) 'Guide'.[17] The government, therefore, suggested omitting the following words (indicated as strikethrough text) from Article 2(5) of the legislative proposal:

'Manufacturer' means the natural or legal person who designs and/or manufactures a product covered by this Directive or who has such a product designed and manufactured, with a view to its placing on the market ~~or for his own professional or private use~~ under his own name or trademark; or places a product covered by this Directive on the market under his own name or trademark.

Table 7.4 Independent Variable 4: Sub-variable 4.2 on the pace-setting strategy (Like Tables 7.2 and 7.3, data for this table have been collected through interviews with Maltese government, Commission and Council Secretariat officials with results representing an overall average.)

Sub-variable 4.2—Pace-setting through norm advocacy & effective intervention in Council deliberations
Scale: [5=successful/+ve; 2.5=medium; 0=not successful/-ve]
5 = Yes, at extremely high levels of intensity;
4 = Yes, at high levels of intensity;
3 = Yes, but at medium-to-high levels of intensity;
2 = Yes, but at low-to-medium levels of intensity;
1 = Yes, but at extremely low levels;
0 = None
Measurable indicator 4.2.1:
• A government's capacity to persuade through moral convictions [0] [1] [2] **[3]** [4] [5]
Measurable indicator 4.2.2:
• A government's diplomatic leverage & capacity to engage effectively [0] [1] [2] [3] **[4]** [5]

Source Table compiled by the author



Graph 7.2 Columns indicating the scores for Sub-variable 4.2. *Source* Graph compiled by the author

This amendment on its own would have had the effect of safeguarding all fireworks factories in Malta from being caught within the scope of this directive that manufacture and display *their own* pyrotechnic articles. This would have been irrespective of whether the 'traditional fireworks' exclusion clause put forward by Malta to Article 1(4) of the Commission's proposal was to be accepted in Council at a later stage in the negotiations (as stated further on, this did not materialize). Therefore, this amendment effectively excluded all fireworks factories in Malta from falling under the Commission's definition and thus as not placing such products on the market.[18]

The Commission signalled in Council that it could live with Malta's suggested amendments to paragraph 5 of this article, since it meant that this kind of activity would still be regulated by means of relevant national legislation. A Commission official observed that this point was already made clear to the Maltese delegation during the bilateral meeting between Malta's Foreign Affairs Minister and the Commissioner (mentioned earlier) before the start of Working Group meetings in Council. The Commission was also reacting to Malta's request on this point which it first received in the government's letter of 3 May 2005 (interview held in Brussels on 13 January 2014).

As observed by a Commission official who participated directly in these Council negotiations, the Maltese government intervened effectively in Council which confirms the high scores obtained in Table 7.4:

> Malta managed to put forward justifiable arguments with which the Commission could live. (interview held in Brussels on 13 January 2014)

This definition on manufacturers was eventually moved by the Council Presidency to another paragraph in the same legislative article, i.e., Article 2(6) in the adopted act with only very minor amendments effected to Malta's proposed clauses. In the quote below, one may observe that the wording on 'for own or professional use' by fireworks producers, in line with Malta's interests, vanished from the text (these amendments are emphasized through underlined and strikethrough text):

> 'Manufacturer' means ~~the~~ a natural or legal person who designs and/or manufactures a ~~product covered by this Directive~~ pyrotechnic article, or who ~~has such a product~~ causes such an article to be designed and

> manufactured, with a view to placing it on the market under his own name or trademark; ~~or places a product covered by this Directive on the market under his own name or trademark~~.

Besides these amendments to paragraph 5 of the Commission's adopted proposal, the Maltese government continued to persuade the Presidency, the Commission and a majority of governments through interventions in Council Working Group meetings, to add wording to paragraph 2 of the same article on definitions (Article 2). Interestingly, one may see that this wording (cited hereunder) is in line with the previously illustrated Malta wording to Article 1(4) of the proposal:

> 'Placing on the market' means the first … **Fireworks built by the manufacturer for own use in the territory where they are produced are not considered as being placed on the market**. (emphasis added in bold)

This wording was agreed to (once again with minor changes—illustrated hereunder in underlined text, whereas the deletion of some of Malta's wording is illustrated in strikethrough text) at Working Group stage and, therefore, at the decision-shaping and technical stages of the process which eased the way for the government during decision-taking. The adopted text on Article 2(2) of Directive 2007/23/EC of 23 May 2007 (OJ L 154, 14.6.2007, p. 4) reads as follows:

> 'Placing on the market' means the first … Fireworks built by ~~the~~ a manufacturer for his own use ~~in the territory where they are produced~~ and which have been approved by a Member State for use on its territory are not to be considered as ~~being~~ having been placed on the market.

An interviewed Commission official who followed closely these negotiations observed that these two paragraphs of Article 2 [i.e., paras (2) and (6)] are in fact still known today among EU circles as the 'Malta clauses'. When asked what made the Commission live with Article 2(2) when it previously disagreed and opposed similar suggested wording by Malta to Article 1(4) on exemptions, the official observed that Malta's request made much more sense in an article covering definitions and that, generally, the Commission would always 'frown' upon delegations that directly request derogations or exemptions from EU legislation; however, genuine, they may be. In other words, it is very difficult to convince the

Commission of the need for exemptions from the applicability of EU legislation.

As observed by the Commission official, this was a very diplomatic and effective manoeuvre on Malta's part to put forward arguments about the omission of Commission wording on manufacturers' use of their own products (in this case, fireworks) that was not in line with its blue guide (previously mentioned). Besides and of paramount importance, the government's suggested text did not disrupt or hinder the double proclaimed Commission objective of introducing minimum safety requirements protecting the general public and professionals alike while creating a single market in pyrotechnical articles:

> The gist of Malta's argument was that this legislation was about protection afforded to users and should not get into the matter of manufacturers using such articles for their own professional or private use. Thus, the legislation should not trespass the dividing line between placing such articles on the market and on their use by the same manufacturers. (interview held in Brussels on 13 January 2014)

As observed earlier, the following table and graph (see also 'Step 2' in Table 9.1 of Chap. 9) illustrate Malta's medium to high intensity levels of pace-setting through norm advocacy and effective intervention in Council deliberations (Sub-variable 4.2).

7.2.3.2 Malta's Capacities and Strategies in the European Parliament

Before focusing on the more recent negotiations on the recast directive of 12 June 2013, one must look at discussions being held in the EP at the same time that Council negotiations were taking place [as discussed in Chap. 4, both these EU institutions represent the legislative chambers of the EU with inter-institutional negotiations defined by Article 294 (TFEU) on the 'ordinary legislative procedure']. Besides employing pace-setting strategies in Council, the Maltese government also lobbied the EP through Maltese MEPs in relevant EP committee groups (as observed in Chap. 6, Malta today has a total number of six seats in the EP. However, during these legislative negotiations, Malta had a total allocation of five seats under the pre-Treaty of Lisbon arrangements).

The EP committee having the lead responsibility over this legislative file was the Committee on the Internal Market and Consumer Protection (IMCO). The committee's *rapporteur* on this legislative file

was Jose Hasse Ferreira, a Portuguese MEP from the PES [the Party of European Socialists which added "Socialists and Democrats" (S&D) to its name in March 2014]. Needless to say, this fact alone helped the Maltese cause, due to similarities existing between the two countries sharing similar traditions in relation to pyrotechnic displays. The other EP committee which examined this proposal (by delivering an opinion only) was the Industry, Research and Energy Committee (ITRE).

IMCO's report of 19 September 2006 (the IMCO committee adopted this report on 14 September 2006 with 31 votes in favour and none against) included the Maltese government's position on the amendments (previously outlined) being requested for in Council. For instance, IMCO's report (EP report 2006: 8) included an amendment to the Commission's recital about religious, cultural, and traditional festivities in member states that make use of pyrotechnic articles:

> … In view of religious, cultural and traditional festivities in the Member States, fireworks built by the manufacturer for his or her own use in the territory where they are produced are not considered as being placed on the market and do not therefore need to comply with this Directive.

Besides the amendment on the recital, the IMCO committee (EP report, 2006: 14 on amendment 22) also called for amendments to be effected to Article 2(2) and (5) in line with Malta's preferences:

> 'Placing on the market' means the first … **Fireworks built by the manufacturer for own use in the territory where they are produced are not considered as being placed on the market**. (emphasis added in bold)

IMCO's amendment (number 25) to Article 2(5) of the Commission proposal read as follows:

> 'Manufacturer' means the natural or legal person who designs and/or manufactures a product covered by this Directive or who has such a product designed and manufactured, with a view to its placing on the market under his own name or trademark. (EP report, 2006: 15)

As observed by a Maltese government official and by the IMCO report (2006: 15) itself about the EP's justification for this last amendment, it first brought the text in line with the definition on 'placing on the

market' found in paragraph 2, i.e., with Malta's suggestion about products built for own use not to be considered as being placed on the market. Second, the suggested wording provided a clearer definition in light of the principles of the 'New Approach' on European standards found in the Commission's blue guide (mentioned earlier) —this too echoed Maltese justifications for this preferred wording in Working Group and Coreper interventions in Council.

Interestingly, this report did not suggest the Maltese amendments to Article 1(4) on exemptions (previously illustrated). This is because by the time IMCO started to discuss this draft legislation, the government had already learnt in Working Group meetings (the decision-shaping stage) that the Commission was not in favour of such amendments to this article (for reasons mentioned earlier). It was also not supported by other delegations (even though this was tacit). Thus, by this time, the government 'fed' MEPs, not least 'its' (i.e. Maltese) MEPs that were directly involved in these discussions, with this information.

The names of the Maltese MEPs are to be found at the end of the IMCO report highlighting the procedure. For instance, John Attard-Montalto (PES) was involved in the ITRE committee's work (which as aforementioned provided solely an opinion to IMCO about the Commission's proposal) and was present for a vote taken by this committee on 30 May 2006. Joseph Muscat (PES) who was also present for the final IMCO vote, as a substitute member[19] (vote taken on 14 September 2006) was also directly involved in uploading and defending Malta's position in these legislative discussions (he has since become the PL's leader and Prime Minister of Malta). Interestingly, these two MEPs belonged to the PL (see Chap. 6) which was in the opposition in Malta's Parliament. They, however, still towed the government line putting the national interest before party politics. Therefore, the government here had individuals who were 'national champions' in a powerful EU institution and who were defending Malta's interests during technical and political discussions both at committee level and during the plenary session held in Strasbourg on 29 November 2006. In this latter instance, Muscat intervened as follows:

> … the amendments unanimously agreed on in the Committee on Internal Market and Consumer Protection acknowledge that there is a market for fireworks that are not sold directly to consumers but that are manufactured for use in licensed activities covered by insurance. These activities include the traditional festivals held mostly in the Mediterranean, including

> Malta… The original procedures would not have led to any changes in the way work is carried out, but would have brought about an increase in costs. In Malta's case, these would have been borne by the voluntary bodies that organize these festivals. (EP Debates, 29 November 2006, p. 4)

Interestingly, besides Maltese MEPs, Malta's government also managed to lobby a German MEP, Anja Weisgerber, hailing from the same political affiliation [the European People's Party (EPP)] as Malta's PN which was in government at the time and who like MEP Muscat, was also a substitute member of the IMCO committee group. In two IMCO committee meetings held on 2 May and 11 July 2006, she intervened in line with the Maltese government's position on one of the recitals and on Article 2(2) of the Commission's proposal. MEP Weisgerber's interventions are recorded in two separate EP documents displaying the proceedings of these meetings (PE 371.984v01-00 of 17 May 2006 and PE 371.984v02-00 of 19 July 2006). In both cases, Weisgerber's justifications for amendments to be made to recital 5b and Article 2(2) are the same and read as follows:

> Amendment by Anja Weisgerber
>
> Amendment 43
>
> Recital 5 b (new)
>
> (5b) In view of religious, cultural and traditional festivities in the Member States, it is possible for manufacturers that are also authorized to use fireworks to produce fireworks for own use and use them on the same territory.
>
> Justification
>
> In Malta handmade fireworks are produced for commercial use on religious holidays. Manufacturers are afraid that the conformity assessment procedures will result in large costs, making production impossible in the long term. Only manufacturers that are authorized to set fireworks off may use them. However, the circumvention of uniform Europe-wide test procedures must be prevented.
>
> Amendment 51
>
> Article 2, paragraph 2

> 2. 'Placing on the market' means the first making available on the Community market of an individual product, with a view to distribution and/or use, whether in return of payment or free of charge.
>
> **Fireworks are not considered 'placed on the market' when they are produced for own use by a manufacturer also authorized to use them and used on the same territory**.
>
> Justification
>
> In Malta handmade fireworks … the circumvention of uniform Europe-wide test procedures must be prevented. (same as above)

The Commission, observing that the EP was strongly pushing for the Maltese clauses to be adopted in the draft text, was at this stage ready to accept this wording to the recital and to Article 2(2) and (5) of its proposal. This is confirmed in a short briefing note of three pages used in a bilateral meeting Gunther Verheugen, the then Commissioner for Enterprise and Industry, had with members of the IMCO committee on 14 September 2006, i.e., on the same day that the MEPs voted in favour of the report. Of paramount importance to Malta's interests at the time, one is able to refer to page 3 of the Commission's briefing note which singled out Malta's case:

> **The proposal will be detrimental to cultural activities (festas) in Malta.**
>
> The amendment proposed by the Parliament's rapporteur offers a suitable solution to allow the local and limited use of self-made fireworks by the manufacturer (Commission briefing note 2006: 3)

7.2.4 The Decision-Taking Stage

Continuing from the last quote by the Commission, one is able to decipher the latter's willingness to accept the Malta clauses as put forward by the government in Council and, as also discussed in depth in the previous sub-section, as proposed by the EP and its IMCO committee. This was in fact the Commission's position in the EP plenary session in Strasbourg a few months later, i.e., 29 November 2006. Markos Kyprianou's (a European Commissioner at that time who replaced Commissioner Verheugen in that plenary session) words confirm that by this time and during this stage in the process (the political stage and, therefore, the start of decision-taking), the Commission accepted Malta's

preferences on the issue of the production and use of fireworks by manufacturers for their own use and on the same territory. Kyprianou's words confirm that the EP was pushing for the same cause as that of the Maltese government, i.e., that differences across the EU on traditional, cultural, and religious festivities should not be penalized through the entry into force of EU legislation that would make adherence costs about conformity to safety requirements exorbitantly high. The quote below from Kyprianou confirms that the EP was 'pushing the same boat' as that of the Maltese on this issue:

> The Commission is well aware that the use of fireworks is subject to different traditions and customs in the Member States. Therefore we can agree to the amendment proposed by Parliament that creation fireworks do not fall under the directive if they are produced by manufacturers for their own use.(EP debates, 2006: 1)

Indeed, all this demonstrates that Malta's government managed to exercise influence in these legislative negotiations primarily because it used its channels of influence well and effectively. That is, appropriate networks were used to influence the EU decision-making process. For instance, the previous sub-section has thrown light on how the Maltese government lobbied the EP so as to add more weight to its position in Council. As previously emphasized, the EP is a co-legislator and has an equal right to adopt or refuse EU legislation as much as the EU governments in Council. Therefore, it represents a crucial channel of influence for small state governments like Malta to tap into.

One is able to track the start of the decision-taking stage in these negotiations with the EP's decision on 30 November 2006 approving the draft legislative act at first reading, i.e., just a day after discussing the Commission's proposal as analysed in Sub-section 7.2.3. This was followed by the European Commission's agreement to the EP's amendments on the same day. In Council, when it was clear that the German Presidency had reached a general compromise with a majority of the delegations being able to vote in favour of the draft legislative text as amended by the EP (which meant that a QMV was achievable), a decision approving the draft proposal was taken at first reading on 16 April 2007. The draft legislative act was formally decided upon by Agriculture and Fisheries Ministers as an 'A' item (i.e., an item not discussed in the Council meeting of 16 April 2007) according to the Council's multilevel hierarchical structure discussed in Chap. 4.

Thus, the EU decision-making process on this legislative file came to an end with the EP's and Council's signature officially adopting Directive 2007/23/EC on 23 May 2007.

7.3 Malta's Government in the 2011–2013 EU Legislative Negotiations Adopting Recast Directive 2013/29/EU on the Making Available on the Market of Pyrotechnic Articles: Case Study 2

7.3.1 Background

Soon after Directive 2007/23/EC was adopted, the EU decided to harmonize and establish a common framework for the marketing of products (pyrotechnic articles included). This framework, which was part of the so-called New Legislative Framework (NLF), was adopted on 9 July 2008 in a decision of the EP and the Council (Decision 768/2008/EC, p. 82) laying down common principles and reference provisions intended to apply across sectoral legislation (to nine product safety directives) to provide a coherent basis for revision or recasts of that legislation.

This, therefore, laid the path for legislative techniques to be adopted by the Commission to align sectoral legislation—such as the one on the placing on the market of pyrotechnic articles—in conformity with an Interinstitutional Agreement (IIA) adopted by the EP, the Council and the Commission in 2001. This IIA laid down rules on the recast legislative technique, in particular on its procedural and presentational aspects. As a consequence, Directive 2007/23/EC required adaptation in line with the NLF and the IIA of 2001. The Commission thus decided that Directive 2007/23/EC should be reset, or better, recast into a new directive.

The recast legislative technique is used to repeal and replace a previously adopted act (in this case Directive 2007/23/EC) with a new one which may include any new amendments made to it during the recasting process.[20] This technique differs from others, such as codification, which is also used to amend previous acts albeit without any substantive changes. Therefore, in this particular recast negotiation on the placing on the market of pyrotechnic articles, it could be anticipated that the legislative discussions in Council and the EP would re-open some of the substantial issues already discussed and agreed to during the recently closed decision-making process adopting Directive 2007/23/EC.

Having said this, it was nevertheless the general view of the time (not least within the Commission—see the quote below) that this legislative text would not require a lengthy decision-making process. In fact, the aim was to maintain most of the substantive elements of the 2007 directive. Naturally, this last point was open for discussion, since, as explained above, the recast technique does allow for substantive changes to be made. However, as just stated, it was felt that this was not going to be necessary. A reason for this was that Directive 2007/23/EC had only been adopted just over a year before the decision on the adoption of the aforementioned NLF in 2008. Hence, re-opening discussions on substantive issues were considered as undesirable and as being a waste of resources.

Thus, the underlying aim behind recasting Directive 2007/23/EC was to align this act with a decision to establish a common EU framework for the marketing of products, albeit leaving enough freedom for amendments to be produced if necessary. In an interview held with a member of the European Commission (Brussels, 13 January 2014), this view was confirmed:

> the recast directive was to leave Directive 2007/23/EC largely intact, with only minor changes being necessary. The aim was definitely not to re-open a legislative discussion one year after its adoption but simply to align it with a decision about a common framework for the marketing of products in the EU.

However, the start of Council and EP discussions took place under a typical recast legislative framework, i.e., requests for a number of substantive changes to be made to the 2007 directive. One just needs to refer to the recitals of the adopted recast directive (precisely, to the first recital of Directive 2013/29/EU, p. 27) to understand that substantive changes to the previous act were in fact made:

> Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles has been substantially amended. Since further amendments are to be made, that Directive should be recast in the interests of clarity.

The following paragraphs thus give a brief overview of the Maltese government's behaviour in these legislative negotiations in its quest to

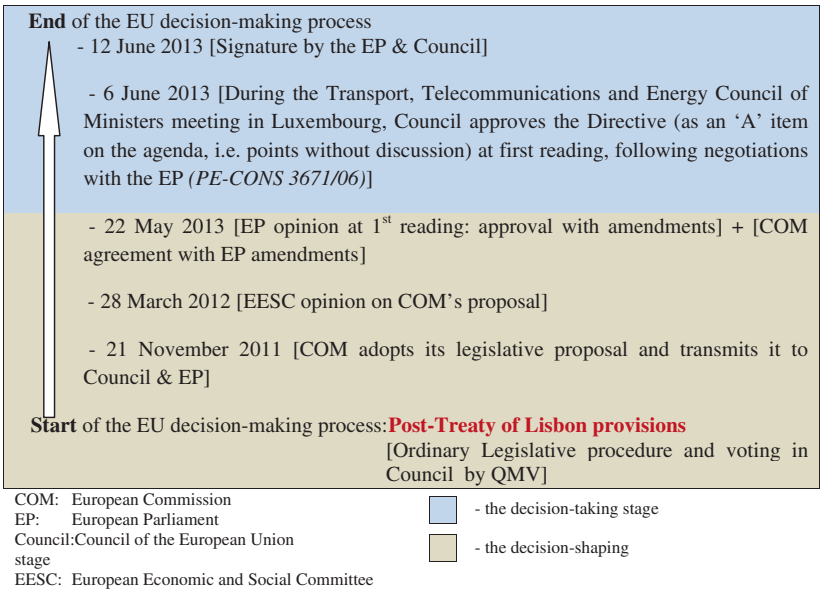


Fig. 7.3 Key dates in the 2011–2013 EU legislative negotiations to adopt recast Directive 2013/29/EU. *Source* Figure based on the PreLex database on inter-institutional procedures: http://ec.europa.eu/prelex/apcnet.cfm?CL=en (accessed on 13.02.2014)

achieve once again a desirable outcome from this process. The focus is, therefore, placed on the Malta clauses as found in Directive 2007/23/EC [as aforementioned, these are to be found in Article 2(2)(6) and recital (8)] and whether the text on these provisions were in any way amended in the discussions leading to the new recast directive, i.e., Directive 2013/29/EU.

In a similar vein to Fig. 7.1, Fig. 7.3 indicates the main key dates and events that occurred in these EU legislative negotiations. It also distinguishes between the decision-shaping stage, starting from the Commission's adopted proposal on 21 November 2011, and the decision-taking stage with the adoption by the Council and the EP of the new recast directive on 12 June 2013.

The Council Presidencies involved in the 2011–2013 EU legislative negotiations are set out in Table 7.5.

Table 7.5 EU Council Presidencies involved in this process

Timeline and stages	*EU member state*	*Events*
July–December 2011	Poland	European Commission proposal on 21.11.2011
January–June 2012 [decision-shaping]	Denmark	The start of discussions in Council at WG level
July–December 2012 [decision-shaping]	Cyprus	Discussions at Council WG and Coreper level
January–June 2013 [decision-taking]	Ireland	- Council Presidency compromise reached on 18.01.13; - EP (1st reading) approval (with amendments) on 22.05.13; - Council of Ministers approval (1st reading) on 06.06.13 [appearing as an 'A' Item on the Transport, Telecommunications and Energy Council agenda]; - Adoption of legislative act on 12.06.13 [signature of the Council and the EP]

Source Table compiled by the author

7.3.2 Malta's Objectives

From the outset, it must be said that the Commission's adopted proposal of 21 November 2011 included most of the text of the 2007 directive. Thus, the Malta clauses previously discussed in Sect. 7.2 formed part of this legislative proposal.

However, as already implied in Sub-section 7.2.3 and as illustrated in Table 7.6, France was not supportive of these articles, particularly the wording of Article 2(2) of the adopted 2007 directive. Because there was an opportunity brought about by 'recasting' the 2007 directive, the French delegation was determined to request that the wording of the Malta legislative article in relation to Article 2(2) on definitions (of the 2007 directive) be removed from the Commission's proposal for a recast directive.

Besides disagreeing with the Maltese requests to exclude from the scope of the directive any fireworks produced by manufacturers for their own use on the same territory, France also put forward a technical argument. It emphasized that the Commission's proposal was changing the scope of the legislative article dealing with 'exclusions' and that it was,

Table 7.6 Overview of delegations' positions in relation to Malta's amendments in Council

Malta issues (legislative articles)	*Delegation/s*	*Status (for or against Malta's amendments]*	*Justification/s*
1. Article 2(2)(g)	1.1 The Commission	1.1 In favour	1.1 The Commission was defending its wording of the draft proposal which was in line with Malta's position
	1.2 Spain	1.2 In favour	1.2 Spain and Malta share similar interests in the fireworks sector. Spain was, therefore, interested to defend the wording of the Malta clauses on the manufacture of fireworks for own use and on the same territory as their production
	1.3 The Cypriot Presidency	1.3 In favour	1.3 Same as Spain. When Cyprus held the Council Presidency, it facilitated maintaining the Malta clauses (found in the 2007 directive) in the recast directive
	1.4 France	1.4 Against	1.4 France was against changing the scope of the 2007 directive as found in Article 2(2)(g) arguing that this went beyond the recast alignment exercise. France, therefore, requested that point (g) be deleted
2. Article 3(9)	2.1 There were no delegations against amending (substantially) or deleting Article 3(9)	2.1 None	2.1 The wording of Article 3(9) was only marginally improved with the gist of the wording of the Malta clause (found in Article 2(6) in the 2007 directive) remaining intact in the new recast directive

Source Table based on data collected during interviews with Maltese government and EU officials and from data found in Council Working Group documents.

Note Other delegations do not feature in this table since they did not pronounce themselves (intervene) on the specific paragraphs of these legislative articles in the Council and are, therefore, not recorded in the footnotes of Council working documents

therefore, going beyond the aim of the alignment exercise which the recast legislative technique was meant to be accomplishing. This had to do with Article 2(2)(g) of the Commission's proposal for a recast directive which read as follows:

> fireworks built by a manufacturer for his own use and which have been approved by a Member State for use on its territory. (COM (2011) 764 final, p. 23)

Article 2(2)(g) of the Commission's proposal is in fact one of the Malta clauses found under Article 2(2) of Directive 2007/23/EC treated earlier.[21]

The difference between the "old" Article 2(2) dealing with 'definitions' and the "new" proposed Article 2(2)(g) was that the latter was being shifted by the Commission (in its proposal) to an altogether new category-type article dealing with 'scope'. The 'scope' article of the Commission's new recast proposal (Article 2) was the former article (in Directive 2007/23/EC) dealing with 'exemptions' in the second paragraph. As illustrated previously (see Sub-section 7.2.3), this was the preferred option for the Maltese government, having requested and intervened in Council to include this type of wording under the exemptions list [Article 1(4) of the 2007 directive on 'exemptions'] during the 2003–2007 negotiations. However, as explained in the previous section, this did not materialize with the Maltese government having to upload its preferences elsewhere, albeit successfully, in Article 2(2) and (6) on 'definitions'.

In this sense, the Commission's new legislative proposal was optimal for the Maltese government given that the new Article 2 matched its preferred option of directly exempting all its local fireworks producers from being caught under this directive. It, therefore, viewed this as a success in itself (i.e., as a continual success from that achieved in the previous negotiations adopting Directive 2007/23/EC) before Council and EP discussions had even commenced. Therefore, the government entered the new negotiations advantaged by this fact alone, aware that this time round it had to 'defend' its preferences already uploaded into the process. It was thus necessary to defend the Commission's text: which, of course, made the Commission an important ally in this decision-making process.

7.3.3 The Decision-Shaping Stage

7.3.3.1 Malta's Capacities and Strategies in the Council of the European Union

Due to the short time span between the adoption of Directive 2007/23/EC and the beginning of the new legislative negotiations in 2011, Malta's governmental capacities (variables 1–3) remained unaltered except for minor changes mainly related to the government's internal structures (i.e., a reduction in the number of line ministries) as a result of the election of a new government in March 2008.[22] In 2011, the DPR and technical attaché in Brussels and the national expert (who like his predecessor also derived from the MSA) were all new representatives in these legislative negotiations.[23] That said, the data found in Fig. 7.2 of this chapter is still representative of the government's capacity in this legislative case on the recast directive.

Discussions in the Council's Working Group began during the Danish Council Presidency in June 2012. As emphasized earlier, France immediately voiced its disagreement on a point of principle with the Commission's proposed shift of enlarging the 'scope' article [to a new point (g) under Article 2(2)]. Therefore, France's main reserve on this point was against substantive changes being made to the previously adopted 'scope' article of the 2007 directive. Footnote 25 of a Council Working Group document (9450/1/12 REV 1 of 22 June 2012, p. 24) indicates the French government's justification for its request to delete point (g) of the proposed Article 2(2):

> FR: Delete (g). Such a change of scope would go beyond alignment exercise.

In reply to the French request, Malta and the Commission intervened during the next Council Working Group meeting (now under the Cypriot Presidency) against the French request to delete this point. Footnote 29 of another Council document (12372/12 of 11 July 2012, p. 24) indicates this situation:

> FR: Delete (g). Such a change of scope would go beyond alignment exercise. ES: Scrutiny reservation. **Cion/MT: Against deletion of (g)….** (emphasis added in bold text)

One should also note that besides Malta and the Commission, Spain was also supportive of the idea to expand the 'scope' article in the manner proposed by the Commission. As indicated in Table 7.6, Spain was another player that was pitching itself against the French request to delete point (g). As one may observe, Spain placed a scrutiny reservation in the footnote reproduced above—which is a tactic used by EU governments during the process to delay and/or signal disagreement with the text being proposed and has the effect of blocking a Presidency compromise on the article concerned. Although Spain was not an active player during the previous negotiations (as re-emphasized in Sub-section 9.3.1 in Chap. 9, Spain became aware of the potential that the adopted Malta clauses hold for some of its southern regions only once the 2005–2007 negotiations were over), it intervened in line with Malta's position and was more pro-active in the recast negotiations.

Such government positions on the new Article 2(2)(g) continued to be placed in other Working Group documents emerging from ensuing meetings. The following paragraphs illustrate in chronological order the Maltese government's interventions (besides those of delegations disagreeing and/or supporting it) recorded in the footnotes of these documents. This methodology allows one to process-trace technical discussions taking place in the Council. It is relevant to point out that underlined, strikethrough and/or bold text, unless denoted, is being reproduced as found in these Council documents.

Having previously mentioned the first two Council documents, the next recorded intervention by the Maltese government is to be found in footnote 32 of one of the aforementioned documents (12372/12 of 11 July 2012, p. 24):

> FR: Delete (g). Such a change of scope would go beyond alignment exercise. **MT: Use wording: "Fireworks which have been approved by a Member State for use on its territory <u>during specific religious, cultural and traditional festivities</u>"** ES: Insert also an indent (ga): "Pyrotechnic articles, which have been authorized by a Member State, for exclusive use on its territory, and limited to the conclusion of specific cultural traditions." Cion: Against deletion of (g)…. (emphasis added in bold text only)

In footnote 33 of Council document 12372/1/12 REV 1 of 31 October 2012, the situation remained at a gridlock with the wording of this footnote mirroring that of footnote 32 of the previous Council

document 12372/12. Therefore, there were no changes in the wording to footnote 33. Things did change slightly, however, on page 25 of Council document 5151/13 of 10 January 2013 (during the Irish Presidency). More precisely, footnote 32 of this document states the following:

> FR: Delete (g) or add something such as "and used on its territory". **MT/ES: Use wording: "Fireworks which have been approved by a Member State for use on its territory during specific religious, cultural and traditional festivities**" Cion: Against deletion of (g) and against MT/ES wording…. (emphasis added in bold text only)

In this last footnote, one observes that France began to take stock of the situation by conceding a little. It put forward an alternative to its specific request to delete this point, thus beginning to accept the Commission's proposal to shifting text found in the 2007 directive to a different category-type article. As stated further on, one of the main reasons for this is that France did not manage to exercise influence in the other decision-making EU institution, i.e., the EP.

Another point worth mentioning is the Commission's disagreement with Malta's (and Spain's) suggested wording for this new point. The Commission, besides supporting Malta (and Spain) to maintain point (g), was mainly pushing for its own preferences, i.e., maintaining the text as originally proposed in its proposal. It, therefore, did not favour Maltese and Spanish suggested wording with specific references to religious, cultural, and traditional festivities and preferred maintaining wording that was less categorical. This was also the Commission's view in changes it proposed to the previous recital 8 of the approved 2007 directive with any references to such traditional activities being left out from its new proposal [i.e., recital (10)—this recital was renumbered (11) in the adopted recast directive]. However, the Commission's preferences on the wording for the new Article 2(2)(g) and recital (10) did not affect the Maltese government negatively (since in substance, they did not go against the gist of the government's position).

The next Council document is dated 31 January 2013 (5151/1/13 REV 1). On page 26 of this document, footnote 32 notes that a Presidency compromise was achieved on 18 January 2013 and that point (g) of Article 2(2) was thus being agreed to as follows [the changes effected to the preceding document (5151/13 of 10 January 2013) are

hereby indicated in bold and underlined text, whereas deletions are in strikethrough text]:

> fireworks **which are** built by a manufacturer for his own use and ~~which have been~~ approved **for use exclusively on its territory** by a Member State ~~for use on its territory~~ **in which the manufacturer is established, and which remain on the territory of that Member State**.

Concerning the new recital (10) being proposed, footnote 11 of Council document 5151/2/13 REV 2 likewise indicates that the Presidency compromise had been achieved on 18 January 2013 (the changes to document 12372/1/12 REV 1 of 31 October 2012 are indicated in bold and underlined text, whereas deletions are in strikethrough text):

> … ~~In view of religious, cultural and traditional festivities in the Member States, f~~ **F**ireworks **which are** built by ~~the~~ **a** manufacturer for his own use and ~~which have been~~ approved **for use exclusively on its territory** by ~~a~~ **the** Member State **in which the manufacturer is established, and which remain on the territory of that Member State** ~~for use on its territory~~ should not be considered as having been made available on the market and should therefore not ~~therefore~~ need to comply with this Directive.

This text also reflects Malta's position, even though as stated earlier (and as seen in this quote), references to specific types of activities/festivities have been removed and do not feature any longer in the recital of the new legislative act. Apart from this, the wording of the recital has in substance remained intact and continues to call for the exemption from the directive of the local manufacture of fireworks approved by a member state for use exclusively on its territory.

Therefore, to sum up, the Maltese government entered the 2011–2013 recast negotiations differently than those of the 2005–2007 negotiations, where it applied pace-setting strategies from the very start of the process. In the case of the more recent recast negotiations, Malta adopted a 'defensive' strategy. As analysed, this was adopted to defend the 'Malta clauses' already approved and found in the 2007 directive thus ensuring that they would be maintained in the adoption of the new recast directive. Indeed, as confirmed by Commission, Council Secretariat and Maltese government officials, Malta set its pace slowly in the beginning of the latest negotiations on pyrotechnic articles

(interviews held in Malta in November 2013 and in Brussels between 12 and 17 January 2014). This can be tracked in the first Council document cited earlier (9450/1/12 REV 1 of 22 June 2012), where one is able to refer solely to the French request for a deletion of Article 2(2)(g) without any other delegation opposing it. Partly, this may be explained, because the French request was raised during the course of the Working Group meeting with the Maltese representatives having no instructions yet to intervene against the French position. However, Malta and the Commission did respond quickly enough in the Working Group meeting that followed.

Therefore, as confirmed through the above cited interviews, the government switched from a 'defensive' strategy to a pace-setting one which was similar to that deployed in the 2005–2007 negotiations.

Tables 7.7 (pace-setting through lobbying) and 7.8 (pace-setting through norm advocacy and effective intervention in Council deliberations) together with their accompanying graphs (Graphs 7.3 and 7.4) demonstrate this (see also 'Step 2' of Table 9.2 in Chap. 9).

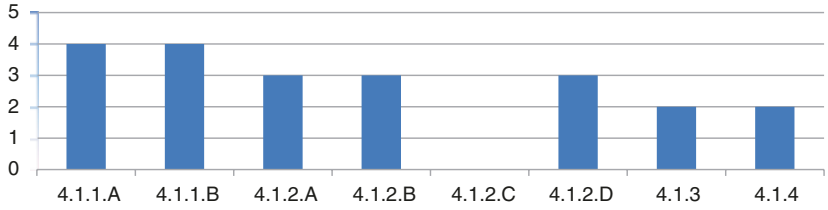
When compared to data found in Table 7.3 and Graph 7.1 for the 2005–2007 negotiations (see Sect. 7.2), Table 7.7 and Graph 7.3 indicate that in the recast negotiations, Malta lobbied the Commission less (since as discussed, Malta's preferences were similar to those held by the Commission in these negotiations) but intensified its lobbying efforts with the Council (the Presidency and the Secretariat). Table 7.7 also reveals that Malta slightly increased its lobbying of other member state governments when compared with the previous round of negotiations. As indicated in Table 7.6, this lobbying was directed particularly towards Spain and Cyprus (with the latter holding the Council Presidency during a crucial stage in the negotiations), both countries sharing similar interests with Malta over local fireworks production. Malta managed to convince these delegations of the negative effects the French suggestion [of deleting Article 2(2)(g) from the Commission's proposal] would have on their pyrotechnic industries if adopted.

However, Table 7.8 and Graph 7.4 indicate similar levels (compared with data in Table 7.4 and Graph 7.2) in the government's other pace-setting capabilities (i.e., norm advocacy and interventions in Council deliberations) for both sets of Council negotiations. Therefore, in order to suppress the French amendments requested in Council, Malta needed to maintain the same pace-setting levels as those displayed in the previous round of negotiations on this legislative file.

Table 7.7 Independent Variable 4: Sub-variable 4.1 on the pace-setting strategy (Like in the previous tables, data for this table has been collected through interviews with results representing an overall average.)

Sub-variable 4.1—Pace-setting through lobbying
Scale: [5=successful/+ve; 2.5=medium; 0=not successful/-ve]
5 = Yes, at extremely high levels of intensity;
4 = Yes, at high levels of intensity;
3 = Yes, but at medium-to-high levels of intensity;
2 = Yes, but at low-to-medium levels of intensity;
1 = Yes, but at extremely low levels;
0 = None
Measurable indicator 4.1.1: Lobbying the Council
• 4.1.1.A – Lobbying the Council Presidency [0] [1] [2] [3] **[4]** [5]
• 4.1.1.B – Lobbying the Council Secretariat [0] [1] [2] [3] **[4]** [5]
Measurable indicator 4.1.2: Lobbying the European Commission
• 4.1.2.A - Lobbying the Commissioner network [0] [1] [2] **[3]** [4] [5]
• 4.1.2.B - Lobbying the Commission Directorate-Generals [0] [1] [2] **[3]** [4] [5]
• 4.1.2.C - Lobbying SNEs in the Commission **[0]** [1] [2] [3] [4] [5]
• 4.1.2.D - Lobbying the Commissioner responsible for the dossier [0] [1] [2] **[3]** [4] [5]
Measurable indicator 4.1.3: Lobbying large state governments [0] [1] **[2]** [3] [4] [5]
Measurable indicator 4.1.4: Lobbying small state governments [0] [1] **[2]** [3] [4] [5]

Source Table compiled by the author



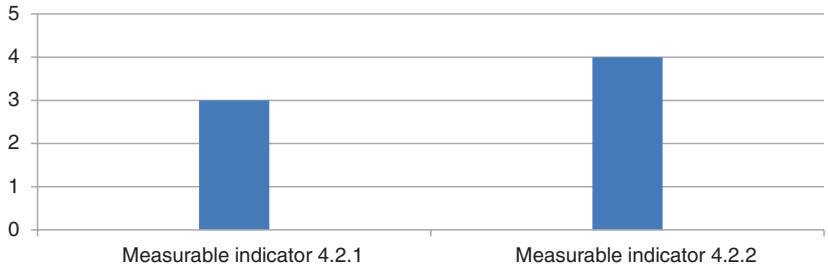
Graph 7.3 Columns indicating the scores for Sub-variable 4.1. *Source* Graph compiled by the author

One must also keep in mind that during the recast negotiations, there were other factors in favour of the Maltese case which were not present in the previous discussion round. As previously observed, one such factor was the Presidency being held by Cyprus during a crucial stage of the

Table 7.8 Independent Variable 4: Sub-variable 4.2 on the pace-setting strategy (Data for this table has been collected through interviews with results representing an overall average.)

Sub-variable 4.2—Pace-setting through norm advocacy and effective intervention in Council deliberations
Scale: [5=successful/+ve; 2.5=medium; 0=not successful/-ve]
5 = Yes, at extremely high levels of intensity;
4 = Yes, at high levels of intensity;
3 = Yes, but at medium-to-high levels of intensity;
2 = Yes, but at low-to-medium levels of intensity;
1 = Yes, but at extremely low levels;
0 = None
Measurable indicator 4.2.1:
• A government's capacity to persuade through moral convictions [0] [1] [2] **[3]** [4] [5]
Measurable indicator 4.2.2:
• A government's diplomatic leverage & capacity to engage effectively [0] [1] [2] [3] **[4]** [5]

Source Table compiled by the author



Graph 7.4 Columns indicating the scores for Sub-variable 4.2. *Source* Graph compiled by the author

Council discussions (see Table 7.5). It is a given among EU circles that Cyprus is Malta's natural ally—a sort of 'brother like' relationship—both islands sharing many factors in common (see also Chap. 2). As observed by a senior Council secretariat official:

> these two countries support each other repeatedly and in most of the EU decision-making processes across various policy spheres. (interview held in Brussels on 16 January 2014)

Thus, in this case, the Cypriot and Irish Presidencies were sympathetic towards Malta's interests (since as already stated, Cyprus too shares similar traditions in the pyrotechnic industry with Malta while Ireland is another small state) which contributed to maintaining the 2007 text on the 'Malta clauses' in the Presidency's compromise of 18 January 2013. Small state Presidencies thus represented another factor to Malta's successful exercise of influence in this process.

7.3.3.2 Malta's Capacities and Strategies in the European Parliament

Before concluding, one must also examine the EP's legislative discussions on the Commission's proposal for a recast directive. As previously illustrated (in Sub-Section 7.2.3) in the run-up to the adoption of the 2007 directive, the Maltese government's position was supported and taken up by the EP's Committee on the Internal Market and Consumer Protection (IMCO). What is of relevance here is to highlight that Malta's government channeled its influence once again in this EP committee (primarily via the Maltese MEPs).

One of the Maltese MEPs involved, Louis Grech (S&D), hails from Malta's Labour Party, which at the time was still in the opposition in Malta (he was later to become Malta's deputy PM and Minister for European Affairs). Grech, who at the time was a member and vice-chair of IMCO,[24] intervened directly in this committee's meetings to counter French MEPs attempts to delete the wording of the Malta clause from the Commission's proposal. Thus, similarly to what materialized in the previous negotiations round, party politics was set aside in favour of the national position and hence MEP Grech towed the government's line.

The French request to delete the wording of the text on the Malta clause [i.e., the wording of Article 2(2)(g) of the Commission's recast proposal] came from MEP Bernardette Vergnaud (who was also a member of IMCO during the 2005–2007 legislative discussions in the EP) who like MEP Grech hailed from the S&D political affiliation. Significantly, she was also a vice-chair of the IMCO committee. MEP Vergnaud followed the French government's position and requested that Article 2(2)(g) be deleted on exactly the same grounds as those aired by the French government in Council—that apart from the new text representing a change of scope going beyond the alignment exercise, it was also confusing and unnecessary. This, however, did not find the backing of the majority of MEPs, who pitched themselves against Vergnaud's amendment. Besides, the Commission made it clear that it was adamant about maintaining the

text of its new proposal as proposed. It is interesting to note how in this case, two MEPs from the same political affiliation in the EP (the S&D), who were both vice-chairs of IMCO, contrasted each other in favour of the positions held by their respective national governments (which at the time were both conservative right wing governments and hence of a different political affiliation to those of these MEPs political parties).[25] This is very instructive of the power held by governments (as extremely strong players when compared to others) in EU decision-making processes.

7.3.4 The Decision-Taking Stage

All the factors discussed at length in the previous sections contributed to maintaining the Malta clauses—albeit with minor changes to the wording of the 2007 directive —in the new EU recast directive. At the end, the Commission, Council and the EP reached a compromise—the EP approving the text (with amendments) at first reading in a plenary session on 22 May 2013; the Commission agreeing with the EP's position on the same day as the EP's approval; and the Council adopting the text as an ' A' item (point not requiring a discussion) at the Transport, Telecommunications and Energy Council of Ministers on 6 June 2013. As shown in Table 7.5, the Irish Presidency reached a compromise on 18 January 2013, with a majority of member states agreeing to the text by QMV.

As for the adopted wording of Article 2(2)(g) focused upon in the previous sections (as stated earlier, this is known as one of the 'Malta clauses'), the text is as follows (the new additions are denoted in underlined text, whereas the deletion of text from the former Article 2(2) of the 2007 directive is denoted in strikethrough text):

Article 2 – ~~Definitions~~ *Scope*

2. This Directive shall not apply to:

~~2.~~(g) ~~F~~fireworks which are built by a manufacturer for his own use and ~~which have been~~ approved ~~by a Member State~~ for use exclusively on its territory ~~are not to be considered as having been placed on the market~~ by the Member State in which the manufacturer is established, and which remain on the territory of that Member State' (Directive 2013/29/EU; OJ L 178, 28.6.2013, p. 32).

With regard to the other legislative article of key importance to the Maltese government, Article 3(9) on page 33 of Directive 2013/29/EU (the former Article 2(6) of Directive 2007/23/EC also known as a 'Malta clause'), the text of the adopted directive is as follows (the new minor amendments are denoted in underlined text, whereas the deletion of text from the former Article 2(6) of the 2007 directive is denoted in strikethrough text):

~~Article 2~~ Article 3 – Definitions

For the purpose of this Directive, the following definitions shall apply:

6.(9) '~~M~~manufacturer' means a natural or legal person who ~~designs and/or~~ manufactures a pyrotechnic article, or ~~who causes~~ has such an article ~~to be~~ designed ~~and~~ or manufactured, ~~with a view to placing it on the market~~ and markets that pyrotechnic article under his ~~own~~ name or trademark.

Finally, it is also appropriate to indicate the text of the new recital of direct interest to the Maltese government, i.e., recital (11) on page 28 of Directive 2013/29/EU. Once again, the new additions are denoted in underlined text, whereas the deletion of text from the former recital (8) of the 2007 directive is denoted in strikethrough text:

~~(8)~~(11) ~~In view of religious, cultural and traditional festivities in the Member States, f~~ Fireworks which are built by ~~the~~ a manufacturer for his own use and ~~which have been~~ approved ~~by a Member State~~ for use exclusively on its territory by the Member State in which the manufacturer is established, and which remain on the territory of that Member State, should not be considered as having been ~~placed~~ made available on the market and should ~~not~~ therefore not need to comply with this Directive.

The legal articles and recital cited above (which were adopted by the Council and the EP on 12 June 2013) demonstrate that the positive outcome achieved by Malta's government in the adoption of Directive 2007/23/EC was also extended to the outcome of the new Directive with the Maltese government's prime and fundamental interests having been achieved.

7.4 Conclusion—An Assessment of the Outcomes for Malta in Case Studies 1 and 2

This chapter has shown the salience of pyrotechnics for the Maltese government as well as the preferences and strategies used by the government during the two legislative EU decision-making processes. Chapter 7 has revealed that in both cases, the Maltese government achieved successful outcomes with the adopted legislative acts matching its preferences. This suggests that the government exercised a significant influence in these legislative processes.

In order to reiterate clearly the findings emerging from this chapter, the cases represent positive ones for Malta's government. The bare fact that there are clauses in these directives known as 'Malta clauses' is by itself testimony of the government's exercise of influence in the EU legislative decision-making processes. As revealed in this chapter, this is by no means a simple feat when considering the complexity of Council and EP legislative negotiations.

Malta's government was thus successful in 'fighting' for its interests as a self-interested and strategically calculating actor, or better as a rational player in these EU processes. However, the fact that it managed to achieve successful outcomes cannot be solely attributed to its capacity to act as a rational player. Reasons for its success must also point at its capacity to exploit opportunities (to channel influence) deriving from the EU institutional framework of the Commission, the Council (where it voiced its concerns directly) and the EP (through Maltese MEPs mainly). In both cases, one is able to notice how Malta's government was capable of striking a balance between the pushing forward of its interests and correct interpretation of negotiation dynamics (and hence opportunities emerging from them) set by the EU's institutional framework. This is even more remarkable when considering Malta's extremely small size.

One last observation worth making concerns the chapter's analysis of the factors explaining the Maltese government's successes in these specific EU decision-making processes. Sub-sections 7.2.3 and 7.3.3 outlined several factors (or more precisely, independent variables) divided between governmental capacities (variables 1–3) and strategy(ies) (variable 4) in line with the book's methodology. These factors (together with those found in Chap. 8 in relation to the third case study) are further elaborated upon and comparatively analysed in Chap. 9.

Notes

1. From 1530, when Charles V of Spain conferred Malta to the Order, until Napoleon Bonaparte's capture of the island in 1798 during his advance towards Egypt. During this period, the order, which was aristocratic and military, used to stage pyrotechnic displays to celebrate some occasion of grand importance, such as the election of a Grand Master or a Pope.
2. In Malta, there are about 35 firework factories and double that a number of towns and villages which celebrate the feast of their patron saints and during which pyrotechnic displays are part and parcel of these traditional and religious celebrations. This is quite a number for a territory the size of Malta.
3. EU Directive 2013/29/EU repeals Directive 2007/23/EC with effect from 1 July 2015 (Article 48 of Directive 2013/29/EU, OJ L 178 of 28.6.2013, p. 46).
4. As explained in Chap. 4, it is the Commission that starts the legislative process by proposing draft legislation.
5. The market in pyrotechnic equipment in fireworks was estimated at €1400 million in 2006 with 96% of fireworks on the market imported from China—EP Report 2005/0194 (COD) of 19.9.2006, p. 37.
6. Pyrotechnic articles in the automotive industry are used for vehicle safety. Equipment using pyrotechnic technology is mainly gas generators used in airbags and in seatbelt pretensioners. The market in pyrotechnic equipment in vehicle safety was estimated at €5500 million in 2006 - EP Report 2005/0194 (COD) of 19.9.2006, p. 37.
7. EC Directive 2007/23/EC and EU Directive 2013/29/EU (recast) have followed the new approach to technical harmonization and standards as laid down in Council Resolution of 7 May 1985, OJ C136 of 7 May 1985. This was necessary, since EU member states, having legitimate health and safety interests at stake, might impede intra-EU trade. Nevertheless, the harmonized measures brought about by these EU directives are not exhaustive and hence set out minimum harmonized standards on a number of issues, such as "CE" marking, labeling, market surveillance, conformity assessment, and obligations of the manufacturer, importer, and distributor.
8. Maltese fireworks production is held in factories mainly owned by band and feast clubs (*każini* in Maltese) spread around Malta's villages.
9. Firework displays dominate Maltese religious feasts. In Malta, imagining such religious and traditional feasts without the amusement, delight, and color brought about by fireworks is unthinkable. Besides, various firework competitions and festivals take place in Malta, such as the 'Malta International Fireworks Festival', held in spring each year. Some local

producers, who are internationally acclaimed having won international prizes, take part in these festivals.

10. Since this particular legislative file fell under more than one EU policy sphere (with issues of equal relevance to consumer protection, competition and industry), larger delegations consisted of various experts with competence in these areas.
11. As illustrated in Chap. 5 (see Table 5.1 and Boxes 5.1, 5.2 5.3 on 'Governmental Capacities'), each of these variables are in turn subdivided into sub-variables. The sub-variables are also illustrated in Fig. 7.2.
12. The vertical axis of this figure represents positive and/or negative ratings for each of the sub-variables on governmental capacities to be found in the horizontal axis.
13. According to a Commission official from DG Enterprise and Industry interviewed in Brussels on 13 January 2014, Malta, even though still not an EU member state at the time, was still invited to participate as an 'observer' state in the consultation process, something which for some reason, it did not do.
14. As illustrated in Table 7.1, the Austrian Presidency did not place this dossier as one of its Council Presidency priorities and thus legislative negotiations in Council only commenced afterwards during the Finnish Presidency.
15. Meeting between Michael Frendo, Malta's Minister of Foreign Affairs and Gunther Verheugen, European Commissioner for Enterprise and Industry held in Brussels on 30 January 2006—at this stage, Council negotiations at Working Group level had not yet commenced.
16. The government's delegation consisted in a national expert and the technical attaché at Malta's Permanent Representation in Brussels, whereas the Commission was represented by an expert from DG Enterprise and Industry. This meeting was held subsequent to the political bilateral meeting but still during the early stages of this decision-making process.
17. Ironically, the Guide was issued by the Commission itself and is used as a guide to better understand internal market legislation on industrial products. It is, therefore, a Guide to assist in the implementation of EU directives based on the 'New Approach' and the 'Global Approach' about European standardization in the removal of technical barriers to trade. These approaches have thus contributed significantly to the development of the Internal Market and to ensuring free movement of goods between EU member states.
18. In an interview, a government official stated that the only category of local fireworks factories that still fell within the scope of the directive,

once Malta's amendments to paragraph 5 of this article were adopted, were those selling their products to the third parties and thus factories operating commercially. For such factories to have also benefited from an exclusion from the EU directive (such factories are in an absolute minority in Malta), Malta's wording to Article 1(4) needed to be adopted too.

19. According to rule 187 of the EP's rules of procedure on substitutes, such MEPs '*shall be entitled to attend and speak at committee meetings and, if the full member is absent, to take part in the vote*.' (http://www.europarl.europa.eu/slides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20140310+RULE-187+DOC+XML+VO//EN&language=EN&navigationBar=YES) (accessed on 24 March 2014).
20. The recast legislative technique first amends a piece of EU legislation and then repeals it replacing it with the consolidated text including the amendments.
21. The other being Article 2(6) of the 2007 directive which was largely untouched by the Commission's proposal for a recast directive and which did not face any new opposition in the recast negotiation in Council and the EP.
22. Although there was a change in the legislature (the eleventh legislature in Malta's history), the governing party remained the Nationalist Party (PN). Refer to Chap. 7 on Malta's administrative and political structures.
23. These changes were made because of the previous representatives having taken up posts elsewhere.
24. There were in fact four vice-chairs in this group.
25. In France, Nicolas Sarkozy's presidency (the conservative Union for a Popular Movement (UMP)) was in power whereas in Malta, Lawrence Gonzi was PM of a Nationalist government.

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CHAPTER 8

Malta's Government in the Legislative Decision-Making Process of the Extension of an EU Directive on Long-Term Residence to Beneficiaries of International Protection: Case Study 3

8.1 Introduction

EU legal migration, irregular migration, and asylum policy fall within the ambit of the EU Justice and Home Affairs (JHA) policy domain. These three 'sub-policy' spheres together with their respective legal framework, particularly that of legal migration, form the focus of this chapter.

However, one must bear in mind that the EU's JHA policy sphere also includes other sub-spheres (notably those on border controls, visas, civil co-operation, criminal law, policing, and security) which this chapter does not delve into given that they have been the focus of work by other authors producing research on this very challenging and complex topic (for instance, see Peers 2011; Geddes 2000; Boswell 2003; amongst others). Rather, the chapter builds on such work and focuses on a particular aspect of the EU's immigration policy, that of long-term residency for legal migrants in the EU. More specifically, this chapter examines the EU legislative negotiations on amending Council Directive 2003/109/EC (of 25 November 2003 known as the 'Long-Term Residents' (LTR) directive) and the Maltese government's behaviour in these negotiations leading to the adoption of Directive 2011/51/EU. As stated in subsequent sections, the *rationale* behind the amendment directive is to extend long-term residency to third-country nationals (TCNs) who are beneficiaries of international protection. Therefore, in a similar manner as found in Chap. 7, Chap. 8 examines whether Malta's government

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was successful in exercising influence during this particular EU legislative decision-making process.

Section 8.2 places EU migration and asylum policy in context. It provides a brief overview of the development of the EU's legal framework for legal migration bringing it up to date with the current post-Treaty of Lisbon era. It also sets out a clear compartmentalization of the existing EU legal framework for the interlinked sub-policy spheres of asylum and legal and irregular migration. Akin with the rest of the chapter, this section focuses on the EU's rules and legal framework on the granting of residence permits to TCNs as defined by Article 79 TFEU, particularly point 2(a) of this Treaty article.

Section 8.3 presents Malta's national position (that is, the government's objectives) adopted in these negotiations on amending the 2003 LTR directive. This section highlights the salience presented by EU legal migration law, particularly EU legislation on long-term residence, for the Maltese government and its interests in this policy sphere. As shall be observed there, the issue of granting long-term residence permits was (and still is) a very sensitive issue for those EU member states (and their governments) geographically placed on the EU's external border. It emphasizes how EU states such as Malta are negatively affected by large numbers of irregular migrants (commonly referred to as 'boat people') arriving on their shores (and by consequence, the 'EU border') seeking refugee status and/or international protection (also referred to as 'subsidiary' protection). This situation has a direct impact on the issue of long-term residency in the EU.

Section 8.4 moves the discussion forward and in a similar vein as that found in Chap. 7 describes and explains the Maltese government's capacities and strategies employed during the legislative negotiations in the Council and the EP in this case. Finally, Sect. 8.5 concludes this chapter by providing a brief overall assessment of Malta's performance throughout these negotiations to determine whether the outcome for Malta was positive.

It must be emphasized that this chapter deals solely with the EU legislative negotiations occurring between 2007 and 2011 to amend the 2003 LTR Council directive. In other words, it does not cover the process adopting the initial directive of 2003. The main reason for this is that at the time, Malta was not yet an EU member state and could not participate in those legislative negotiations. Therefore, since the book is about Malta's behaviour in EU legislative decision-making processes, it did

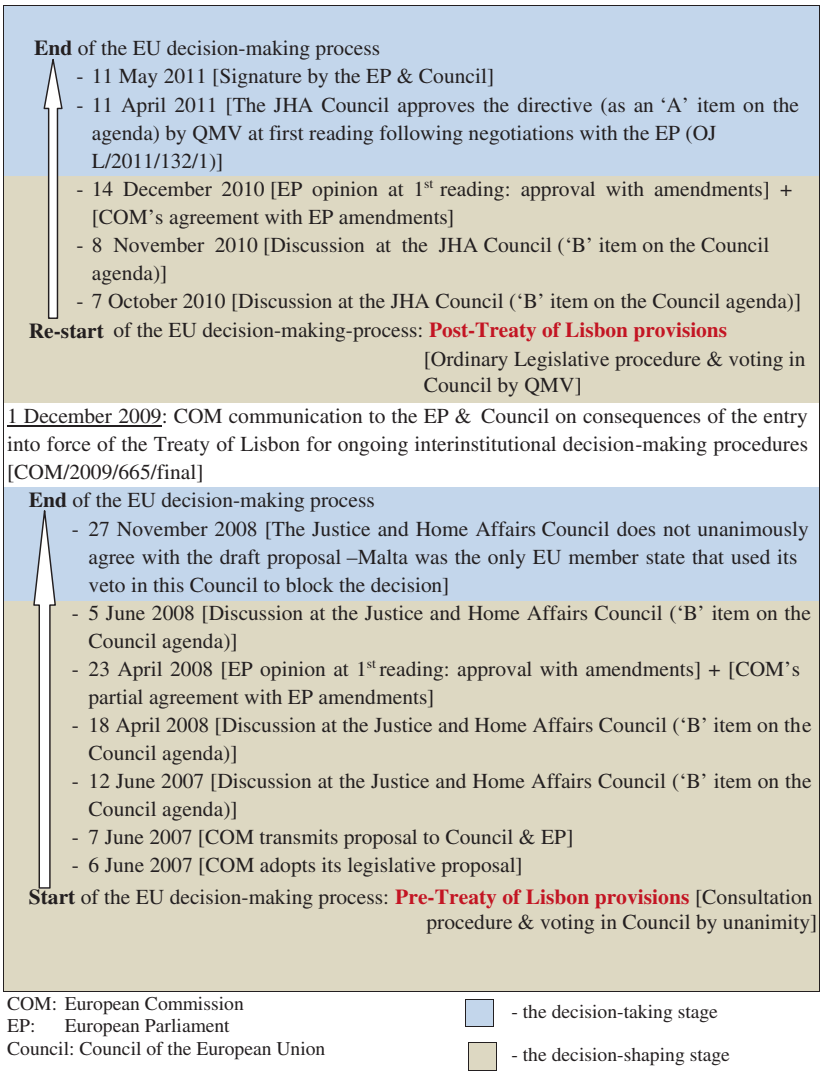


Fig. 8.1 Key dates in the 2007–2011 EU legislative negotiations to adopt Directive 2011/51/EU. *Source* Figure based on the PreLex database on inter-institutional procedures: http://ec.europa.eu/prelex/apcnet.cfm?CL=en (accessed on 15.06.2016)

not make much sense to examine the earlier negotiations. Unlike the case studies presented in the previous chapter, this chapter deals solely with one set of negotiations, albeit occurring in two distinct phases separated by the entry into force of the Treaty of Lisbon on 1 December 2009 (this last point is illustrated in Fig. 8.1 on key dates in the negotiations).

8.2 An Overview and Background of the EU's Policy on Legal Migration

As stated above, the aim of this section is not to give an in-depth view of the EU's asylum and immigration policy, but rather to provide a context and starting point for the examination in this chapter on the legislative revision of the LTR directive.

As also observed in the chapter's introduction, the EU's JHA legislation on the granting of long-term residence permits to TCNs falls under the EU legal migration domain. However, as Peers (2011: 382–383) points out, EU rules on legal migration are intrinsically linked with other sub-policy spheres found in the EU's JHA policy area, including irregular migration and asylum. The complexity of the EU's rules on legal migration and asylum is illustrated in the fact that the rules on granting refugee status, residence permits, and employment to TCNs are linked with those of family reunion and long-term residence permits for refugees and persons granted subsidiary or international protection. However, as Peers (2011: 383) rightly observes, '*the grant of a residence permit or a long-stay visa or the admission of family members can also trigger the EU's rules on responsibility for asylum applications*', the so-called 'Dublin III' Regulation (EU Regulation 604/2013 of 26 June 2013—the successor of the Dublin II Regulation, Council Regulation (EC) No 343/2003 of 18 February 2003) which, as stated further on, is a thorny issue for the Maltese government.

The point here is that the domains of EU asylum and migration (legal and irregular) and their respective legal framework are intermeshed, with one complementing the other. Table 8.1 compartmentalizes these JHA sub-policy spheres to put some order to this extremely wide EU policy domain (although it should also be borne in mind that the JHA policy sphere overlaps and gets caught in the remit of other EU policies such as the EU's internal market and its four freedoms—particularly the free movement of persons).

Table 8.1 List of the EU legal framework for EU asylum and immigration (legal and irregular) policy

Asylum	Legal migration	Irregular migration
❖ **Human rights** - International human rights & refugee law and the European Convention on Human Rights (ECHR). ❖ **Uniform status** - The recast Qualification Directive (Directive 2011/95/EU of 13 December 2011). ❖ **Temporary protection** - The Temporary Protection Directive (Council Directive 2001/55/EC of 20 July 2001). ❖ **Common procedures** - The recast Asylum Procedures Directive (Directive 2013/32/EU of 26 June 2013).	❖ **Human rights** - The right to family reunion, family life, and private life protected by Article 8 ECHR. - The right to non-discrimination protected by Article 14 ECHR. ❖ **Primary migration** - The Blue Card Directive for highly skilled workers (Council Directive 2009/50/EC of 25 May 2009). - The Single Permit Directive (Directive 2011/98/EU of 13 December 2011). - The Intra-corporate Transferees and Seasonal Workers Directive (Directive 2014/36/EU of 26 February 2014). - The Third-Country Researchers Directive (Council Directive 2005/71/EC of 12 October 2005). - The Non-Economic Migrants Directive (Council Directive 2004/114/EC of 13 December 2004).	❖ **Human rights** - The European Convention on Human Rights (ECHR). ❖ **Prevention of irregular migration** - Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985. - Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data. - Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence. - Council framework Decision 2002/946 of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence. - Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings. - Regulation (EU) No 493/2011 of 5 April 2011 on the creation of an immigration liaison officer (ILO) network.

Asylum	Legal migration	Irregular migration
❖ **Responsibility for applications** - The recast Dublin III Regulation (Regulation (EU) No 604/2013 of 26 June 2013). - The recast Eurodac Regulation (Regulation (EU) No 603/2013 of 26 June 2013). ❖ **Reception conditions** - The recast Reception Conditions Directive (Directive 2013/33/EU of 26 June 2013).	❖ **Family reunion** - The Family Reunion Directive (Council Directive 2003/86/EC of 22 September 2003). ❖ **Long-term residents** - The recast Long-Term Residence Directive for Beneficiaries of International Protection (Directive 2011/51/EU of 11 May 2011). ❖ **Social security co-ordination** - Regulation 1231/2010 extending Regulation 883/2004 on social security for EU citizens to third-country nationals who move within the EU. ❖ **Residence permits & long-stay visas** - Regulation No 330/2008 on residence permits for third-country nationals.	❖ **Treatment of irregular migrants** - Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. - Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subjects of an action to facilitate illegal immigration, who cooperate with the competent authorities. ❖ **Expulsion measures** - The Returns Directive (Directive 2008/115/EC of 16/12/2008). - Directive 2001/40/EC of 28/05/2001 on the mutual recognition of decisions on the expulsion of TCNs. - Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air. - Council Decision 2004/573/EC of 29 April 2004 on joint expulsion flights.

Source Table compiled by the author based on the structure of Chaps. 5–7 in Peers (2011)

Immigration is a highly complex and controversial subject in the EU and among its member state governments. This is mainly because of the general conception (or misconception, depending on one's views on this topic) held by EU governments about migration in the EU as one causing 'havoc' to national economies while, at the same time, destabilizing social and cultural harmony (see Peers 2011: 382).

Given that EU states have different views about this subject, EU immigration policy (particularly the EU's legal framework for legal migration) has experienced a slow and complex development. For instance, in the central Mediterranean, Malta and Italy are firm believers of the view just expressed above, since they are being faced by the immediate challenge of hosting continuous influxes of irregular migrants arriving (most of which request for refugee or international protection upon arrival), thus causing extreme burdens on their administrations. In the particular case of Malta (due to its extremely small size in terms of land mass), any large number of migrant arrivals also negatively affect its natural resource and infrastructural base. These views contrast with, for instance, the more centrally placed EU states that do not form part of the EU's periphery (this is explained by a process known as 'distalization'—see Sect. 8.2.2 below).

Therefore, such factors explain why in the EU, a considerable amount of discretion in this sphere has been left in the hands of the member states and their respective national jurisdictions. However, they also explain why EU decision-making in this policy sphere is characterized by contrasting views held by the EU states which makes decision-taking extremely difficult.

The next section describes the development of EU legal migration, policy, and law, with the aim of enabling the reader to gain the relevant background prior to the analysis of the negotiations of the 2011 EU amendment directive (Directive 2011/51/EU).

8.2.1 The Development of the EU's JHA Institutional Framework for Legal Migration

The development of the EU's legal migration framework may be said to have occurred roughly in seven stages (at least until the time of writing of this book). These stages are summarized in Table 8.2 below.

The first stage was established with the Council's adoption of an intergovernmental Joint Action Plan on a uniform residence permit in 1996 (OJ L 7/1, 1996). Since the Council adopted a package of EU

Table 8.2 Different stages in the development of the EU's institutional framework on EU legal migration

Stage 1: The Joint Action Plan on a uniform residence permit adopted by Council in 1996.
Stage 2: The Treaty of Amsterdam (1997)—conferral of Community competence over migration law, Article 63(3) and (4) TEC.
Stage 3: The Tampere European Council, October 1999— rules established about the fair treatment of third-country nationals leading the Commission to propose legislation.
Stage 4: The Hague Programme of November 2004— outlined the future of the EU's JHA policy and shifted Council voting to QMV besides changing the legislative procedure to co-decision (as it was called at the time) for all immigration-related topics except that of legal migration.
Stage 5: The European Pact on Immigration and Asylum of 2008— a commitment on the part of the EU governments to organize legal immigration to take account of the priorities, needs, and reception capacities determined by each member state.
Stage 6: The Treaty of Lisbon (2009)—Article 79 TFEU gave more competence to the EU (besides modifying Council voting to QMV and establishing the ordinary legislative procedure for legal migration, thus bringing it in line with all other immigration-related topics) justifying more action on its part in immigration policy.
Stage 7: The European Agenda on Migration of 2015—it responds to the priorities identified in the Political Guidelines of European Commission President Jean-Claude Juncker and is a call for EU action to respond to migration and to provide tools to EU member states to better manage migration in all its aspects.

Source Table compiled by the author

legislation on EU migration subsequent to the Maastricht Treaty's 'third pillar' provisions on JHA, the Joint Action Plan was necessary to achieve some form of harmonization in the immigration field. As Peers (2011: 384) points out, this EU legislative package included legislation on: family reunion; the admission of workers, the self-employed, and students; long-term residence status; and marriages of convenience. The idea was to place this package under a migration law Convention proposed by the Commission in 1997 (COM (97) 387 of 30 July 1997; OJ C 337/9) which was, however, not adopted by the Council. Thus, the Joint Action represented the only 'hard law' that the EU had at its disposal prior to the entry into force of the Amsterdam Treaty.

The second stage of the development of this EU policy area occurred when the Treaty of Amsterdam (Article 63(3) and (4) TEC) 'Communitarized' migration law (in particular for the purposes of this chapter, those provisions on the issuing of long-term visas and residence

permits under Article 63(3)(a) TEC). However, it was clear that this would not preclude member state action from occurring when necessary. In fact, the final provisions of Article 63 TEC stated that:

> Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

The third stage was the Tampere European Council of October 1999, which established rules about the 'fair treatment' of TCNs to be upheld by EC migration law. Of particular relevance to this chapter was point 21 of the European Council Conclusions:

> 21. The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State, a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g., the right to reside, receive education, and work as an employee or self-employed person… (the underlined text is emphasized here, since this point represents the crux of the Maltese government's position during the legislative negotiations treated further on in this chapter).

The Tampere Conclusions led the Commission to propose legislation under legal migration, including a first-time proposal in 2001 for a directive on the status of long-term residents (COM (2001) 127 of 13 March 2001). These proposals were met with mixed reactions by the EU governments in the Council, and consequently, only some of them were adopted. There were two Council regulations adopted in 2002 on migration law, one of which 'Communitarized' and replaced the previously mentioned intergovernmental Joint Action Plan (Council Regulation 1030/2002/EC of 13 June 2002). This regulation was later amended in 2008 to introduce fingerprinting and photographs in the process for the application of residence permits, thus ensuring more document security. Besides these regulations, there were another two Council directives adopted in 2003: Council Directive 2003/86/EC on family reunion and Council Directive 2003/109/EC on long-term residence. Both are a watered-down version of the draft legislation originally

proposed by the Commission. Due to this fact (emphasized in the next section), the Commission introduced a new legislative proposal in 2007 to amend Council Directive 2003/109/EC extending its scope to beneficiaries of international protection.[1]

The fourth stage in the development of EU legal migration was the Hague Programme of November 2004, which outlined the future of the EU's JHA policy. This marked an important development for all the sub-fields of this EU policy area, with the exception of legal migration (in this sense, it was a non-development). In other words, unlike all other EU immigration-related policy spheres that, by this stage, were 'Communitarized' and were thus supranational in nature (with the Commission being able to start the legislative process and the Council and the EP having to adopt or reject EU legislation), legal migration was the only one which maintained an intergovernmental structure in its decision-making process.[2] This meant that legal migration was still subject to unanimous voting in the Council with only a minimalist role for the EP through the consultation legislative procedure (under this procedure, the views of the EP can be overlooked by the Council). This scenario unfolded as from 1 January 2005 and lasted until the entry into force of the Treaty of Lisbon on 1 December 2009 which remedied this anomalous situation. As discussed in Sect. 8.4, these procedural changes impacted heavily on the outcome of the legislative negotiations focused upon by this chapter.

The Hague Programme, although failing to outline any future substantial programme for EU legal migration law (unlike the aforementioned Tampere European Council Conclusions), invited the Commission (albeit rather superficially) to come up with a new policy plan on legal migration by the end of 2005. Of paramount importance to this chapter, it identified some measures to be taken in this sub-policy domain, including an amendment directive to extend the scope of Council Directive 2003/109/EC to beneficiaries of international protection (i.e., refugees and/or those granted subsidiary/international protection), amongst others. In June 2007, the Commission took up this invitation and sent the Council a draft legislative proposal on this topic (COM (2007) 298 final, 6 June 2007). As discussed in subsequent sections, the Council was, however, unable to agree on this amendment directive and the situation was only resolved through the entry into force of the Treaty of Lisbon (which as aforementioned shifted Council voting from unanimity to QMV and established the ordinary legislative

procedure—which gave the EP same powers as the Council to adopt or reject this legislation).[3]

The next stage in the development of EU legal migration was the 2008 European Pact on Immigration and Asylum. As Peers shows, it was a commitment on the part of the EU governments '*to organize legal immigration to take an account of the priorities, needs, and reception capacities determined by each Member State*' (Peers 2011: 388). The so-called Dublin Regulations (mentioned earlier) on responsibility for asylum applications stirred quite a lot of controversy among many of the EU governments, not least Malta's government. Malta is currently still in favour of revising them to bring them in line with the European Pact of 2008 and with the EU Treaty principles on solidarity and fair-sharing enshrined in Article 80 TFEU:

> The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

However, after having said the above, the Pact did not produce any tangible reference to any EU legislation on any of the legal migration issues.

The sixth stage in the EU's legal migration development is represented by the post-Treaty of Lisbon period. Here, the focus is placed on Article 79 (TFEU) falling under 'Chap. 2' (Policies on Border Checks, Asylum, and Immigration) of Title V (Area of Freedom, Security, and Justice) of the Treaty (this Treaty article is quoted in the next subsection). It begins by committing the Union and its member states to develop a common immigration policy (Article 79(1) TFEU). For the purposes of this chapter on long-term residence permits, Article 79(2) TFEU is significant for two main reasons. First, this Treaty article confirms that the EU legal framework for legal migration shall be formed by the EP and the Council acting in accordance with the ordinary legislative procedure. Second, it requests these two EU decision-making institutions to adopt measures in some areas, such as adopting standards on the issuing of long-term visas and residence permits by the EU member states.

All this means that the EU's remit in this policy sphere has become more powerful, with it now being obliged to adopt a common

immigration policy. At the same time, the Treaty of Lisbon provisions has diminished the EU member states' rights to intervene in this sphere. In fact, the entry into force of the Treaty of Lisbon has made it more difficult for EU member state initiatives to maintain or introduce national provisions alongside EU legislation (and which is contrary to the provisions of the former Article 63 TEC brought about in the second stage of the policy's development). EU governments have thus lost some form of sovereignty on issues of legal migration in the process.[4] However, this is partly made up for through Article 79(5) TFEU which still allows EU member states to determine the volume of admission of migrants entering their borders seeking employment. Besides, Article 79(1) TFEU, unlike the former Article 63 TEC, broadened the wording of the text adding a new dimension to the Treaty. As Peers (2011: 389) observes, Article 79(1) TFEU speaks about 'efficient' management, 'fair treatment' of legal residents, and so forth: features that are novel to this policy sphere.

In brief, the Treaty of Lisbon brought about important changes to the EU's legal framework for legal migration, the most significant of which were the introduction of QMV in Council voting provisions and the application of the ordinary legislative procedure where the Council and the EP are equally involved in the EU's legislative decision-making process. As already emphasized, and as discussed in the following sections, these changes had an impact on the EU legislative negotiations adopting Directive 2011/51/EU.

Peers (2011: 393) hits the nail on its head when he maintains that:

> Following the entry into force of the Treaty of Lisbon, immigration still remains a shared competence of the EU and its Member States. However, the wording of the new provisions suggests that it is now easier to justify more intensive EU action pursuant to the principles of proportionality and subsidiarity, and harder to argue that any particular area of immigration law is outside EU competence.

This last point, in fact, leads to some of the latest developments in the legal migration front represented mainly by the adoption of a European Agenda for Migration (see Communication from the Commission to the Council and the EP on 'A European Agenda for Migration' on 13 May 2015 (COM(2015) 240 final). This was necessitated by an overall lack of a coordinated European response to the refugee and migration crisis

(that hit Europe hard in 2015 and 2016) with the European Agenda setting out a comprehensive approach for improving the management of migration in all its aspects. At least, at the time of writing, three implementation packages were adopted under this Agenda in 2015 (on 27 May, 9 September and 15 December). Besides, a Commission proposal for an EP and Council directive on the conditions of entry and residence of TCNs for the purposes of highly skilled employment was adopted on 7 June 2016 (see COM(2016) 378 final—the aim behind this legislative proposal is to review the EU Blue Card Directive (OJ L 155, 18.6.2009, p. 17) to make it more effective to attract talent to Europe).

8.2.2 Background to the EU Legislative Case on the Negotiations of Directive 2011/51/EU

As stated in the previous sub-section on the development of the EU's legal migration policy and legislation, the Tampere European Council of October 1999 established rules about the 'fair treatment' of non-EU nationals (or TCNs) that encouraged the Commission to come up with draft legislative proposals, such as the one in 2001 on the status of long-term residents for TCNs. This proposal also included the possibility for refugees to qualify for long-term EU residence.

8.2.2.1 The Need to Streamline and Harmonize EU Legal Migration Legislation

As previously observed, the Commission's 2001 legislative proposal for TCNs to be recognized as long-term residents in the EU (the LTR directive) was not popular among the EU governments of the time and, as a result, the adopted Council directive (of 25 November 2003) watered-down the Commission's original proposal. During those negotiations, the EU governments in Council also agreed to exclude refugees from the scope of the directive. However, they did (together with the Commission) come up with a Joint Statement (adopted during the Justice and Home Affairs Council of Ministers meeting of 8 May 2003) that affirmed that in the short term, the rights of long-term EU residence should be extended to TCNs who were refugees or under some form of protection.

This was mainly because the Commission realized that the entry into force of the 2003 LTR directive, which was applicable only to TCNs who were not refugees or beneficiaries of international protection, would, in reality, produce inconsistencies with other EU legislation

in this policy sphere already in force. For instance, the Qualification Directive (Council Directive 2004/83/EC of 29 April 2004) already recognized the status of stateless persons needing international protection, unlike the 2003 LTR directive (see Recital (1) of Directive 2011/51/EU of 11 May 2011, p. 1). Therefore, the Commission needed to streamline and harmonize EU law. As depicted in Fig. 8.1 and as examined later, the Commission adopted its proposal for a revision directive amending the 2003 LTR directive in June 2007.

8.2.2.2 The Intergovernmental and Supranational Nature of the Negotiations Adopting Directive 2011/51/EU

As emphasized further on in this chapter, the 2007–2011 EU legislative negotiations on the amendment directive began in a purely intergovernmental setting. This, however, lasted only until the entry into force of the Treaty of Lisbon which shifted and 'Communitarized' all remaining aspects of EU immigration policy. Here, it is relevant to point out a Communication from the Commission to the EP and the Council about the consequences of the entry into force of the Treaty of Lisbon on ongoing interinstitutional decision-making processes (COM(2009) 665 final of 1 December 2009). This mainly had to do with changes effected to the legal base of ongoing processes in accordance with the new Article 79(2)(a)(b) TFEU. This legislative file was, in fact, one of these EU legislative processes affected with a change in its legal base from Article 63(3)(a) and (4) TEC to Article 79(2)(a) and (b) TFEU:

> Article 79
>
> (ex Article 63, points 3 and 4, TEC)
>
> 1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration, and trafficking in human beings.
>
> 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

(c) illegal immigration and unauthorized residence, including removal and repatriation of persons residing without authorization;

(d) combating trafficking in persons, in particular women and children'.

8.2.2.3 Scope and Conditions Behind Extending the LTR Directive to Beneficiaries of International Protection

It is important to understand the aim behind EU legislation granting long-term residence permits to TCNs (Council Directive 2003/109/EC of 25 November 2003) and subsequently its extension to beneficiaries of international protection (Directive 2011/51/EU of 11 May 2011). Both directives state that for a non-EU national to be awarded the status of a long-term resident, the person must have resided continuously (i.e., uninterruptedly) for a period of 5 years in one of the EU's member states. The granting of this status is, however, dependent on the following conditions:

- a stable and regular source of income;
- health insurance;
- when required by the EU member state responsible for the processing of the application, compliance with integration measures; and
- the person must not constitute a threat to public security or public policy.

Once met, the EU member state responsible for the application process (i.e., the member state hosting the third-country citizen) can issue a long-term residence permit granting this person the status of 'long-term resident'. This permit is renewable and allows the person to enjoy the same treatment and rights as nationals of that EU member state, such as the right to access employment (also self-employment), education and vocational training, social security (protection and assistance), and access

to goods and services, amongst others (European Commission, DG Home Affairs website). Most importantly, such persons, once granted long-term residence, may move freely within the EU with the exception of the United Kingdom (UK) and Ireland— which received special 'opt-out' arrangements[5] from implementing the Schengen *acquis* when the Treaty of Amsterdam incorporated them into the EU Treaties.[6]

Thus, in a nut-shell, the aim behind extending the scope of the 2003 LTR directive to refugees and to beneficiaries of international protection was to bestow upon this category of TCNs a set of rights about legal certainty and residence that would be equal to those availed of by other non-EU nationals and that are more or less comparable with those enjoyed by EU citizens.

8.2.2.4 Linkage Between the Immigration and Asylum EU Policy Spheres

It is also important to understand the relevance behind the Commission's intention to legislate in this area as part of a wider objective to link this sphere with that of asylum—that of implementing a Common European Asylum System (CEAS)— thus making this new framework as effective as possible.[7] As stated, this goes back to the Tampere European Council of 1999 when the EU member state governments committed themselves to establish a common policy in the sphere of immigration and asylum. This meant that the extremely sensitive issue of external and internal EU border controls had to be settled as part of a package on a common EU policy. This chapter's introduction has, in fact, already emphasized how interlinked immigration (legal and irregular) and asylum are.

It is also worth expanding a little on the sub-policy sphere of asylum, since the next sections reveal a sense of uneasiness on the part of Malta's government in the legal migration domain (experienced during the legislative negotiations adopting the 2011 amendment directive) which were linked with its difficulties as an external border of the EU in the asylum field. One must bear in mind that Malta together with Lampedusa, an Italian island southwest of Maltese territorial waters, constitutes the first secure ports for irregular migrants/boat people to enter the EU from the African continent in the central Mediterranean region.

This issue of border controls finds its roots back to the 1985 Schengen Agreement which effectively marked the beginning of efforts to remove internal border controls among the EU member states.[8] This later spilled-over into the adoption by EU governments of the Dublin Convention in 1990 and its successors—the Dublin II Regulation and

the recast Dublin III Regulation (adopted on 26 June 2013 and entering into force on 19 July 2013).

The Dublin regulations established rules on, amongst other things, which EU state is responsible for non-EU nationals entering the EU (whether this occurred by way of visa or permit or through which they have traveled irregularly), which EU member state is responsible for applications of asylum seekers (i.e., the first EU member state where finger prints have been stored or an asylum claim lodged) and for relocation of such persons. To make this effective, a host of other initiatives were eventually established such as the establishment of Frontex in 2005 (the EU's external border agency) and a number of databases to enhance electronic controls. These included the Schengen Information System (SIS) in 1995 and the European dactylographic system (Eurodac) in 2003 (this has now been recast in 2013) to store and share biometric identification data.[9] Today, the CEAS has finally been accomplished with the entry into force of a package of EU legislation.

Simply put, one may trace the foundations of the gradual development of a common European system on asylum to the Schengen Agreement of 1985 which then snowballed into other initiatives. These initiatives were initially intergovernmental in form which later became 'Communitarized' via the ordinary legislative procedure and with QMV voting in Council.

8.2.2.5 'Distalization' Processes in the EU

Another important issue concerning Malta's difficulties as an external border of the EU is what Mainwaring (2012: 48–49) observes about 'distalization' processes, i.e., initiatives taken deliberately by EU governments to '*transfer responsibility towards the external border*', something which the Maltese government and other external border EU member states (such as Italy) are trying to avert and address today. The stark difference here is that Malta was not yet an EU member state at the time when the first EU initiatives and decisions previously discussed were taken, while other 'Mediterranean' states like Italy, Spain, France, and Greece were. Unlike these countries, both Malta and Cyprus (which together constitute the EU's southern-most periphery in the Mediterranean) were obliged to adopt and implement provisions such as those on the Dublin II Regulation (now Dublin III) as part of the pre-accession process whilst not having had the opportunity to participate directly in their decision-shaping and taking processes. Moreover, unlike the UK, Ireland, and Denmark, they could not opt-out from such

agreements. This, therefore, is another important factor to be kept in mind when focusing on the Maltese government's position in the next section about its sensitivities and reservations on EU migration and asylum policies.

8.2.2.6 Timeframe of the Negotiations Adopting Directive 2011/51/EU

Figure 8.1 sets out the timeframe of the 2007–2011 negotiations adopting Directive 2011/51/EU and gives a snapshot of the main dates and events that occurred during the negotiations. As with Figs. 7.1 and 7.3 in Chap. 7, Fig. 8.1 also distinguishes (by means of colour shades) the stages of decision-shaping and taking as well as two main phases in

Table 8.3 EU Council Presidencies involved in this process

Timeline & stages	*EU member state*	*Events*
January–June 2007 [decision-shaping]	Germany	- European Commission (COM) Proposal on 6 June 2007 - Start of decision-shaping negotiations with a discussion at the JHA Council on 12 June 2007
July–December 2007 [decision-shaping]	Portugal	None
January–June 2008 [decision-shaping]	Slovenia	- Discussions at JHA Council on 18 April 2008 - EP opinion on 23 April with COM's partial agreement with it - Discussions at JHA Council on 5 June 2008
July–December 2008 [decision-taking]	France	JHA Council on 27 November 2008: Unanimity not reached because of Malta's veto and hence directive not approved
July–December 2009	Sweden	COM communication on the consequences of the entry into force of the Treaty of Lisbon
January–June 2010	Spain	None
July–December 2010 [decision-shaping]	Belgium	- Discussions at JHA Council on 7 October 2010 - Discussions at JHA Council on 8 November 2010 - EP opinion (1st reading) on 14 December 2010
January–June 2011 [decision-taking]	Hungary	- Approval of Council of Ministers (1st reading) on 11 April 2011 - Adoption of legislative act on 11 May 2011

Source Table compiled by the author

these negotiations made up of the pre and post-Treaty of Lisbon phases. Thus, the first phase of the negotiations began on 6 June 2007 (the decision-shaping stage) which progressed to the decision-taking stage on 27 November 2008 where a unanimous vote in favour of the amendment directive was not achieved and where the legislative proposal could not be adopted. This phase is hereinafter referred to as the pre-Treaty of Lisbon phase. The Commission was, however, able to reintroduce its proposal once the Treaty came into force and the legal base was modified. This phase of the negotiations is referred to as the second phase (the post-Treaty of Lisbon phase) which re-commenced at the decision-shaping stage on 1 December 2009 and ended with a Council decision taken at first reading and by QMV on 11 April 2011. The act was adopted jointly by Council and the EP a month later, i.e., on 11 May 2011.

Complementing Fig. 8.1, a list of the Council Presidencies involved in these negotiations is set out in Table 8.3. This table indicates the various EU Council Presidencies and main events occurring during particular and crucial stages in the negotiations on this legislative file.

8.3 Malta's Objectives in the 2007–2011 EU Legislative Negotiations

The Maltese government's objective in the legislative negotiations on widening the scope of Council Directive 2003/109/EC to beneficiaries of international protection was to relocate rapidly the number of TCNs residing in Malta. The government needed to intervene to modify Article 4(1) of the 2003 Council directive about the duration of residence for TCNs seeking long-term residence status in the EU. As stated further on and as stipulated by this legislative article, in order for TCNs to be eligible for long-term residence status, they needed to have resided continuously and uninterruptedly in an EU member state for a period of 5 years. This thus went contrary to Malta's objectives and preferences.

As previously stated and as further explained in Sect. 8.4, during this time (i.e., of the Commission's adoption of the legislative proposal), Malta was being faced with an influx of irregular migrants, many of whom request subsidiary protection on arrival. The government has, on many different occasions, urged the international community, the European Commission, and the EU member states to find a solution to

this problem and assume burden-sharing responsibilities according to previously cited EU Treaty articles.[10] For instance, in a speech delivered during a United Nations General Assembly on 26 September 2007(thus, just a few months after the Commission's adoption of the proposal to amend the 2003 LTR directive), Malta's Prime Minister, Lawrence Gonzi, stated the following:

> The plight of internally displaced persons and those that are seeking a better life elsewhere has continued to be one of the priority issues of the international community. Indeed, Malta has for some time been witnessing this tragic human migration… resulting in a large influx of asylum seekers arriving irregularly on our small island state which, at 1,200 persons per square kilometer, has one of the highest densities of population in the world.
>
> I would like to reiterate the calls made by Malta in this Assembly last year for a concerted response from the international community as well as the United Nations… in addressing appropriately and adequately this problem… by providing particular assistance to those countries which, like Malta, carry a disproportionate burden in addressing this phenomenon… to find support in establishing a comprehensive institutional and holistic response to international migration based on solidarity, respect for human dignity and responsibility-sharing. (Permanent Mission of Malta to the United Nations 2007, p. 4)

In a similar intervention made by Gonzi some years later in 2011 (and just before the adoption of the amendment LTR directive), when the immigration situation in Malta had further deteriorated as a result of the outbreak of the Libyan civil war in February 2011, he stated that:

> Malta is facing an enormous crisis which surpasses the one being seen in Italy (Times of Malta, 4 April 2011).

Malta's PM was referring to the influx of displaced TCNs who were escaping from the Libyan conflict and who were arriving in Malta (which was the first, safe land to reach) as a result of its geographic proximity to the conflict. He was also reacting to the previous comments made (a week before) by the EU Home Affairs Commissioner, Cecilia Malmström, who downplayed Malta's immigration crisis and rejected its call to trigger an EU-wide mechanism of obligatory solidarity found in the Temporary Protection Directive of 2001 (Council Directive

2001/55/EC of 20 July 2001). The mechanism is referred to as the 'EU emergency mechanism', which when triggered (by QMV in Council and following a proposal by the Commission) provides irregular migrants with a temporary protection status for up to 2 years enabling relocation to other EU member states (based on a voluntary offer from a member state and on the consent of the transferee).[11] At the time, Malta received 820 sub-Saharan Africans in 24 hours which was described by Malta's Prime Minister as a 'red light' which should have triggered the mechanism immediately:

> Malta received 820 sub-Saharan Africans in 24 h… This may seem like a small number for other countries, but for us, it is enormous (ibid).

In comments made to the Times of Malta, Gonzi explained that Italy had received almost 20,000 migrants since the beginning of that year (2011). However, while most of the migrants landed on the tiny island of Lampedusa overwhelming its population, the Italian government began shipping large numbers of them to mainland Italy. Gonzi observed that:

> comparing migrant arrivals as a proportion of the population, Italy, which has a population of more than 60 million people, would have to see some 120,000 people reach their shores to be at a par with Malta which received 800… The European Commission was well aware of the situation in Libya and the massive potential for a biblical exodus of migrants. However, she (Commissioner Malmström) was 'still not realizing' that the problem in Malta was different from that anywhere else (ibid).

However, despite the government's and Maltese MEPs incessant calls to activate the mechanism, the Commissioner insisted that:

> there is no consensus among EU member states on the need to activate an emergency directive obliging member states to show solidarity and resettle 'Libyan' asylum seekers arriving in Malta and Lampedusa… member states still do not feel the need that the time has come to trigger this mechanism (Times of Malta, 5 April 2011).

This prompted a strong reaction from both the government (as illustrated above) and also Maltese MEPs. During an EP debate with the Commissioner on 5 April 2011, MEP Simon Busuttil (at the time of

writing, he is the leader of the Nationalist party in opposition in Malta), the EPP-ED Group's spokesman for Frontex (the EU external borders agency), stated:

> Commissioner Malmström—you should show political leadership and propose the activation of the temporary protection directive… In Malta, there is an emergency as 800 people arriving in 24 h is the same as if 120,000 have arrived in France. The Commission should not base its analyses on mere numbers but in relative terms. On the other hand, EU member states should honour their promises and show real solidarity (ibid).

Another Maltese MEP, John Attard Montalto, from the Party of European Socialists (PES) also intervened during this debate, inviting the Commission to outline what it considers to be the right number of asylum seekers reaching Europe for the emergency solidarity clause to be activated:

> We have an unfolding tragedy today and we need to act today. Let us not be the man of yesterday (ibid).

It is also worth mentioning some concrete initiatives of the past years taken by some member state governments, such as the 'Quadro Group' (consisting of Cyprus, Greece, Italy and Malta) established in November 2008 (therefore, during the legislative negotiations on the amendment LTR directive) and 'Operation Mare Nostrum' [an Italian initiative which ended on 31 October 2014 and superseded by Frontex's 'Operation Triton' (under Italian control) and 'Poseidon Sea' (under Greek control)] to mitigate the irregular migration problem as a result of a lack of political will by the Commission and other EU governments to intervene at an EU level.

The previous paragraphs thus indicate considerable tension in Malta on the immigration issue, which prevailed during the negotiations on the directive. They also indicate the sensitivity of the problem of 'unwanted' arrivals on Southern Europe's shores which had been looming in the background, since the turn of the millennium and which reached unprecedented levels by 2010–2011 (especially since the outbreak of the Libyan civil war of 2011). Therefore, the Commission's 2007 legislative proposal to extend the scope of the 2003 Council directive to TCNs who are beneficiaries of international protection meant that such persons would be able to request a long-term residence permit once

their situation became regularized and legal. Thus, Article 4(1) of this directive would have made the situation worse for countries like Malta, particularly because of its geographic proximity to North Africa and its extremely small and densely populated characteristics (discussed in Chap. 6). Adoption of this article as proposed by the Commission would have obliged TCNs who had acquired refugee status or international protection to reside and stay on the island for a period of 5 years before being able to move to another EU member state. Article 4(1) reads as follows:

> Article 4
>
> Duration of residence
>
> 1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for 5 years immediately prior to the submission of the relevant application.

The Maltese government's other, related, point of contention with the Commission's proposal was that there were no guarantees that once the 5 years elapse and a long-term residence permit and status is granted to a TCN, he/she would decide to leave the island. Malta believed that to the contrary, once these beneficiaries received certain rights within a member state [aforementioned in the previous section (see 8.2.2)], this could effectively act as a disincentive for such persons to relocate to another member state.

The government, therefore, had to ensure that this situation would not materialize. The Maltese government's main preference in these legislative negotiations was to maintain the *status quo*, i.e., that Council Directive 2003/109/EC would not be extended to other types of migrants. It, therefore, needed to 'kill' and prevent this legislative proposal from being adopted. It was initially advantaged by the right to veto in Council, something which as aforementioned was eventually no longer possible with the entry into force of the Treaty of Lisbon. Notwithstanding, Malta's government perceived the 'power of the veto' to block the adoption of an EU legislative act in Council as a last resort, something which was highly undesirable to deploy because of the negative connotations that vetoing bestows to a country's reputation.

To this end, the government eventually devised a fall-back position— that of trying to amend Article 4(1) to make the 5-year duration of residence flexible and cumulatively applied between two or more EU member states. Malta was thus in favour of allowing a refugee or beneficiary of international protection to be able to move around the EU 'during' and not 'after' the 5 year wait for a long-term residence application, thus avoiding TCNs getting 'stuck' in one EU member state. The result of this would be a reduction of the demographic burden for small and extremely high densely populated states like Malta experiencing heavy influxes of migrants besides a relaxation of administrative burdens such a process that imposes on small administrations.

Therefore, instead of requesting to be exempt from falling under the remit of the legislative act, the government's fall-back position in these negotiations was to intervene on those articles about the duration of residence for TCNs requesting long-term resident status. As discussed in the next section, this, however, only occurred late in the negotiations and only once the government apprehended that its first preference, that of 'shooting down' the proposed amendment directive, was virtually an impossible feat to achieve (especially once the Council's voting procedure shifted to QMV).

8.4 Malta's Capacities and Strategies During the 2007–2011 EU Legislative Negotiations

8.4.1 The Decision-Shaping Stage

8.4.1.1 Malta's Capacities and Strategies in the Council of the European Union

- Malta's Capacities (variables 1 to 3):

Similar to the Maltese government's capacity in the previous legislative cases discussed in Chap. 7, here too, the government was rather weak in terms of the number of public officials working on this legislative file. In fact, there were around five to six officials (excluding the JHA Minister involved in the decision-taking stages) involved in this process. They were as follows:

– Malta's PR (who together with the minister was also involved in the decision-taking stage) in Coreper II;

– a technical attaché at the Permanent Representation of Malta to the EU in Brussels;
– a policy officer at the EU Secretariat (at the time within the Office of the Prime Minister in Malta); and
– the Director (EU Affairs) and a national expert from the Ministry for Justice and Home Affairs [since 2013, it has been called the Ministry for Home Affairs and National Security (MHAS)].

The different roles played by each of the above have already been explained in the previous chapter. One must note that even though Chaps. 7 and 8 differ in terms of policy sphere, the roles played by these officials are similar and will not be repeated here.

In line with the methodology (explained in Chap. 5 and also applied to the case studies in Chap. 7), Fig. 8.2 illustrates data for the government's capacity in this EU legislative file (see also 'Step 1' of Table 9.3 in Chap. 9). The variables stem from the quantitative design of the book's

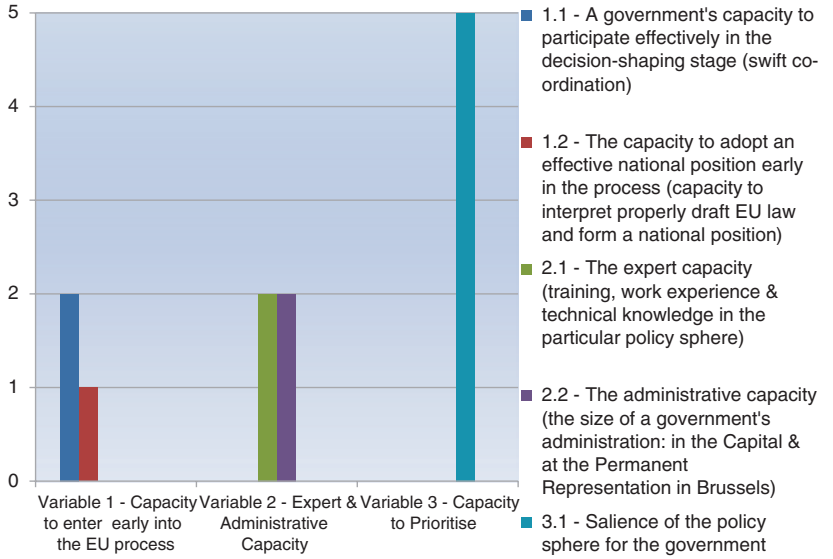


Fig. 8.2 Data on Step 1 variables of the 'decision weights and measures' approach for the Maltese government. *Source* Figure compiled by the author with data collected from interviews with Maltese government officials

methodology with Fig. 8.2 indicating positive and negative ratings for the government's capacity in this legislative process.[12]

Figure 8.2 thus indicates negative ratings for the government's capacity to enter early in the EU decision-making process (variable 1). This aspect is expanded upon in subsequent paragraphs in this section. Figure 8.2 also indicates negative ratings for the expert and administrative capacity (variable 2). This is mainly because Council Directive 2003/109/EC was substantively a new type of legislative act for the Maltese administration to 'download'— it was, in fact, only transposed by the end of 2007, therefore, the same year when the Commission adopted the new proposal to amend it.[13] Thus, variables 1 and 2 are below the 2.5 mean and, therefore, are rated as negative. Figure 8.2, however, indicates a positive rating for the Maltese government's capacity to prioritize (variable 3.1 on the salience of the policy sphere which obtained a rating of '5').

- Malta's strategies during the pre-Treaty of Lisbon phase of the negotiations (variables 4 to 6):

Before the start of legislative negotiations in the Council (during the agenda-setting stage), the Commission held an 'experts meeting' in 2004 (i.e., before the adoption of its legislative proposal on 6 June 2007) to get feedback from the stakeholders and governments about its plans on extending the scope of Council Directive 2003/109/EC to beneficiaries of international protection. As mentioned in a previous section in this chapter, the need for a revision to the 2003 Council directive was recognized in a joint declaration made by the Council and the Commission on 8 May 2003.

A Maltese government official who was following this legislative file at the Ministry for Justice and Home Affairs (as it was called during that time) confirmed that Malta did attend this meeting mainly as a means to understand what other delegations had to say about it (interview held in Valletta on 12 December 2013). At the time, Malta had not yet established a position on this issue about the extension of long-term residence for beneficiaries of international protection. The government was fully occupied trying to come to terms with having just acquired EU membership and coping with implementing the EU's *acquis communautaire* (not least, EU legislation in the JHA EU policy sphere which, as already stated, is extremely vast and complex). These were the main reasons for

the government's lack of focus on the Commission's ideas about a future legislative proposal on this topic. As subsequently stated, Malta's government continued to 'ignore' this issue (and at any adverse implications, it could have for it later with the act's enactment) until late in the decision-making process (refer to previously illustrated data for sub-variable 1.2 in Fig. 8.2 above).

This situation continued even after the Commission's adoption and submission of its proposal to the Council in June 2007. In fact, the government was quiet and seemed to be in agreement with the proposal deciding to fence-sit the discussions, i.e., adopt a 'wait-and-see' approach (variable 6). Table 8.4 and Graph 8.1 below illustrate this situation. According to an official from Malta's ministry (MHAS), this strategy was not really contemplated:

> It came rather naturally, since the government was not yet sure what the implications were and even once discussions in Council began, the government was still studying the Commission's tabled proposal' (interview in December 2013—see also the score (with accompanying justification) for sub-variable 6.1 in Table 8.4).

The legislative negotiations in Council began on 12 June 2007 under the auspices of the German Presidency. This item appeared as a 'B' item on a Council of Minister's agenda, i.e., an item requiring discussion. However, after this meeting, not much occurred at the Council of Ministers level with this item only appearing again in a subsequent JHA Council meeting on 18 April 2008 (under the Slovenian Presidency).

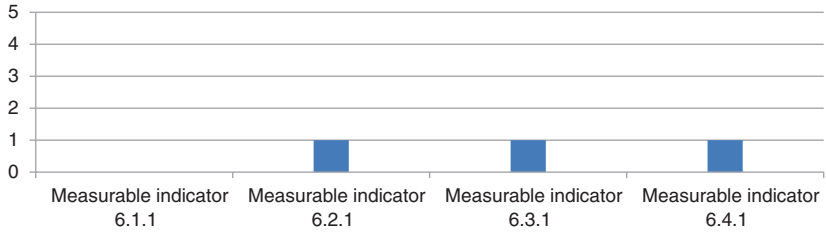
In between, however, legislative negotiations on the Commission's proposal occurred at Working Group and Coreper II meetings. Here, these negotiations mainly focused on the crux of the matter—that is, the scope of the proposed amendment directive—with a majority of member states in favour of the inclusion of both refugees and beneficiaries of subsidiary protection falling within the scope of this directive. There were, moreover, some member states preferring to extend the scope even further—to other categories and not just to those two to include other forms of protection granted by the EU member states. Contrary to this position, there were delegations that were more in favour of diluting the scope limiting it to refugees only (which, as illustrated further on, was similar to Malta's position on this matter and on its specific amendments to Article 4(1) of the proposal; see Table 8.7). As just observed, Malta

Table 8.4 Independent Variable 6 on the fence-sitting strategy

Variable 6—The Fence-sitting strategy
Scale: [5 = successful/+ve; 2.5 = medium; 0 = not successful/−ve]
5 = Yes, at extremely high levels of intensity;
4 = Yes, at high levels of intensity;
3 = Yes, but at medium-to-high levels of intensity;
2 = Yes, but at low-to-medium levels of intensity;
1 = Yes, but at extremely low levels;
0 = None.
Sub-variable 6.1: Altering coalitions
• 6.1.1 – Frequency of coalition shifting
While fence-sitting the process, did the government shift coalitions between pace-setters and foot-draggers according to how discussions developed?
[0] [1] [2] [3] [4] [5] (No, it just fence-sat the process without paying much attention to how the discussions in Council were developing—at this stage, it was still studying the Commission's proposal)
Sub-variable 6.2: Similar national positions
• 6.2.1—Preferences of other governments with similar positions
Since the government's preferences were being injected in the early stages of the process by other delegations (with similar positions), it decided to enter the process by adopting a fence-sitting strategy. If so and through the adoption of only this strategy, how much could you rate the government's success of a favourable outcome in the process?
[0] **[1]** [2] [3] [4] [5]
Sub-variable 6.3: Miscalculating EU outcomes
• 6.3.1—Making-up for a miscalculation of compliance costs
Due to a miscalculation on the government's part about the likely outcome of the negotiation, it decided to fence-sit throughout some (or most) of the process. If so, what score could you give to the government's ability to influence the later stages of the process?
[0] **[1]** [2] [3] [4] [5]
Sub-variable 6.4: Lack of benchmarks during the implementation process
• 6.4.1—Making-up for a lack of benchmarks on which to base a position on
Since the government was relatively new to the EU decision-making process and since it might not have had any benchmarks set by the implementation process (when downloading EU legislation) in this same policy sphere, the government entered this process by adopting a fence-sitting strategy. If so, what score could you give to the government's ability to influence the later stages of the process?
[0] **[1]** [2] [3] [4] [5]

Source Table compiled by the author

Data for this table has been collected through interviews with Maltese government, Commission and Council Secretariat officials with results representing an overall average. The method and the individual components found in this table have been discussed at length in Chap. 5



Graph 8.1 Columns indicating the scores for Variable 6. Graph 8.1 replicates the data found in Table 8.4 presented in columns (see also 'Step 2' of Table 9.3 in Chap. 9). *Source* Graph compiled by the author

fence-sat the early decision-shaping stage of the discussions without sensing the need to participate actively, let alone exercise influence in the process.

- *A Shifting Strategy During Council Negotiations: From Fence-Sitting to Pace-Setting*

As the decision-shaping phase was coming to an end and entering decision-taking, the government broke silence by placing a reserve in a Coreper II meeting on 12 November 2008. As affirmed by a Commission official working at the time for DG Home Affairs, this was really unexpected and took everyone by surprise (interview held in Brussels on 13 January 2014). This was confirmed by an official from Malta's JHA Ministry who observed that Malta never intervened in Working Group and Coreper II meetings up to that stage to make clear their disagreement with the proposal and/or suggest any amendments to legislative articles (interview held in Valletta on 12 December 2013). However, once it realized that there was a general agreement to widen the scope of the directive in Council and that this would add more challenges to it on the irregular migration front, the Maltese government decided to intervene. This was mainly in reaction to the proposal having made strides forward with the reality of a Presidency compromise being likely. Besides, there was another crucial development occurring in Malta during this precise time that spurred the government to intervene: irregular migrant arrivals suddenly increased drastically.

As Table 8.5 reveals, from the mid-2000s, there was a shift in trend in the number of arrivals in Malta of irregular migrants by sea. Just before the government placed a reserve in the Coreper II meeting on 12 November 2008, it had new statistics about immigrant arrivals in Malta having occurred that summer (when most boat-crossings occur due to ideal maritime conditions). One may observe that in Table 8.5 and Fig. 8.3, the statistics for the number of arrivals of irregular migrants arriving on its shores in 2008 greatly outnumbered those of all previous years, even though the figures demonstrate a constant steady increase occurring since 2002, i.e., when this phenomenon first surfaced. In fact, the figures reveal that in 2008 alone, Malta experienced a 38.7% increase from the previous year with 2775 irregular migrants (compared to 1702 in 2007) arriving in Malta. The government thus suddenly became aware of the new situation occurring in Malta and could not remain silent any longer in the negotiations.

Thus, in November 2008, there was fear that these statistics would only get worse in the short-to-medium term. In the Coreper II meetings of 12 and 19 November (Malta's government circulated a statement containing its position during the meeting on 19 November), Malta's government emphasized that it was experiencing a sudden influx of irregular migrants, something which was not occurring before on such a large scale. It stressed that, as a result, it could not agree in principle

Table 8.5 Number of TCNs arriving illegally in Malta by boat from 2002 to 2012

2002—1686
2003—502
2004—1388
2005—1822
2006—1780
2007—1702
2008—2775
2009—1475
2010[a]—47
2011—1579
2012—1890

[a]2010 experienced a sharp drop in the number of migrant arrivals as a result of Italy's (the Berlusconi government) push-back agreement with the former Muammar Gaddafi's Libya (i.e., a year before the Libyan revolution broke out)

Source Police General Headquarters—Immigration Section [in National Statistics Office (NSO), News release, 19 June 2013, 118/2013, p. 2]

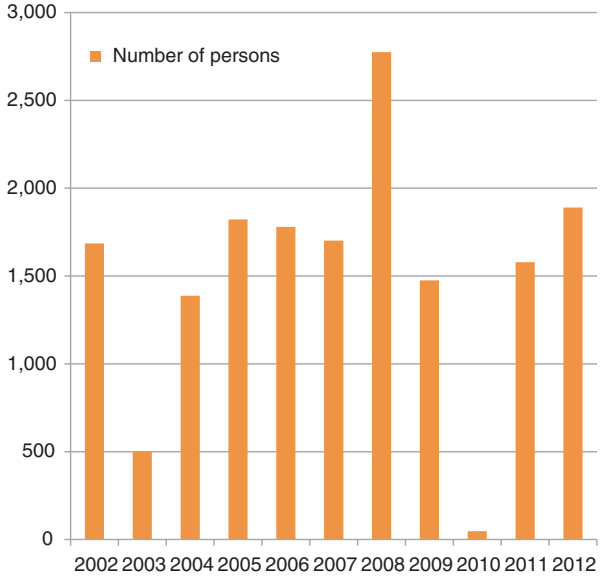


Fig. 8.3 Persons arriving illegally in Malta by boat between 2002 and 2012. *Source* National Statistics Office (NSO), News release, 19 June 2013, 118/2013, p. 3

with amending the scope of the 2003 Council directive, especially with extending its scope to cover TCNs offered subsidiary protection.

This last issue is worth expanding upon in order to understand better Malta's position on this point. Once irregular migrants arrive in Malta, they request asylum or international protection, i.e., subsidiary protection. Asylum (refugee status) must not be confused with the granting of international or subsidiary protection. They are different, since the granting of international or subsidiary protection to TCNs is a stage in the application process which precedes that for refugee status. As may be observed in Table 8.6, Fig. 8.4, and Chart 8.1 below, requests by TCNs for subsidiary protection in Malta outnumber those for refugee status. Table 8.6 and Fig. 8.4 indicate the number of applications granted subsidiary protection between 2002 and 2012 by the Maltese government. With this scenario in mind, although Malta's government was more flexible on extending the scope of long-term residence to TCNs who were refugees (since as being indicated by Chart 8.1, between 2002 and 2012,

Table 8.6 Number of TCN applications granted and rejected protection (refugee status and subsidiary or other forms of protection) by the Maltese authorities during 2002–2012

Year	*Total*	*Granted refugee status*	*Granted subsidiary/ International protection*	*Rejections*
2002	419	22	111	286
2003	568	53	328	187
2004	868	49	560	259
2005	1102	36	510	556
2006	1045	22	481	542
2007	959	7	623	329
2008	2697	19	1397	1281
2009	2575	20	1671	884
2010	348	43	179	126
2011	1606	70	814	722
2012	1590	35	1398	157
Grand Total	13,777	376	8072	5329
%	100	2.72	58.59	38.68

Source National Statistics Office (NSO), News release, 19 June 2013, 118/2013, p. 6

they accounted for only 3% of all asylum decisions when compared to the 58% for subsidiary or other forms of protection), it was extremely uncompromising on extending these rights to beneficiaries of subsidiary or international protection, especially to those entering the EU irregularly.

Malta's government argued that the adoption of the amendment directive (as proposed by the Commission and as maintained in the Council Presidency compromise text presented in the Coreper II meetings mentioned earlier) would effectively put the status and rights for beneficiaries of subsidiary protection being granted a long-term residence permit on an equal footing with those of refugees similarly seeking long-term residence. The government argued that the two types of category of international protection were not the same in the application process for asylum.

However, this (Maltese) position on the need to differentiate between refugees and beneficiaries of international protection could not be accepted by the European Commission.

Table 8.7 shows Malta's main 'opponents' in these negotiations. It also shows the delegations which supported Malta on its stance against the non-extension of the 2003 LTR Directive and, as explained further

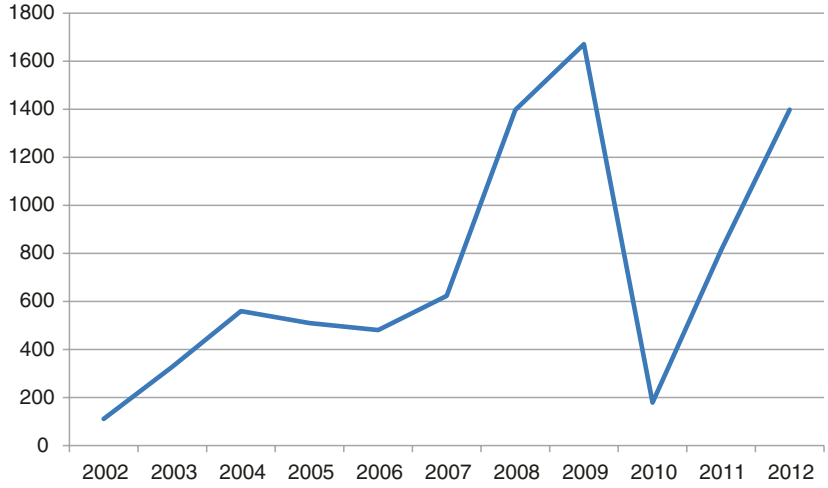


Fig. 8.4 Number of TCNs granted subsidiary and/or international protection by the Maltese authorities during 2002 and 2012. *Source* National Statistics Office (NSO), News release, 19 June 2013, 118/2013

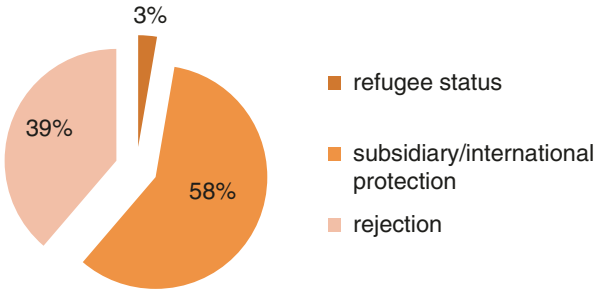


Chart 8.1 Asylum decisions taken by the Maltese authorities during 2002–2012. *Source* National Statistics Office (NSO), News release, 19 June 2013, 118/2013

on, on its specific requests to include amendments to Article 4(1) (of the 2003 LTR directive) in the draft revision directive.

A former official from DG Home Affairs observed (interview held in Brussels on 13 January 2014) that the Commission could not agree with a compromise which discriminated between different categories of

Table 8.7 Overview of delegations' positions in relation to Malta's amendments in Council

Malta issues	Delegation/s	Status (for or against Malta's position)	Justification/s
1. Non-extension (i.e., non-approval) of the Commission's proposal to revise the 2003 LTR Directive	1.1 The Commission	1.1 Against	1.1 The Commission's aim was to add legislation to cover TCNs who were beneficiaries of international protection, thus streamlining the situation in relation to EU long-term residence for refugees and those with subsidiary protection. Malta's position, therefore, went against the Commission's *rationale*.
	1.2 Germany, Sweden, Denmark, the UK, and The Netherlands	1.2 Against	1.2 Same position as the Commission.
2. Article 4(1)	2.1 The Commission	2.1 Against	2.1 The Commission could not understand Malta's position since as stipulated in Article 4(1), TCNs were to be granted a free movement right after spending 5 years in one member state.
	2.2 France, Greece, Portugal, and Spain	2.2 In favour	2.2 Although they could generally agree with Malta on Article 4(1), they could also live with the Commission's proposal to extend the scope of the 2003 LTR directive. These delegations did not veto (during the pre-Lisbon phase) or vote against the adoption under QMV rules (during the post-Lisbon phase).
	2.3 Cyprus and Italy	2.3 In favour	2.3 These delegations were more vociferous than other states in supporting Malta's position on both issues (points 1 and 2 in this table). However, they did not veto the decision-taking stage during the pre-Lisbon phase of the negotiations.
	2.4 The Czech Republic	2.4 In favour	2.4 It supported Malta against the Commission's proposal to extend the scope of the 2003 LTR directive. Although it did not veto the process during the pre-Lisbon phase of the negotiations, like Malta, it voted against approving the legislation when voting rules shifted to QMV (in the post-Lisbon phase).

Source Table compiled by the author with data collected from interviews with Malta government and EU officials

Note Other delegations do not feature in this table either because: (1) they were in favour of the Commission's proposal to revise the 2003 LTR Directive, or (2) they did not have a position or were against Malta's specific amendments to Article 4(1)

protection. In fact, one of the main aims behind the Commission's proposal was to put refugees and beneficiaries of subsidiary protection on an equal footing (Commission background note, DG JLS/B.2 for the Coreper II meetings of 3 and 5 December 2008).

Thus, when it realized that its preferred option of not extending the scope of the directive was not to be achieved, the government had to switch approach to one that was more proactive and direct. This marked the start of a pace-setting strategy (variable 4) in the little time left before the end of the negotiations in Council (in fact, this strategy was deployed only a fortnight before the JHA Council of 27 November 2008 when the French Presidency was expected to request for a decision to be taken (see Fig. 8.1 on the key dates of the 2007–2011 negotiations).

A Maltese official from the JHA Ministry emphasized that Malta's Permanent Representation in Brussels wasted no time in taking the lead (with approval being granted by the Office of the Prime Minister) to commence lobbying efforts with other EU member states, the Commission and the Council Presidency:

> Around the time when Malta placed a reserve in the Coreper II meeting in November 2008, the Permanent Representative recommended that the government's structures lobby intensely (interview held in Valletta on 12 December 2013).

Another Maltese official (who was at the time a technical attaché following JHA issues at Malta's Permanent Representation) stated that:

> Once Malta became more confident with the text of the Commission's proposal and due to influxes of irregular migrants starting to be perceived as a national problem with numbers starting to reach unprecedented levels, a letter was sent by the Permanent Representative of Malta to the EU to the PM requesting that the government immediately begins to lobby the EU institutions and member state governments and adopt other possible effective strategies in this policy sphere and in the little time we still had available… Time was running out and we were aware of it (interview held in Malta on 23 November 2013).

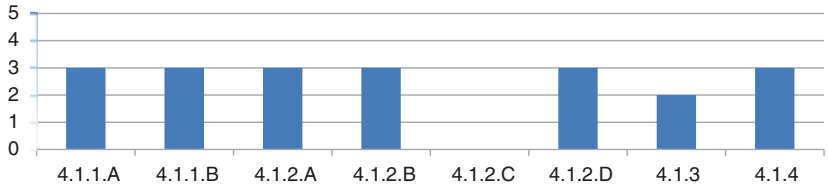
Table 8.8 and Graph 8.2 (see also 'Step 2' of Table 9.3 in Chap. 9) give an indication of Malta's lobbying efforts in this process—a

Table 8.8 Independent Variable 4: Sub-variable 4.1 on the pace-setting strategy

Sub-variable 4.1—Pace-setting through lobbying
Scale: [5 = successful/+ ve; 2.5 = medium; 0 = not successful/-ve]
5 = Yes, at extremely high levels of intensity;
4 = Yes, at high levels of intensity;
3 = Yes, but at medium-to-high levels of intensity;
2 = Yes, but at low-to-medium levels of intensity;
1 = Yes, but at extremely low levels;
0 = None.
Measurable indicator 4.1.1: Lobbying the Council
• 4.1.1.A—Lobbying the Council [0] [1] [2] **[3]** [4] [5]
• 4.1.1.B—Lobbying the Council Secretariat [0] [1] [2] **[3]** [4] [5]
Measurable indicator 4.1.2: Lobbying the European Commission
• 4.1.2.A—Lobbying the Commissioner network [0] [1] [2] **[3]** [4] [5]
• 4.1.2.B—Lobbying the Commission Directorate-Generals [0] [1] [2] **[3]** [4] [5]
• 4.1.2.C—Lobbying SNEs in the Commission **[0]** [1] [2] [3] [4] [5]
• 4.1.2.D—Lobbying the Commissioner responsible for the dossier [0] [1] [2] **[3]** [4] [5]
Measurable indicator 4.1.3: Lobbying large state governments [0] [1] **[2]** [3] [4] [5]
Measurable indicator 4.1.4: Lobbying small state governments [0] [1] [2] **[3]** [4] [5]

Source Table compiled by the author

Data for this table has been collected through interviews with Maltese government, Commission and Council Secretariat officials with results representing an overall average. The method and the individual components found in this table have been discussed at length in Chap. 5



Graph 8.2 Columns indicating the scores for Sub-variable 4.1. *Source* Graph compiled by the author

medium-to-high level (had there been more time available for the government, it might have possibly registered even higher levels).

Besides lobbying, the government also used other pace-setting strategies such as norm advocacy and effective intervention in Council

meetings. The government thus used its diplomatic capacity, such as in the use of clear and effective language and style, as a tool to attract and win support for its arguments against the need to revise the 2003 LTR Directive. It also used its diplomatic capacity to put forward moral arguments to persuade other parties to the legislative negotiations that the issues at stake were of fundamental importance to it.

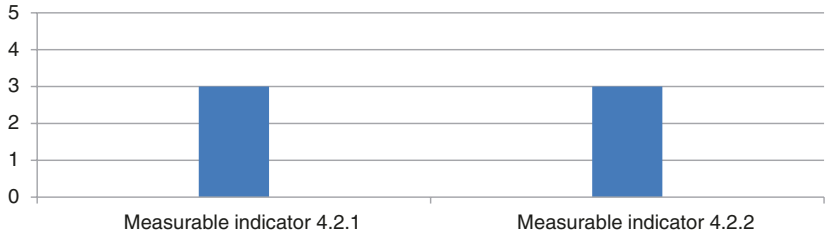
However, although Malta's government put forward its position (in a written statement) in the Coreper II meeting of 19 November 2008 (in the run-up to the JHA Council meeting of 28 November 2008), this was too late in the negotiations with a compromise text having already been 'baked' by the Council Presidency. This is confirmed by data in Table 8.9 and Graph 8.3 (see also 'Step 2' of Table 9.3 in Chap. 9), which reveal that although the Maltese government obtained medium-to-high scores, it was not enough in this particular case. As Grant (1993: 31–32) observes, once a compromise begins to emerge, working against it or attempting to modify it is extremely difficult. That is to say, turning round a likely decision from being taken in the decision-taking stage of the process is an extremely difficult task to achieve.

Table 8.9 Independent Variable 4: Sub-variable 4.2 on the pace-setting strategy

Sub-variable 4.2—Pace-setting through norm advocacy and effective intervention in Council deliberations
Scale: [5 = successful/+ve; 2.5 = medium; 0 = not successful/−ve]
5 = Yes, at extremely high levels of intensity;
4 = Yes, at high levels of intensity;
3 = Yes, but at medium-to-high levels of intensity;
2 = Yes, but at low-to-medium levels of intensity;
1 = Yes, but at extremely low levels;
0 = None.
Measurable indicator 4.2.1:
• A government's capacity to persuade through moral convictions [0] [1] [2] **[3]** [4] [5]
Measurable indicator 4.2.2:
• A government's diplomatic leverage & capacity to engage effectively [0] [1] [2] **[3]** [4] [5]

Source Table compiled by the author

Data for this table has been collected through interviews with Maltese government, Commission and Council Secretariat officials with results representing an overall average. The method and the individual components found in this table have been discussed at length in Chap. 5



Graph 8.3 Columns indicating the scores for Sub-variable 4.2. *Source* Graph compiled by the author

Aware that time was running out, Malta's government turned its attention specifically to the legislative article in the proposal that caused most problems to it. As stated in the background section, this was Article 4(1) of Council Directive 2003/109/EC on the duration of residence of TCNs applying for a long-term residence permit (see Table 8.7 for an outline of the main delegations supporting and rejecting Malta's amendments to Article 4(1)).

In its proposal of 7 June 2007, the Commission was not proposing to amend this legislative article. Having only joined the EU in 2004 (and thus not having participated in the adoption of the 2003 Council directive), Malta put forward a proposal during the Coreper II meeting of 19 November 2008 that the 5 year continuous and uninterrupted duration in one member state for the granting of long-term residence be amended to one that would be more flexible. In short, Malta suggested that after 1 year of residence in any EU member state, long-term residence applicants should be able to move and reside in two or more member states during the remaining 4-year calculation period. The effect of this would be to alleviate the immigration influx problem being faced by peripheral EU states such as Malta.

The Commission, being faced with this suggestion for the first time and at such a late stage in the process, disagreed with Malta's proposal. It stated that this would go beyond the very principle of long-term residence that these persons would need to observe in one EU member state prior to the granting of the permit. The Commission also observed (it had already emphasized this point throughout the negotiations) that once granted with this permit, such persons were able to move to other EU member states.

The government countered this last argument maintaining that the amendment directive would not give enough guarantees about such migrants being relocated to other EU member states. For instance, recital 23 of Council Directive 2003/109/EC (which was being maintained by the amendment directive) stated that '*third-country nationals* ***should*** *be granted the possibility of acquiring long-term resident status in the Member State where they have moved…* (emphasis added in bold text)'. This wording (the word 'should' as opposed to 'shall') shows that it was not obligatory for other EU member states other than the first member state to grant this status to such persons. Therefore, the first EU member state responsible for the asylum seeker (according to the Dublin Regulations) depends on whether a second EU member state allows such persons to acquire this status or not. If not, such persons remain in the first EU member state (usually a peripheral EU member state)—which was the real problem for Malta.

Thus, the government's main concerns with other previously mentioned EU legislation—particularly in the asylum sphere (for instance, the Dublin III legislative negotiations which were also occurring at this time together with other legislative acts forming part of the CEAS)—about fair-sharing and solidarity to be displayed by other EU member states were also valid here. It was, therefore, adopting a national position reflecting this last point across the whole of the EU's JHA policy spectrum. Besides, and of more relevance, the Maltese government pointed out that it was difficult for such persons to move away from a country in which they would have already received certain rights similar to those received by Maltese (EU) citizens (already highlighted in sub-Sect. 8.2.2). According to the Maltese government, this acted as a disincentive for such persons to leave the island.

A quote by a Maltese government official working at the Permanent Representation in Brussels when these negotiations were ongoing states the following about Malta's fears:

> This Long-Term Residents Directive, which is going to be extended to all beneficiaries of international protection, will grant a free movement right to persons after five years. However, what that means in effect is that after 5 years when you would have given them so many more rights, then they will not leave (Mainwaring 2012: 58).

Another Maltese government official confirms this position:

> For someone to qualify for long-term residence, so having been in Malta for 5 years, having health insurance, having employment, the necessary resources… if someone qualifies, if someone fulfills all of those criteria, then it means that they are perfectly well integrated. They are not the ones who really need to move' (ibid).

These two quotes reveal the real dilemma Malta's government had with the proposed amendment directive to extend the scope of the 2003 LTR Council directive.

- *Shifting Strategy Once Again in Council—from Pace-Setting to Foot-Dragging*

As mentioned earlier, by this time, Council discussions moved from the decision-shaping to the decision-taking stages in the first phase (the pre-Treaty of Lisbon phase) of these negotiations (see Fig. 8.1). The fact is that although Malta's government engaged in active pace-setting strategies (exhibited in Tables 8.8 and 8.9 above) during the last 2 weeks of November 2008, this was too late in the process. In fact, as shown in Table 8.7, with the exception of Cyprus, Italy and to a certain extent the Czech Republic (which had issues with other legislative articles in this proposal), Malta did not manage to convince successfully other delegations of the merits of its cause. Malta was 'isolated' and represented the only EU member state which was vociferous in Council against the Commission's proposal. It, therefore, had no other choice but to veto the decision-taking process (this situation has been conceptualized in point D.3 in Table 3.1, Chap. 3) in the JHA Council meeting held on 28 November 2008 (as mentioned previously, pre the Lisbon Treaty, voting in Council took place by unanimity on the issue).

One must bear in mind that it was the only government to veto the proposal blocking its adoption. Vetoing legislative proposals in Council is a rare (but not impossible) occurrence, especially for Malta. Therefore, besides making this case study particularly interesting to research, Malta's veto demonstrates that the stakes were very high for the government, 'forcing' it to take a drastic measure. As an EU official pointed out:

> It is extremely difficult for small states to adopt strategies other than a pace-setting one. One might expect a large state to foot-drag a process, because it has the means and necessary resources to do so. However, while

> this is true about large states, the same cannot be said about the smaller states (interview with the Head of the EP delegation in Malta on 22 November 2013).

The quote above, therefore, reveals how difficult it was for a small state like Malta to foot-drag the final stages of the Council discussions during the pre-Treaty of Lisbon phase.

Another issue to be borne in mind is that although the government managed to foot-drag successfully the negotiations, it did this only in so far as the intergovernmental nature of the pre-Treaty of Lisbon phase in the negotiations prevailed (with Council voting procedures allowing it to veto the decision-taking process). This is demonstrated in Table 8.10 with Malta achieving a low score of '2' on '5'. Therefore, although successful in blocking the adoption of the EU directive, Malta only managed to foot-drag and delay the adoption of the legislative proposal with great difficulty—it did not manage to persuade other delegations to veto the proposal.

Malta's veto could be interpreted in two main ways. First, it may be interpreted as a failure on the government's part to successfully exercise influence and convince the Commission and other delegations in Council that it had a case that deserved being supported. Second, it could nevertheless be interpreted as a success, since Malta managed to achieve its first preference of 'shooting-down' and blocking the adoption of the legislative proposal. Whichever view is taken, the fact remains that

Table 8.10 Independent Variable 5 on the foot-dragging strategy

Sub-variable 5.1—Foot-dragging through delaying tactics in Council deliberations
Scale: [5 = successful/+ve; 2.5 = medium; 0 = not successful/−ve]
5 = Yes, at extremely high levels of intensity;
4 = Yes, at high levels of intensity;
3 = Yes, but at medium-to-high levels of intensity;
2 = Yes, but at low-to-medium levels of intensity;
1 = Yes, but at extremely low levels;
0 = None.
Measurable indicator 5.1.2:
• A government's capacity to delay and/or circumvent
an outcome through *argumentation* and *voting* [0] [1] **[2]** [3] [4] [5]

Source Table compiled by the author

Note This table excludes the other sub-variables and measurable indicators for Variable 5 (included in Box 5.5 in Chap. 5), since they do not apply to Case 3

Data for this table has been collected through interviews with Maltese government, Commission and Council Secretariat officials with results representing an overall average. The method and the individual components found in this table have been discussed at length in Chap. 5

Malta's government was able to successfully block the adoption of an EU act with negative implications for it. As observed by a Maltese government official from the JHA Ministry:

> … there was hardly any point to discuss the proposed amendment directive article-by-article when the government's preference and interest was to maintain the 'status quo' (i.e., the non-extension of long-term residence status to refugees and beneficiaries of international protection)…we were against it and did not want the proposal to see the light of day…this was our primary position and preference in this negotiation (emphasis added in parenthesis).

The previously mentioned JHA Council meeting of 28 November 2008 did not, however, close the negotiations completely, since there was an attempt by the French Presidency to try and find a compromise on the legislative proposal. In fact, there were another two Coreper sessions held (on 3 and 5 December 2008) to try and lift the Maltese veto placed on the proposal. From Commission documents (Commission background note, DG JLS/B.2) prepared for these Coreper II meetings (which outline the Commission's position on two Presidency compromise texts mentioned hereunder), one finds that the Commission, in a spirit of compromise, was able to accept the Presidency's suggestion to offer more flexibility in terms of a delay in the entry into force and transposition of the EU directive into Maltese and Cypriot national legislation.

Here, there were two main issues. The first involved extending the deadline for the transposition of this amendment directive into Maltese national law. Both the Presidency and Malta presented their own compromise texts on the legislative proposal. The first one was presented by the Presidency which suggested extending the maximum deadline for the entry into force of the act into Maltese and Cypriot law from 1 January 2011 to 1 January 2012, i.e., a 1-year extension to enforce the law.

In the Coreper II meeting of 3 December 2008, the Commission stated that it could live with this compromise, since it did not depart too much from the fixed transposition deadline. However, Malta voiced its disagreement with this compromise, since it did not take into account its main concerns expressed in the Coreper II meeting of 19 November 2008 about the difficulties which implementation of this act will cause to its situation as an EU peripheral and extremely small state. This thus led to another Presidency compromise text presented in the next Coreper II meeting on 5 December 2008 which went further than the

previous one in terms of extending further the transposition deadline for Malta and Cyprus until 1 January 2013. The French Presidency's aim was to make the proposed directive as digestible as possible for Malta and Cyprus by granting their administrations a good 'running-in' period with enough time to get accustomed to the new provisions. Thus, the Presidency was suggesting that a new Article 2 and a recital (i.e., a new 'Article 2A' that would be added to Article 2 and a new recital found in the Commission's adopted proposal for the extension of the 2003 LTR directive) to the proposed amendment directive would reflect this:

> 'Article 2A
> Malta and Cyprus, due to the fact that these Member States are faced with a specific and disproportionate pressure on their national asylum systems, shall be authorized to bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive by **1 January 2013** at the latest.
>
> Before the end of this transitional period, the Commission shall examine whether it is justified to have it extended and may submit appropriate proposals to that end.'

> 'Recital
> Malta and Cyprus, which are faced with a specific and disproportionate pressure on their national asylum systems due in particular to their geographical and demographic situation, their reception capacities, the important increase of asylum seekers in recent years and, more generally, disproportionate influxes of immigrants, should be allowed to benefit from a transitional period in order to bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive.

During this Coreper II meeting, Malta's PR expressed gratitude towards the Presidency for its proposal which took into consideration some of Malta's needs. However, the Maltese government put forward an alternative compromise text which extended the transposition deadline to 1 January 2015 (with a possibility to renew the transitional period by a renewable 4-year period). Besides, it also incorporated its position (as mentioned before, this was already circulated in Coreper II of 19 November 2008) on the calculation of the 5-year duration period thus amending Article 4(1) of Council Directive 2003/109/EC. Malta suggested the following wording for the new Article 2A and the new recital:

New Article 2A

1. Malta shall be authorized to bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive by **1 January 2015** at the latest. Before the end of this transitional period, if Malta notifies the Commission that in its view that the objective conditions justifying this transitional period are still applicable, such **transitional period shall be extended by a renewable 4-year period**, subject to a right of review according to the legislative procedures applicable.

2. **One year after having been granted international protection** in Malta and having stayed legally in Malta, **beneficiaries of such protection shall be allowed to stay in another Member State** pursuant to Chapter III of Directive 2003/109/EC, in the same manner as third-country nationals who have obtained a long-term residence permit in Malta, it being understood that they cannot claim a more favourable treatment than the treatment that such other Member State is obliged to provide to beneficiaries of international protection pursuant to Chapter VII of Directive 2004/83/EC.

New Recital

Due to the specific and disproportionate pressures on its national asylum system, in particular because of its geographical and demographic situation as well as the extremely high numbers of beneficiaries of international protection relative to population when compared to the European average, Malta requires assistance in fulfilling the obligations contained in this Directive. It should be allowed to benefit from a transitional period in order to bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive. This Directive should provide for beneficiaries of international protection in Malta to acquire the right to reside in the territory of other Member States even if they have not yet been granted long-term resident status in Malta. Member States are encouraged to facilitate the exercise of this right with a view, in particular, to the reallocation of such persons from Malta.

As stated above, the Maltese compromise text thus went far beyond the one put forward by the Presidency, notably by further extending the transitional period and by calling for assistance. Thus, the wording was ‘stronger’ and used the phrase ‘transitional period’ as a form of short-term derogation. The intention was that Malta could, at a later stage, re-negotiate this with the Commission. Moreover, Malta’s proposal explicitly referred to its position on the 5-year calculation for the long-term

residence permit in a new Article 2A(2), which would be specific to Malta's needs. It was thus not trying to amend any longer Article 4(1) of Council Directive 2003/109/EC as it suggested in a previous Coreper II meeting (on 19 November), but rather was intervening in this new legislative article due to the new circumstances prevailing (the French Presidency wanted to achieve a compromise and the Commission was up to a certain extent willing to concede on certain issues) which was being interpreted as a 'final' opportunity for the government so late in the process.

As to be expected, the Commission was against both compromise texts especially the Maltese one. Although it was able to live with the 1-year extension deadline in the first Presidency compromise, it had previously made it clear during the Coreper II meeting on 19 November that it would not accept any '*à la carte*' solutions and derogations which went beyond a 1-year possible extension deadline. The Commission was adamant about this last point, even though it was aware about the intergovernmental nature of the negotiations, having already experienced Malta's veto during the JHA Council meeting and thus the 'killing' of its legislative proposal.

Returning to the point about two main issues that were found in the French Presidency's attempts to find a compromise (in the Coreper II meetings on 3 and 5 December 2008), the second issue concerned the Commission's awareness that if the Maltese compromise text was supported by a majority of other delegations, it might consider withdrawing its legislative proposal altogether. However, as shown in Table 8.7, this situation did not materialize and thus the Commission's fear on this issue quickly disappeared.

In fact, these Coreper II sessions were not able to break the ground and reach a compromise with both the Maltese and Commission delegations 'sticking to their guns'.

- Malta's Strategies During the post-Treaty of Lisbon Phase of the Negotiations (variable 5)

The Commission had to wait for the entry into force of the Treaty of Lisbon to be able to re-introduce this legislative file and re-commence negotiations that is the second phase of the negotiations—see Fig. 8.1 illustrating the different stages in the negotiations), though this time under a new legislative procedure: the ordinary legislative procedure with a shift in Council voting from unanimity to QMV. This prompted a

Commission official to comment about Malta's veto earlier in the process in 2008 that:

> Malta was shooting itself in the foot, since everyone knew that a qualified majority was present at the time, even though voting was by unanimity and that the blocking minority quorum was going to be very difficult to achieve (interview with the European Commission, Brussels, 13 January 2014).

In fact, as soon as the legal base changed, the Maltese government was outvoted, not being able to form a blocking minority as stipulated in Article 16(4) (a minimum of four Council members). This situation for Malta is illustrated in Table 8.11 which shows that Malta was unable to foot-drag successfully (scoring '0' on '5') once voting rules in the Council shifted from unanimity to QMV.

Despite its complaints and protestations,[14] the amendment directive was adopted by QMV in the JHA Council of 11 and 12 April 2011 (as an 'A' item on the agenda) and at first reading (following negotiations with the EP). It was co-signed with the EP (due to the ordinary legislative procedure requiring both the Council and the EP to adopt EU legislation) and was thus adopted a month later. As indicated in Table 8.7, only Malta and the Czech Republic voted against its approval.

Table 8.11 Independent Variable 5 on the foot-dragging strategy

Sub-variable 5.1—Foot-dragging through delaying tactics in Council deliberations
Scale: [5 = successful/+ve; 2.5 = medium; 0 = not successful/−ve]
5 = Yes, at extremely high levels of intensity;
4 = Yes, at high levels of intensity;
3 = Yes, but at medium-to-high levels of intensity;
2 = Yes, but at low-to-medium levels of intensity;
1 = Yes, but at extremely low levels;
0 = None.
Measurable indicator 5.1.2:
• A government's capacity to delay and/or circumvent an outcome through *argumentation* and *voting* **[0]** [1] [2] [3] [4] [5]

Source Table compiled by the author

Note This table excludes the other sub-variables and measurable indicators for Variable 5 (included in Box 5.5 in Chap. 5), since they do not apply to Case 3

Data for this table has been collected through interviews with Maltese government, Commission and Council Secretariat officials with results representing an overall average. The method and the individual components found in this table have been discussed at length in Chap. 5

So strongly did it feel on the matter that the Maltese government even contemplated invoking the 'Luxembourg Compromise', since it had been outvoted by QMV on an issue of fundamental and crucial importance to it.[15] However, this was finally not resorted to although it is interesting to point out that the government did trigger this mechanism in respect of another negotiation in the JHA policy sphere—that of the Frontex guidelines which were also of fundamental importance to Malta's interests.

In response to its 'defeat', the Maltese government, supported by the Czech Republic, produced a declaration summing up its dissatisfaction with the way that the legislative process developed. The declaration, which is reproduced in Table 8.12, was annexed to the JHA Council minutes of 11 and 12 April 2011 (Malta Statement in Council document 8881/11 ADD 1, PV CONS 22, JAI 230, COMIX 224 of 21 June 2011, p. 6). However, even here, the government was unsuccessful, because it requested that the annex to the Council conclusions be a Council declaration and not a Malta one. A Council declaration would have carried more weight ensuring that all EU member states would, in the future, respect the contents of this declaration, most notably the points on solidarity and burden-sharing.

8.4.1.2 Malta's Capacities and Strategies in the European Parliament

As previously stated, the EP was only consulted under the pre-Treaty of Lisbon phase of these negotiations. The Committee on Civil Liberties, Justice and Home Affairs (LIBE) which was responsible for this legislative file produced a report on 14 April 2008 by its *rapporteur*, Martine Roure, on the Commission's legislative proposal (COM(2007)0298—C6-0196/2007—2007/0112(CNS), A6-0148/2008 of 14 April 2008). Here, one notes that none of Malta's preferences (particularly the one on Article 4(1) on the duration of residence) were included in the LIBE's amendment recommendations to the Council.[16]

However, the situation changed after the June 2009 EP election, which resulted in one of Malta's previously mentioned MEPs, Simon Busuttil, being appointed as a member of the LIBE Committee during the new EP legislative mandate (2009–2014). As a result and as already illustrated before, Busuttil was able to champion directly the Maltese government's concerns about immigration-related matters in the EP, especially Malta's position on the respect of the solidarity principle and burden-sharing in the EU. For instance, in addressing an EP plenary session in Strasbourg in April 2008, Busuttil stated:

Table 8.12 Malta Declaration

Statement by Malta

"Malta:

- Regrets that the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection does not take its difficulties into account. The Directive will render heavier the pressure that Malta is under due to the number of beneficiaries of international protection present on the island combined with Malta's limited absorption capacity.
- Makes particular reference to the Explanatory Statement of the Report of the European Parliament on this Proposal[a] which notes that this Proposal may have the effect of exacerbating the pressure to which Member States that host a disproportionate number of beneficiaries of international protection are subjected, due in particular to their geographical or demographic situation. The Explanatory Statement further stresses that the provisions of the Directive should be applied in such a way as to facilitate the exercise of the right of beneficiaries of international protection who enjoy long-term resident status in a Member State facing such disproportionate pressures, to reside in a Member State other than the one which granted them international protection.
- Calls on the Member States to take up this recommendation and to facilitate the movement of beneficiaries of international protection from Malta once they have acquired long-term residence status there, with a view to mitigating the negative effects that would otherwise derive from the implementation of this Directive.
- Reiterates its call for greater solidarity through the intra-EU relocation of beneficiaries of international protection, as called for by the European Pact on Immigration and Asylum and reaffirmed by the Council Conclusions, endorsed by the European Council, on 17 June 2010.
- Recalls that the European Union's immigration and asylum policy must be governed by the principle of solidarity and fair sharing of responsibility in accordance with Article 80 of the Treaty on the Functioning of the European Union (TFEU) and declares that the Proposal fails to incorporate measures to implement this principle, in spite of the fact that it is the first instrument to be adopted in the establishment of the Common European Asylum System (CEAS).
- Augurs that the other instruments to be adopted in the context of the CEAS fully respect the principle enshrined in Article 80 TFEU, and that the qualified majority voting regime is applied in line with this overarching principle."

[a]Committee on Civil Liberties, Justice and Home Affairs, A7-0347/2010, 1 December 2010.

Source Malta statement in the addendum to draft minutes of the 3081st meeting of the Council of the European Union (Justice and Home Affairs) held in Luxembourg on 11 and 12 April 2011

> Stop the hypocrisy of being scandalized at the loss of lives in the Mediterranean and then leaving Southern EU countries to carry the burden on their own… I ask the Commission and the Council: What will they

> do this year? There is no doubt that everyone has an obligation to save lives. However, who will assume the responsibility for immigrants who are saved? Is there one single country that should carry this on its own or is this a burden that should be shared by all? (EP Press Release, EPP-ED Group, 24 April 2008).

This intervention was made as a reaction to a 2007 incident which saw immigrants, caught in difficulty at sea in Libya's search and rescue maritime region, left clinging to a tuna-pen. In this instance, Libya did not intervene to save the immigrants, while EU countries pointed at each other over who was to take responsibility for them.

At the time, MEP Busuttil was thus in a position to intervene directly in the EP and clarify the negative effect that this amendment directive would have on those countries being faced with disproportionate numbers of third-country nationals being able to apply for a long-term residence permit. However, this was not simple, since many of the provisions found in the Martine Roure report were maintained with other amendments being proposed by the new *rapporteur*, Claude Moraes.

Once the Treaty of Lisbon came into force and the Commission proposal was sent back to the EP, this time under the ordinary legislative procedure which gives the EP co-decision power with the Council, the Maltese government channeled more attention on the EP. MEP Busuttil carried Malta's interests during the decision-shaping negotiations occurring in the EP between 27 April and 15 November 2010 (the LIBE Committee discussed this matter on the following dates: 27.4.2010; 28.9.2010; 11.10.2010; 26.10.2010; 15.11.2010; and 29.11.2010). The EP took a decision on the 29 November 2010 adopting its report of 1 December 2010. In the explanatory statement of this report, one can detect the hand of Busuttil and indirectly, the Maltese government punching beyond its weight. The wording included the following provision:

> this report notes that in view of the fact that some Member States host a disproportionate number of beneficiaries of international protection, the eligibility of such long-term resident status in accordance with this Directive may have the effect of exacerbating the pressure to which those Member States are subjected, due in particular to their geographical or demographic situation. While other measures are, therefore, required to address this undesired consequence, your rapporteur stresses that the provisions of this Directive should be applied in such a way as to facilitate the exercise of the right of beneficiaries of international protection who enjoy

> long-term resident status in a Member State facing such disproportionate pressures, to reside in a Member State other than the one which granted them international protection (Explanatory Statement of EP Report of 1 December 2010 on the Commission's proposal).

This extract has already been discussed in the previous section when discussing the Maltese statement found in Table 8.12. The statement by the LIBE Committee stressed the need for the EU to come up with further measures to alleviate such burdens faced by states like Malta in line with the government's horizontal position in this EU policy sphere. It was thus reproduced by the Maltese government (this time containing more weight as it was able to refer to the EP's report) in the JHA Council meeting of 11 and 12 April 2011.

However, the LIBE Committee's report did not suggest amendments to Article 4(1) on the calculation of the duration period similar to those advanced by the Maltese government in Council. This was mainly because the process was really in the late stages, with not much support for such an amendment being shown by other MEPs in the committee. Having said this, one may see a stark contrast between the previous LIBE report of April 2008 (with none of Malta's concerns addressed there) and the one of 1 December 2010 with the EP addressing and accepting the Maltese concerns.

8.4.2 The Decision-Taking Stage

As discussed in the previous sub-section, there were two decision-taking stages in these negotiations, reflecting the pre and post-Treaty of Lisbon phases. Thus, as can be seen in Fig. 8.1 and as discussed earlier, there was a decision taken by the JHA ministers in the Council meeting of 27 November 2008 marking the end of the first phase of these negotiations with no adoption being possible. As seen, this was because of the veto produced by the Maltese government in the ministerial Council meeting. As stated, this was not easy to execute for Malta, since it was the only government to veto the adoption of the amendment directive and was under immense pressure by the French Presidency to find a compromise. Up to this stage in the decision-making process, the EP's role in the process was just a consultative one.

However, as soon as the Treaty of Lisbon came into effect, the Commission re-started the process, leading to another decision-taking

stage in April and May 2011 (see Fig. 8.1). The April date corresponds to the JHA Council meeting held on 11 April 2011 in which the Hungarian Presidency, amid Maltese protestations, was able to find an agreement by QMV. This was later co-signed on 11 May 2011 by the EP, which resulted in the adoption of Directive 2011/51/EU.

8.5 Conclusion—An Assessment of the Outcomes for Malta in Case Study 3

This chapter has indicated the salience held by the JHA legislative sphere for the Maltese government as well as the preferences and strategies used by the government during the two phases (the pre- and post-Treaty of Lisbon phases) of the legislative negotiations.

Section 8.4 revealed how during the pre-Treaty of Lisbon phase, Malta managed (to a certain extent) to obtain a successful outcome from the process (that of maintaining the 'status quo', and hence the non-extension of Council Directive 2003/109/EC to beneficiaries of international protection) which matched its preference. However, this outcome reflected a capacity and strategy deficit on the government's part to exercise influence during decision-shaping and taking stages of the process which precede actual voting. This is because the government's result was obtained solely through the mechanisms afforded by the intergovernmental nature of the voting system (that of unanimity) and certainly not through a manifestation of its influence in the decision-making process. In other words, the outcome was not so much a consequence of Malta exercising influence in the process as it was of it being able to resort to the 'power' of the veto to block the adoption of the amendment directive.

As seen, this lack of influence could be mainly attributed to the fact that the government's pace-setting strategy was adopted very late in the process and because of a general unwillingness on the part of other EU member state governments to accept Malta's justifications about its concerns with the Commission's legislative proposal. In this case, therefore, the government's veto reflected negatively on its influence levels in the process.

Section 8.4 confirmed that the government lost most of what influence it did have once the legislative process and voting procedure changed with the entry into force of the Treaty of Lisbon. The adoption by QMV of the amendment directive in May 2011 represented a general

failure for the government (in terms of not having managed to influence the process) to 'brake and break' the decision-making process, thus leading to a negative outcome for it.

Overall, this Chapter has shown that even though Malta's government was proactive through the adoption of a pace-setting strategy in the later stages of the negotiations, it was unsuccessful and failed to exercise enough influence to amend the Commission's proposal in line with its preferences. This case study reveals that the government was extremely inflexible due to the sensitivity of this subject matter and because it was adopting a similar policy line in all remaining and ongoing legislative negotiations in EU immigration. In short, the government was pushing for the principle of solidarity and a fair sharing and distribution of responsibility (burden-sharing) to be respected in the EU (in accordance with Articles 78(3) and 80 TFEU), especially because certain EU Mediterranean states were being hit hardest by the growing phenomenon of immigrants reaching their borders.

This legislative case reveals that in these negotiations, there was no room for a compromise between opposing stands on what is an extremely sensitive topic in the EU. As observed, Malta was the most vociferous peripheral EU member state requesting more flexibility to Article 4(1), with the Commission and other non-peripheral EU governments opposing such a request. Ultimately a 'win–lose' relationship emerged as an outcome. In this case, Malta and the Czech Republic, two small states (even though Cyprus and some other EU Mediterranean states—notably Italy— favoured Malta's position on this point), were the real 'losers', having voted against the adoption of this act under the QMV procedure.

One last observation worth making concerns the analysis of the factors explaining the Maltese government's failure in these specific EU legislative negotiations on legal migration. In a similar manner as in Cases 1 and 2, this chapter has outlined and provided an analysis on several factors in Sect. 8.4 (divided between governmental capacities and strategies in line with the book's methodology). These factors are further elaborated upon in the next chapter which provides a cross examination and comparative analysis of the book's case studies.

Notes

1. As previously stated, during this time (2001–2003) Malta was not yet an EU member state and did not participate in the Council legislative negotiations on these two proposals. As a result, Malta was unable to influence the legislative negotiations, particularly those regarding Article 4 of Council Directive 2003/109/EC (the LTR directive) on the five-year duration of residence which TCNs are required to meet to be granted long-term resident status. As illustrated in the next sections of this chapter, this alone caused some problems for the Maltese government during the legislative negotiations of 2007–2011 amending this directive.
2. The Hague Programme of 2004 shifted all JHA voting (with the exception of legal migration legislation) to QMV and established the co-decision procedure (now referred to as the ordinary legislative procedure) as the standard procedure to be followed thus granting more weight to the EP in EU JHA decision-making processes.
3. During this time, the Council was however able to agree on other Commission legislative proposals on legal migration such as Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of TCNs for the purposes of highly qualified employment, the so-called 'Blue Card' Directive.
4. This is because of the abolition of the penultimate paragraph of the previous Article 63 TEC by the Treaty of Lisbon.
5. Besides the opt-outs that the UK and Ireland have with regard to the adoption of the Schengen *acquis*, these two EU member states together with Denmark have opt-outs in the whole Title V of the TFEU, i.e. the area of freedom, security and justice. These were obtained in the IGC adopting the Treaty of Amsterdam (for the UK and Ireland) and the Edinburgh Agreement of 1992 (for Denmark) and were retained in the Treaty of Lisbon.
6. One must keep in mind that the new EU member states (those having acceded the EU as from 2004) did not have the possibility to opt-out from any of the EU's *acquis communautaire* during their EU pre-accession negotiations.
7. Ever since the Tampere European Council, EU member state governments committed themselves to establish the CEAS, a goal which has been reconfirmed on various occasions over the years (the last time with the adoption of the Stockholm programme in 2009) and which has only been adopted in 2013. The CEAS is made up of a package of five legislative acts which have all been recast into newer legislative acts on the same date (with the exception of the Qualification Directive): the Reception Directive (recast Directive 2013/33/EU of 26 June 2013); Eurodac

Regulation (recast Regulation (EU) No 603/2013 of 26 June 2013); Dublin III Regulation (recast Regulation (EU) No 604/2013 of 26 June 2013); the Procedures Directive (recast Directive 2013/32/EU of 26 June 2013); and the Qualification Directive (recast Directive 2011/95/EU of 13 December 2011).

8. This agreement was signed in 1985 between five of the ten EU member states— Belgium, the Netherlands, Luxembourg, France and West Germany—with the aim of gradually abolishing internal border checks. In 1990 the Agreement was supplemented by the Schengen Convention which proposed the abolition of internal border controls and a common visa policy. Later the Treaty of Amsterdam incorporated the *Schengen acquis* into the main body of EU law together with the opt-outs for Ireland and the United Kingdom. Today Schengen is a core part of EU law and all EU member states (without an opt-out and which have not yet joined the Schengen Area) are legally obliged to enforce it.
9. Eurodac was mainly devised so as to avoid 'refoulment' by migrants, i.e. applications for certain rights being filed in more than one EU member state.
10. When the Dublin II Regulation was recast into the Dublin III Regulation (EU Regulation 604/2013 of 26 June 2013), Malta was unable to influence the outcome to change the situation that would allow for more than one EU member state to be responsible for asylum seeking applications. This would have alleviated the burden for it and other EU member states at the periphery faced with an influx of migrants.
11. The EU emergency mechanism can only be triggered in exceptional circumstances and in case of a mass influx of displaced TCNs.
12. As discussed at length in Chap. 5 (see Sect. 5.2), these variables are rated according to a 0–5 scale with 0–2.5 representing a negative rating and 2.5–5 representing a positive one.
13. As stipulated in Article 26 of the 2003 LTR directive, member states were obliged to comply with it by 23 January 2006. This did not occur. Therefore in 2007, the Commission initiated infringement proceedings against Malta and another 19 EU member states (all member states except Austria, Slovenia, Slovakia, and Poland) under Article 258 (TFEU) for not having implemented the directive in time or for not having properly informed the Commission of the adoption of national legislation implementing the directive. However since then, all member states have complied.
14. Malta protested during Coreper II and JHA meetings held during the Autumn of 2010 (October to December 2010 during the Belgian Presidency) during the decision-shaping stages of this new phase of the negotiations (see Fig. 8.1).

15. As a result of the 'Empty Chair Crisis' of July 1965 brought about by Charles de Gaulle (the President of the French Republic) over the Commission's attempt to supranationalize the Common Agricultural Policy (CAP), a compromise was reached during the Luxembourg Presidency in January 1966 whereby a de facto veto power was given to every state on topics that held 'very important' national interests at stake. The compromise consisted in that should a topic of concern arise, Council members would seek to create a solution that could be unanimously agreed to by all, regardless of whether or not the treaty required only a majority.
16. As observed in Chap. 7, one must bear in mind that Malta has a total number of 6 seats in the EP but that during this time, Malta as the smallest EU member state, had a total allocation of 5 seats under the pre-Treaty of Lisbon provisions.

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CHAPTER 9

Conclusion: A Comparative Analysis of the Cases

9.1 Introduction

Chapter 9 concludes the book's case studies by producing a comparative analysis. It, therefore, concludes and ties together the empirical parts of this book on Malta's capacities and strategies to influence EU legislative decision-making processes.

Chapters 7 and 8 have already discussed and examined the methodological factors that provide explanatory value for the exercise (or lack) of influence in the three EU legislative case studies presented in these Chap. 9 thus carries forward this discussion and cross-examines these factors, something which the preceding chapters have not done given that their focus was placed on studying separately the legislative cases.

Section 9.2 briefly reminds the reader about the outcomes of the three cases for the Maltese government. This is followed by Sect. 9.3 which presents both qualitative and quantitative comparative analyses to cross-examine the explanatory factors. While Sect. 9.4 re-visits the book's methodology, Sect. 9.5 paves the path for future research in this area. Finally, Sect. 9.6 provides a summation of the main findings arising from the analysis.

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9.2 Re-visiting the Outcomes for the Maltese Government in the Three EU Legislative Cases Presented in this Book

Chapter 7 dealt with two separate sets of EU legislative negotiations about the placing on the EU market of pyrotechnic articles—those occurring between 2005 and 2007 (**Case 1**) and those between 2011 and 2013 (**Case 2**). The chapter concluded that Malta's government emerged successful having achieved positive outcomes in both cases. The bare fact that there are clauses in the pyrotechnic directives of 2007 and 2013 known as 'Malta clauses' is by itself testimony of the government having exercised influence in those EU legislative decision-making processes. As previously stated, there are a number of explanatory factors for the success achieved by the government in influencing these outcomes. These factors are further elaborated upon and comparatively analysed in Sect. 9.3.

Chapter 8—on legal migration (**Case 3**)—examined the same explanatory factors as those found in the fireworks cases. When compared to Cases 1 and 2, Case 3 revealed a lack of influence on the part of Malta's government in the legislative negotiations on extending the scope of the 2003 LTR directive on EU long-term residence to beneficiaries of international protection. This case, therefore, represents a negative one for the Maltese government. The factors explaining Malta's lack of influence in Case 3 are re-visited in the next section of this chapter.

It is relevant to reiterate that in all the cases, all parties to the negotiations had deep and conflicting interests. This issue is relevant and is being emphasized so as to avoid any assumption that Malta may have exerted influence and emerged successful in the first two cases (contrary to the outcome in the third case), because it was easier to do so. One might think that there were delegations with a lack of interest in these spheres. Indeed, this was not the case.

9.3 A Comparative Analysis of the Main Factors for Malta's Influence and/or Non-influence in the Negotiations of the Adopted Directives

This section is divided into two main parts. Sub-sect. 9.3.1 provides a qualitative comparative analysis of the three cases presented in Chaps. 7 and 8, while Sub-sect. 9.3.2 provides a quantitative one.

Before delving into the comparative analysis, it is relevant to produce the following questions which stem from the book's main research questions (specified in Chap. 5) and which are being refined to bring them closer to the empirical research found in Chaps. 7 and 8. These questions, therefore, represent a key element on which the following comparative analysis has been built:

- Through the cases previously studied, is one able to infer that a small EU member state the size of Malta (and indeed, the smallest EU state) is capable of influencing the EU decision-making process when specific strategies are adopted and certain factors are manifest and present in this process?
- If influence was manifested, why, how, and at which stage did Malta's government manage to influence the two EU decision-making processes on the adoption of EU directives on pyrotechnic articles? And why did it fail to influence decision-making in the legal migration case?
- What were the main differences emerging from these cases that are able to explain this discrepancy in the government's capacity to manifest influence in EU decision-making?

The three case studies presented in the previous chapters outline a number of ways by which influence was exercised and not exercised through explanatory factors divided between governmental capacities (independent variables 1–3) and strategies (independent variables 4–6).

Governmental capacities:

variable 1—the capacity to enter the EU legislative process as early as possible;

variable 2—the expert and administrative capacity;

variable 3—the capacity to prioritize.

Governmental strategies:

variable 4—pace-setting the process;

variable 5—foot-dragging the process;

variable 6—fence-sitting the process.

9.3.1 A Qualitative Comparative Analysis

This sub-section cross-examines the independent variables belonging to the government's capacities and strategies in these cases.

1. Malta's **capacities** in the three case studies:

Variable 1—the capacity to enter the EU legislative process early
One of the main factors for a government's success to influence EU decision-making processes is its capacity to enter into such processes as early as possible. As empirically tested in these chapters, this is particularly relevant for small states which, as maintained by literature on the subject (see Chap. 2), perceive small states at a disadvantage when compared to their larger counterparts which generally have large administrations and more expertise.

In relation to Case 1, Sect. 7.2 reveals how Malta's government managed to upload its preferences (on wording about the use of pyrotechnic articles for religious and traditional purposes) into a Commission impact assessment report during the agenda-setting stage of the process, i.e., prior to the Commission's adoption of its legislative proposal (in October 2005) which was based on this report. For instance, one is able to cite recital 7 of the Commission's proposal which was in line with the government's position on maintaining differences of cultural and religious customs and traditions in EU member states (thus moving away from a 'one size fits all' approach). This eased the way for the government to be able to intervene strongly at the start of Council negotiations in 2005, with its position about the local fireworks industry and its importance for religious, traditional, and cultural activities in Malta having already been partially uploaded in the text of the proposed EU legislation. As analysed, the Maltese government's argument was eventually accepted and adopted in separate paragraphs to Article 2 (paragraphs 2 and 6) of Directive 2007/23/EC by the Commission, the EU governments (in Council), and the EP. As stated, these paragraphs are still known today as the Malta clauses which, as observed in Chap. 7, maintain explanatory value about Malta's exercise of influence in this process.

However, the same cannot be said about Case 2 concerning the recast EU legislative negotiations of 2011–2013. In these negotiations, the Maltese government found itself in a different situation than the previous round due to the fact that the 'Malta clauses' already formed part of the Commission's proposal of 21 November 2011. Thus, the government's main preferences were already uploaded into the draft proposal. In consequence, the government adopted a defensive strategy which, however, switched to a pace-setting and proactive one once French opposition to a new Article 2(2)(g) on 'scope' (the former Article 2(2) of Directive 2007/23/EC, and therefore, the main 'Malta clause' as illustrated

in Sect. 7.3) started to emerge in Council Working Group meetings. Therefore, although the government became active at a later stage than its interventions in Case 1, it still managed to enter the process relatively early with discussions having just started in the Council Working Group (the discussions were still at an early phase in the decision-shaping stage). However, as in the 2005–2007 negotiations, Malta voiced its concerns equally strongly.

All this means that Cases 1 and 2 presented different scenarios for the government with this factor on early and timely interventions being necessary to influence both EU decision-making processes.

However, there is a stark contrast with this factor between Cases 1 and 2 on one hand, and Case 3 on the other (on legal migration). In this last case, the government adopted a wait-and-see approach in the initial stages of the negotiations (both during agenda-setting and decision-shaping once negotiations in Council began). As observed, the government's non-intervention in the Council Working Group during these stages of the process wasted precious time for it. The government only shifted strategy to one which was more proactive and necessary to address and upload its preferences during the decision-taking stage. This proved too late for Malta to propose amendments to a Council Presidency compromise text which, as shown in Chap. 8, had already surfaced by this time. It was thus compelled to block the adoption of the directive by exercising a veto when the process was still governed by pre-Treaty of Lisbon provisions (see Chap. 8). However, Malta could not rely on the veto once the Treaty of Lisbon entered into force and the legislative and voting procedures changed (i.e., from consultation to the ordinary legislative procedure and from unanimity to QMV in Council). Even though the government's late efforts to lobby intensely did materialize, it was unable to influence the outcome at such a late stage in the process, when a Council compromise was already formed. This was one of the main explanatory factors for the lack of influence Malta's government experienced during this particular EU decision-making process.

In short, the three empirical cases demonstrate that the government was faced with different scenarios presented by these EU legislative decision-making processes, but with a common factor on early and timely interventions being necessary to influence such processes. The differences thus found in these cases in relation to this factor alone already hold relevant explanatory value for Malta's influence or lack of influence in the outcome of the three processes.

Variable 2—the expert and administrative capacity

Cases 1 and 2 reveal high levels of expert capacity (sub-variable 2.1), i.e., the training, work experience, and technical knowledge of the government's officials in the particular policy sphere dealing with the pyrotechnic industry. One must remember that as observed in Chap. 7 (see sub-Sect. 7.2.2), Malta unlike other EU member states had long-standing national legislation in force (the 'Explosives Ordinance' of 15 July 1904 as successively amended throughout the years) that already regulated the local pyrotechnic industry. The administration was, therefore, already knowledgeable on this subject matter.

Notwithstanding the above, Malta's government wanted to ensure that the Commission's proposal of October 2005 for a first and new directive in this field would not dilute national legislation. As discussed, Malta had to strive during the negotiations to maintain the 'status quo' in the local market. Therefore, due to its expertise in this policy sphere, the government was able to participate actively and produce valid arguments. This contributed very much to the successes achieved in both processes (cases 1 and 2) in protecting its local industry from falling under the approved directives which would have lead to the cessation of fireworks production in Malta in the long term. Fig. 7.2, in fact, indicates positive ratings for this sub-variable for Cases 1 and 2. This figure, however, also indicates a negative rating for the government's administrative capacity (sub-variable 2.2) in both cases.

However, the fact that the government is made up of a very small administration did not impede it from exercising influence and 'punching above its weight', thus achieving positive outcomes in both cases. This has been confirmed by research participants who were interviewed and who do not work for Malta's government (officials from the Commission and the Council Secretariat) who participated in these discussions in Council and who witnessed first-hand Malta's interventions. They observed that Malta must have held the necessary expertise to have understood the situation that was unwinding at various stages in the negotiations. Indeed, the government's administrative co-ordination system, described at length in Chap. 6, succeeded in providing representatives with timely instructions to be adopted in Council meetings at the stages of decision-shaping (technical level) and decision-taking (political level). Chap. 7 has recorded the footnotes of Malta's interventions found in some of these Council working documents (particularly those belonging to the recast negotiations).

As observed in Chap. 8 and unlike EU legislation on the placing on the market of pyrotechnics, the legal migration negotiations were novel to the government's administration. Unlike Cases 1 and 2, Case 3 on amending Council Directive 2003/109/EC to extend it to beneficiaries of international protection evidenced a lack of expertise by the Maltese administration in this particular sub-policy sphere. As previously explained in Sect. 8.3 (see also Fig. 8.2 which indicates an average score of '2' on '5' for this variable), this was mainly due to the fact that the 2003 Council Directive was a substantially new legislation for the Maltese administration to download (implement). Besides, this directive was enforced into Maltese national law in 2007, i.e., the same year as the Commission's adoption of its new legislative proposal. Therefore, there was not enough time available for the Maltese administration to study well this legislation in the downloading process. This would have acted as a type of benchmark assisting the government when formulating its national position, enabling it to acquire the relevant expertise to be able to 'punch above its weight' once more.

Variable 3—the capacity to prioritize

All three cases reveal that once Malta's government recognizes issues with important and direct consequences for it emerging from particular EU legislative processes, it focuses on them by prioritizing and mobilizing administrative resources. The pyrotechnic and long-term residence (LTR) legislative cases demonstrate this—even though the government only turned its focus on the latter case at a late stage in the legislative process. Figures 7.2 and 8.2 illustrate a very high positive rating for all three cases in relation to this variable.

Chap. 7 reveals that in Cases 1 and 2, the government identified very clear objectives to be attained from these negotiations and ably framed its preferences (in the form of legislative amendments) in such a way as to make them acceptable to the majority (i.e., the other EU member state governments together with the Commission and the EP). As aforementioned, this variable on the capacity to prioritize achieved the highest score possible in Fig. 7.2, which maintains a lot of explanatory value about the government's skills to co-ordinate efficiently its national position and prepare itself well for negotiations. Without doubt, this helped the government to exercise influence in these two cases.

With regard to the third case study, although the Maltese government's capacity to prioritize was also steadfast and reliable in the latter

stages of the decision-making process (Fig. 8.2 provides a positive rating of '5' on '5' for this governmental capacity), this factor did little on its own to stop a negative outcome from being achieved by the government. As stated, the government only came up with a clear national position fairly late in the process. This, therefore, goes contrary to the analysis for variable 1, i.e., the capacity to enter early into the process which as just stated did not materialize in Case 3. Thus, the importance of participating actively during the decision-shaping stages (when positions are still being formulated early in the process) is demonstrated by Malta's lack of influence in the legal migration case.

2. Malta's **strategies** in the three case studies:

Variable 4—pace-setting the process

In the three cases presented in the book, one finds that the Maltese government adopted two types of pace-setting strategies: lobbying and intervening in Council with convincing arguments and diplomatic leverage. Both types of pace-setting are dealt with separately in the following paragraphs.

i. Pace-setting through the delivery of convincing arguments and the use of diplomatic leverage

As already discussed in Chap. 7, the negotiations in Case 1 were characterized by Malta's government pace-setting the discussions in Council. It did this throughout the whole process, i.e., from the very early stages of decision-shaping to decision-taking. When compared with the recast negotiations held a few years later (Case 2), Malta started to participate actively as soon as the Working Group meetings began in Council. In Case 2, Malta's government began the negotiations differently and on a defensive path, since its preferences were already integrated in the Commission's proposal. This was similar to a cautious 'wait-and-see' approach, whereby the government was studying other delegations' interests all the while ensuring that its interests were not to be left out from the proposal. However, once the Commission's proposal started to be 'torn apart' in Council—with the danger that Malta's clauses could be amended, or worse still, deleted—there was no other option than for the government to intervene and defend its interests directly. Therefore, after a 'slow' start in the recast negotiations, the government shifted towards a pace-setting strategy.

As observed in Chap. 7, various parties involved in the recast negotiations confirmed (in interviews conducted with them) that Malta rapidly shifted to an active role, intervening more constantly in Council Working Group meetings and thereby reaching levels of influence previously experienced in the 2005–2007 negotiations. It thus re-produced convincing arguments and managed to persuade other delegations through Council interventions (particularly the Spanish delegation and the Cypriot Council Presidency) about the necessity for its interests to be included in the final compromise for adoption. For instance, in the first case (the 2005–2007 negotiations), it persuaded the Commission over the proper definition of a 'manufacturer' and on 'the placing on the market' of such articles—Article 2(6) and (2) of Directive 2007/23/EC. Likewise, in the second case (the 2011–2013 negotiations), Malta managed to persuade the rotating Council Presidencies (see Table 7.5) and other delegations to maintain the extension granted to the 'scope' article [Article 2(2)(g) of Directive 2013/29/EU] as originally proposed by the Commission.

Crucially, the Maltese government also managed to win favourable outcomes by convincing other delegations in Council through diplomatic leverage, i.e., through the use of clear and effective interventions linking issues together.

This last point holds true of the 2005–2007 negotiations when Malta requested to amend existing paragraphs rather than suggesting new ones. To be precise, the 2005–2007 case study showed that Malta did request a new paragraph to be included under the exemptions article [Article 1(4) of Directive 2007/23/EC], the effect of which was to exempt outright its local industry from falling within the scope of the directive. As seen, this was not met with much enthusiasm by the Commission (as the author of the legislative text, it does not favour an 'unraveling' of the text). Therefore, Malta's government reverted to other subtler ways of how to exempt its industry—through the 'Malta clauses' mentioned earlier—making its suggestions for amendments to the texts more 'digestible'.

Interestingly, this contrasts starkly with the lack of success that the Maltese government experienced during EU legislative negotiations amending the 'Birds Directive' (Directive 2009/147/EC of 30 November 2009—this directive is the successor of Directive 79/409/EEC), another crucial legislative file for Malta. A Maltese government official (interview held in Valletta on 13 November 2013) observed that had the government acted in a similar manner to the one on the

pyrotechnic articles by attempting to propose amendments to the legislative text rather than requesting outright exemptions or derogations from the scope of such legislation, the government might have been equally successful in influencing the process and thus achieving a positive result. Instead, the government '*buried its head in the sand and stamped its feet that anything that is not equivalent to derogation would not be acceptable*'. As history reveals, the government in this case did not attain much and worse still, ended up with having to implement an unclear piece of EU legislation which has landed it into trouble. Indeed, the government is currently interpreting the Birds Directive differently from the Commission. As a result, this dispute has appeared in front of the Court of Justice of the EU[1]. In short, had the government acted in a similar manner as in the negotiation on fireworks, the 'Birds Directive' might have included some similar wording to the 'Malta clauses' which effectively exempted the local industry and its interested stakeholders. This official disclosed that:

> There are members of the hunting community and in government that look at the fireworks industry and the 'exemptions' that it managed to achieve in this directive in a 'jealous manner' for not having applied similar strategies to those employed in the pyrotechnic articles negotiation.

Therefore, in Case 2, the government's use of clear, brief, and effective interventions was a recipe for success for such a small EU state.

However, this was not the case in the legal migration negotiations. As revealed in Chap. 8 (and as reiterated further on in this chapter), Malta's government fence-sat the decision-shaping stages of this process and was late to adopt a pace-setting strategy, by which time that the process had already entered the decision-taking stage of decision-making. Chap. 8 reveals that although the government initially tried to adopt an aggressive pace-setting strategy reverting to a foot-dragging one later, this shift in strategies did not produce any tangible results other than the placing of a veto (without support from any other member state) when the voting procedure was still by unanimity. However, once the Treaty of Lisbon came into force, thereby switching voting to QMV, there was little that the government could do (other than placing a 'conciliatory' statement attached to the JHA Council minutes) to break the process.

Thus even though Malta attempted to pace-set discussions in Coreper II by producing convincing arguments and diplomatic leverage to

justify its requests for amendments to be made to the draft EU law (see Table 8.9 and Graph 8.3 in Chap. 8), this was too late with a Council Presidency compromise already formed. Therefore, as may be seen in Table 8.7, even though it managed to persuade and receive support from some of the EU member states, Malta's government did not convince the majority of the parties to the negotiations. Case 3 thus reveals that Malta's late diplomatic persuading efforts in Council were in vain, which maintains explanatory value for the importance that countries, especially small states, must pace-set discussions in areas of particular interest to them from the very start. Anything contrary to this is a mistake, which small states in particular cannot afford and which can only result in negative outcomes for them in EU decision-making processes.

ii. Pace-setting through lobbying

Case 1 reveals the relevance of lobbying other parties to the negotiations. Sub-Sect. 7.2.3 shows that Malta lobbied the Commission and the EP throughout the process and that lobbying was a crucial channel of influence to achieve success in EU decision-making. It also reveals the importance for a small state government to take advantage of and lobby the Council Presidency as a means to channel influence, especially when this is held by another small state. In fact, Cases 1 and 2 expose how the Finnish (in Case 1) and Cypriot (in Case 2) Presidencies were able to accommodate the Maltese government's cultural, traditional, and religious concerns.

As a side note to this last point about lobbying, it is interesting to note that informal ways of lobbying such EU institutions are equally effective when it comes to persuasion. In the run-up to the 2007 directive, the government's representatives adopted a 'hands-on approach' by inviting European Commission and EP officials to Malta during the fireworks festival period which is an annual occurrence every May. In fact, this worked dividends. This was declared by a government's official stating that:

> …inviting them to Malta made them aware and able to understand more what we (Malta) were really talking about in Brussels… that this kind of local activity was small when compared with other industries in markets elsewhere in Europe… they got a direct sense that fireworks in Malta are produced locally for the traditional and not commercial purposes and that this should, therefore, not pose a problem if it was to be exempt from

> falling within the scope of the proposed EU directive…. (interview held in November 2013)

Besides lobbying the EU legislative institutions, it is also vital to lobby other EU governments. With particular reference to the first case, Sect. 7.2 has shown that although other EU member state governments were sympathetic with Malta's position, the government was isolated in this particular negotiation with no other government intervening similarly in the Council. However, as just stated above, one of the positive aspects for the government in these (2005–2007) negotiations was that technical discussions (in Working Group meetings) at the decision-shaping stage of the process were being held under the Finnish Presidency, i.e., another small state.

One may have thought that Spain, a large country with an excellent track record about exercising influence and achieving successes in various fora and policy spheres in EU decision-making processes, would have supported Malta (something it did later in the more recent 2011–2013 negotiations) for obvious reasons—it is a Mediterranean country sharing similar traditions to those found in Malta and has a strong fireworks industry in some of its regions—particularly in the south. However, a European Commission official involved directly in the 2005–2007 negotiations confirmed that Spain was a silent player and completely overlooked these cultural concerns. It only recognized the potential that the 'Malta clauses' could hold for its pyrotechnic industry once the process was over, i.e., after the adoption of the EU directive by the Council and the EP.

> Spain could only thank Malta about these amendments. However, obviously Spain, a heavyweight in the EU decision-making process, would have helped Malta's cause tremendously by easing Malta's way and adding weight to its arguments during the course of the negotiations. (interview in Brussels, January 2014)

Interestingly and according to this same official, Spanish regional authorities from the south, namely Valencia, Catalonia, and the Balearics, held bilateral talks with the Commission's DG Enterprise and Industry once the Industry once the decision-making process ended:

> They came here and said that we now have a big problem with (implementing) this legislation.

This is because the traditional festivities using large pyrotechnics (unlike those found in Maltese feasts) take place in these regions. They, therefore, tried to examine with the Commission how the 'Malta clauses' on definitions (Article 2(2) and (6) of the 2007 Directive) could apply to their situation. They were, therefore, trying to justify these types of fireworks for use in the traditional festivities particular to their regions (for instance, the popular '*patum de berga*' festivity[2] in which a large crowd of people light-up hand-held pyrotechnics such as sparklers) and to exclude them from falling within the scope of this EU legislation. However, the European Commission official observed that these types of pyrotechnics (mainly hand-held sparklers) are quite large and that they infringe safety requirements on minimum safety distances:

> … the regional authorities and festivity organizers realized that they may have a big problem now, because if you have one of these giant sparklers, then the minimum safety distance should be 8 m.

The substance of all this is that Malta's government could have had a strong ally in Spain during discussions leading to the adoption of the 2007 EU directive, but, most probably because of the lack of resources commensurate to a small state and, therefore, a low capacity to lobby a vast array of players other than the main ones—the Commission, Council Presidency, and the EP—this did not happen (see Table 7.3 on Malta's lobbying efforts). Therefore, the Maltese government had to push singlehandedly for its position to be accepted during the 2005–2007 negotiations, which makes the result achieved by the government even more extraordinary.

Case 2 about the 2011–2013 recast negotiations offers a different dynamic to the previous one, with Spain and the European Commission being Malta's strong allies throughout this process. Once again, the fact that another small state (Cyprus) was hosting the Council Presidency at a crucial stage in the process was a bonus for Malta, one not to be taken lightly when reviewing the government's successful outcome in the recast negotiations. As stated in Sect. 7.3 of Chap. 7, all these factors (besides the EP as another crucial channel of influence) facilitated Malta's government to suppress French attempts to drop the 'Malta

clauses' from the compromise proposal, something which as explained did not materialize. Thus, the government's main objective in the recast negotiations—that of maintaining the 'Malta clauses' in the legislative alignment exercise of EU legislation (through the recast technique) to continue to exempt the local pyrotechnic industry from falling within the scope of this EU directive—was achieved.

On the other hand, Case 3 illustrates that even though Malta pace-set late in the process, the government still lobbied various key parties to the negotiations. However, mainly due to the lack of political will on the part of other EU member states (with the exception of a few EU Mediterranean states, as shown in Table 8.7) and because of the late nature of its interventions and lobbying efforts in these negotiations, Malta could do little to overturn a majority rule which went contrary to its preferences. This is confirmed by the data found in Chap. 8 (see Tables 8.8 and 8.9 and Graphs 8.2 and 8.3) which reveals that although Malta's government obtained relatively high scores (medium to high levels of intensity) in the adoption of the pace-setting strategy in these negotiations, this was not sufficient.

Variable 5—foot-dragging the process

As observed in Chap. 8, the foot-dragging strategy was adopted by Malta's government only in the case on legal migration. Chap. 8 revealed how during and up to the pre-Treaty of Lisbon phase of the EU decision-making process, Malta managed to obtain a successful outcome from the process—that of blocking the extension of the 2003 LTR Directive to beneficiaries of international protection. As discussed earlier, this result was only obtained because of Council voting mechanisms which allowed it to veto the process. Therefore, success during the pre-Lisbon Treaty phase in these negotiations was not achieved through a manifestation of its influence in the process but rather by its right to simply resort to the 'power' of the veto to block the adoption of the amendment directive. This is demonstrated in Table 8.10 which explains why although successfully blocking the adoption of the legislation on its own, Malta only managed to foot-drag and delay the adoption of the legislative proposal at extremely low levels. It was not being able to persuade other delegations to also veto the proposal. As emphasized in Sect. 8.4, it was the only member state to veto the decision-taking stage.

As shown in Chap. 8, this lack of influence could be mainly attributed to the fact that the government's pace-setting strategy was adopted very

late in the process and because of a general unwillingness on the part of other EU member state governments to accept Malta's justifications about its concerns with the draft amending directive. In this case, therefore, the government's veto reflected negatively on its influence levels in the process.

Chapter 8 also revealed that the government lost most of what influence it did have (by simply vetoing the decision) once the legislative process and voting procedure changed with the entry into force of the Treaty of Lisbon. As explained, the adoption by QMV of the amendment directive in May 2011 represented a general failure for the government's foot-dragging strategy (see Table 8.11) to 'brake and break' the decision-making process, thus leading to a negative outcome for it.

Variable 6—fence-sitting the process

The fence-sitting strategy was not adopted by Malta's government during the negotiations in Cases 1 and 2, although it did so in Case 3. Chap. 8 reveals that the government fence-sat the early stages of the negotiations. Indeed, it practically fence-sat throughout all the decision-shaping stages of the negotiations when the pre-Treaty of Lisbon provisions was still in force. As discussed in Chap. 8 (see Sect. 8.4), during this time, Malta's administration was busy implementing much of the EU's JHA legal framework having just obtained EU membership in 2004. Besides, as confirmed by a ministry official (interview held in Valletta, December 2013), the government at first seemed to be in agreement with the Commission's proposal. These facts together with the reality of its extremely small administrative size partly explain the adoption of a fence-sitting strategy.

However, as explained, matters changed once the dangers of the Commission's proposal were identified by the government and once immigration in Malta quickly became a sensitive issue of national and grave importance upon achieving EU membership (with massive arrivals of immigrants arriving at its shores). It thus needed to shift strategy to one that was more proactive (see point D.3 in Table 3.1, Chap. 3). However, as aforementioned, although Malta stopped fence-sitting in Council, this occurred too late in the process for the government to make amends and exercise influence.

Table 8.4 in Chap. 8 furnishes scored indicators for this variable. One finds that the frequency of coalition shifting (between pace-setters and foot-draggers), the similarity of other government positions with that of its own, the miscalculation of the outcome, and the lack of benchmarks

afforded by the implementation phase have all produced some explanatory value on the government's adoption of this strategy and on its lack of influence in this process.

9.3.2 A Quantitative Comparative Analysis

This sub-section derives from the quantitative sections in the method of data collection discussed in Chap. 5. That chapter hypothesized that the higher the levels and scores for each of the independent variables discussed above, the higher the probability that the government would exercise influence and be successful in EU decision-making processes. [3] This sub-section tests this by providing a quantitative comparative analysis of the three empirical cases presented in the previous two chapters. More precisely, it provides an analysis for each of the cases by establishing the third step of the decision weights and measures scoreboard (the approach consisting of a three-step method as explained in Sect. 5.3 on methods of data collection) after which the results of the three cases are compared.

Step-3 in the decision weights and measures approach is required to add up, compare, and test quantitatively the data achieved in the previous two steps of the scoreboard. This will bestow a picture of whether steps-1 and 2 correspond with each other, determining whether Malta's government possessed enough capacities (the step-1 variables: variables 1–3) to be able to influence a process through the adoption of precise strategies during EU legislative negotiations (the step-2 variables: variables 4–6). It thus tests quantitatively whether a causal link exists between these variables in the cases previously analysed. For instance, whether high scores inputted for step-1 variables are compatible with high scores for step-2 variables. If so, the overall result for the cases should be a positive one indicating that the government held the capacity and adopted an appropriate strategy to be able to manifest influence in these negotiations.

As already indicated in Chap. 5, the data in the tables found in this sub-section have been inputted by using the following scale with the ranges of 0–2.5 indicating a negative marking and 2.5–5 a positive one:

Extremely High =	**5**
High =	4
Medium to High =	3
Medium =	**2.5 [Positive]**
Low to Medium =	2
Low =	1
Extremely Low (or none) =	**0 [Negative]**

Case 1:
As in Fig. 7.2 and Tables 7.3 and 7.4 in Chap. 7, Table 9.1 below reproduces the data for steps-1 (data in relation to variables 1–3 on governmental capacities) and 2 (data for variable 4 on governmental strategies—as previously observed, variables 5 and 6 did not apply to this case) of the decisions weights and measures scoreboard for Case 1 (on the adoption of Directive 2007/23/EC of 23 May 2007). However, this table goes one step further from the figure and tables found in Chap. 7 by also presenting the data for step-3 of the approach.

Table 9.1 thus presents the following results:

- a total average score of '3.4' on '5' for step-1 (a medium-to-high influence category and, therefore, a positive rating in the scale outlined above);
- a total average score of '2.6' on '5' for step-2 (a medium level and hence a positive rating); and
- a total net average weight of '3' on '5' (a medium-to-high category) in step-3 and, therefore, a positive overall result for Malta's government in Case 1.

One may see that the positive result attained for the step-1 variables has also been registered in step-2. This suggests continuity. It also suggests that the government's possession of a medium-to-high level ('3.4' on '5' for step-1) of capacities necessary to influence the process actually led the government to adopt a proper strategy to influence EU decision-making. As seen, Malta's government adopted an active pace-setting strategy throughout the process achieving a '2.6' on '5' (in step-2) and thus, a medium level.

Therefore, this case presents a positive result ('3' on '5' in step-3 and, therefore, a medium-to-high category) demonstrating that Malta's government did, indeed, exercise influence in the adoption of Directive 2007/23/EC.

Table 9.1 Decision weights and measures scoreboard for Case 1

STEP 1	*STEP 2*
(data extracted from Fig. 7.2)	(data extracted from Tables 7.3 & 7.4)
Variable 1	Variable 4
Sub-variable 1.1 = 4 on 5	Sub-variable 4.1—Pace-setting through lobbying
Sub-variable 1.2 = 3 on 5	4.1.1.A = 3 on 5
Variable 2	4.1.1.B = 2 on 5
Sub-variable 2.1 = 4 on 5	4.1.2.A = 4 on 5
Sub-variable 2.2 = 1 on 5	4.1.2.B = 5 on 5
Variable 3	4.1.2.C = 0 on 5
Sub-variable 3.1 = 5 on 5	4.1.2.D = 5 on 5
TOTAL = 17 (on 25)[a]	4.1.3 = 0 on 5
	4.1.4 = 0 on 5
	Sub-variable 4.2—Pace-setting through norm advocacy & effective intervention in Council deliberations
	4.2.1 = 3 on 5
	4.2.2 = 4 on 5
	TOTAL = 26 (on 50)[b]
STEP 3	
Total average score for Step 1 = 3.4 out of 5 [(17 × 5) ÷ 25 = 3.4] (a **+ve result** according to the 0 to 5 scale)	
Total average score for Step 2 = 2.6 out of 5 [(19 × 5) ÷ 50 = 2.6] (a **+ve result** according to the 0 to 5 scale)	
Total net weight for Steps 1 and 2 = 6 out of 10 [3.4 + 2.6 = 6]	
TOTAL net average weight for Steps 1 & 2 = 3 [(6 × 5) ÷ 10 = 3]	
Result: Demonstration levels of **Medium-to-High influence** (3 out of 5) in this EU decision-making process.	
(+ve indication of influence capacity in step 1 has been confirmed by actual levels of influence manifestation emerging from step 2)	

[a]5 sub-variables each scored out of 5
[b]10 indicators each scored out of 5
Source This table has been compiled by the author with data collected from interviews with Maltese public officials and members of the Commission and Council Secretariat

Case 2:
Similar to Fig. 7.2and Tables 7.7 and 7.8 in Chap. 7, Table 9.2 below reproduces the data for steps-1 and 2 of the decisions weights and measures scoreboard for Case 2 (on EU recast Directive 2013/29/EU of 12 June 2013). As with Table 9.1, Table 9.2 also presents the data for step-3 of the scoreboard.

Table 9.2 Decision weights and measures scoreboard for Case 2

STEP 1	*STEP 2*
(data extracted from Fig. 7.2)	(data extracted from Tables 7.7 & 7.8)
Variable 1	Variable 4
Sub-variable 1.1 = 4 on 5	Sub-variable 4.1—Pace-setting through lobbying
Sub-variable 1.2 = 3 on 5	4.1.1.A = 4 on 5
Variable 2	4.1.1.B = 4 on 5
Sub-variable 2.1 = 4 on 5	4.1.2.A = 3 on 5
Sub-variable 2.2 = 1 on 5	4.1.2.B = 3 on 5
Variable 3	4.1.2.C = 0 on 5
Sub-variable 3.1 = 5 on 5	4.1.2.D = 3 on 5
TOTAL = 17 (on 25)[a]	4.1.3 = 2 on 5
	4.1.4 = 2 on 5
	Sub-variable 4.2—Pace-setting through norm advocacy & effective intervention in Council deliberations
	4.2.1 = 3 on 5
	4.2.2 = 4 on 5
	TOTAL = 28 (on 50)[b]
STEP 3	
Total average score for Step 1 = 3.4 out of 5 [(17 × 5) ÷ 25 = 3.4] (a **+ve result** according to the 0 to 5 scale)	
Total average score for Step 2 = 2.8 out of 5 [(28 × 5) ÷ 50 = 2.8] (a **+ve result** according to the 0 to 5 scale)	
Total net weight for Steps 1 and 2 = 6.2 out of 10 [3.4 + 2.8 = 6.2]	
TOTAL net average weight for Steps 1 & 2 = 3.1 [(6.2 × 5) ÷ 10 = 3.1]	
Result: Demonstration levels of **Medium-to-High influence** (3.1 out of 5) in this EU decision-making process.	
(+ve indication of influence capacity in step 1 has been confirmed by actual levels of influence manifestation emerging from step 2)	

[a]5 sub-variables each scored out of 5
[b]10 indicators each scored out of 5
Source This table has been compiled by the author with data collected from interviews with Maltese public officials and members of the Commission and Council Secretariat

Table 9.2 thus presents the following results:

– a total average score of '3.4' on '5' for step-1 (a medium-to-high influence category and, therefore, a positive rating in the scale outlined above);

– a total average score of '2.8' on '5' for step-2 (a medium level and hence a positive rating); and
– a total net average weight of '3.1' on '5' (a medium-to-high category) in step-3 and, therefore, a positive overall result for Malta's government in Case 2.

When compared with Case 1, Case 2 also clearly holds explanatory value about the causal link existing between the step-1 and 2 variables leading to an overall positive result ('3.1' on '5' in step-3 and, therefore, a medium-to-high category) in terms of Malta's influence levels manifested in this case.

Case 3:
The data found in Fig. 8.2, Table 8.4, and Tables 8.8–8.11 in Chap. 8 are hereby re-inputted in the table below.

Table 9.3 thus presents the following results:

– a total average score of '2.4' on '5' for step-1 (a low-to-medium influence category and, therefore, a negative rating in the scale outlined before);
– a total average score of '1.93' on '5' for step-2 (a low-to-medium level and hence a negative rating); and
– a total net average weight of '2.16' on '5' (a low-to-medium category) in step 3 and, therefore, a negative overall result for Malta's government in Case 3.

Section 9.1 has already maintained qualitatively that unlike the fireworks cases presented in Chap. 7, the third case on EU immigration was negative in terms of Malta's influence in the negotiations. Table 9.3 also confirms this finding from a quantitative angle. It confirms once again a causal link existing between the step-1 and 2 variables, this time producing a negative overall result in the third step of the decision weights and measures scoreboard. The reasons for this have already been outlined in Sect. 9.1 in the qualitative section of this chapter and are thus not repeated here.

Therefore, when compared with Cases 1 and 2, Table 9.3 produces data demonstrating negative capacities and strategies as reasons for the government's failure to exercise influence in this case.

Table 9.3 Decision weights and measures scoreboard for Case 3

STEP 1	*STEP 2*
(data extracted from Fig. 8.2) Variable 1 Sub-variable 1.1 = 2 on 5 Sub-variable 1.2 = 1 on 5 Variable 2 Sub-variable 2.1 = 2 on 5 Sub-variable 2.2 = 2 on 5 Variable 3 Sub-variable 3.1 = 5 on 5 **TOTAL** = 12 (on25)[a]	(data extracted from Tables 8.4 and 8.8–8.11) Variable 4 Sub-variable 4.1—Pace-setting through lobbying 4.1.1.A = 3 on 5 4.1.1.B = 3 on 5 4.1.2.A = 3 on 5 4.1.2.B = 3 on 5 4.1.2.C = 0 on 5 4.1.2.D = 3 on 5 4.1.3 = 2 on 5 4.1.4 = 3 on 5 Sub-variable 4.2—Pace-setting through norm advocacy & effective intervention in Council deliberations 4.2.1 = 3 on 5 4.2.2 = 3 on 5 Variable 5 Sub-variable 5.1—Foot-dragging through delaying tactics in Council 5.1.2 = 2 on 5 [pre-Lisbon phase] 5.1.2 = 0 on 5 [post-Lisbon phase] Variable 6 Sub-variable 6.1 = 0 on 5 Sub-variable 6.2 = 1 on 5 Sub-variable 6.3 = 1 on 5 Sub-variable 6.4 = 1 on 5 **TOTAL** = 31 (on 80)[b]

STEP 3
Total average score for Step 1 = 2.4 out of 5 [(12 × 5) ÷ 25 = 2.4] (a **-ve result** according to the 0 to 5 scale)
Total average score for Step 2 = 1.93 out of 5 [(31 × 5) ÷ 80 = 1.93] (a **-ve result** according to the 0 to 5 scale)
Total net weight for Steps 1 and 2 = 4.33 out of 10 [2.4 + 1.93 = 4.33]
TOTAL net average weight for Steps 1 & 2 = 2.16 [(4.33 × 5) ÷ 10 = 2.16]
Result: Demonstration levels of **Low-to-Medium influence** (2.16 out of 5) in this EU decision-making process.
(-ve indication of influence capacity in step 1 has been confirmed by low levels of influence manifestation in step 2)

[a]5 sub-variables each scored out of 5
[b]12 indicators and 4 sub-variables each scored out of 5
Source This table has been compiled by the author with data collected from interviews with Maltese public officials and members of the Commission and Council Secretariat

9.4 Re-visiting the Book's Methodology

As observed in Chaps. 1 and 5, the book's research made use of both qualitative (case study and comparative designs) and quantitative approaches (descriptive statistics with levels of measurement and spread) to bestow a holistic methodological design.

As stated in Chap. 5, data were collected through the process-tracing technique. This consisted mainly of documentary analysis of Maltese government, Council, Commission, and EP working documents. Process-tracing was complimented through interviews with members of Malta's public service and EU officials (primarily from the European Commission and the Council Secretariat) who were the main players directly involved in the legislative negotiations featuring in this book. Data were also collected by means of the 'decision weights and measures' approach—a quantitative approach involving the compilation of a scoreboard. Interview participants were thus able to score the book's variables (in relation to Malta's capacities and strategies in the three cases studied) by means of this scoreboard.

Another methodological factor concerned the potential usefulness of the book's methodology for future studies of small state influence in EU decision-making processes. The previous chapters have stressed that it is extremely difficult to extract findings about a specific government's influence in EU decision-making processes. Chapter 4 defined and described EU decision-making as a slippery process involving many players and with policy goal-posts continuously shifting. However, as seen from the empirical chapters, even though the research had to face such challenges, the book's inter-disciplinary approach of qualitative and quantitative methods complemented each other to produce findings about the legislative cases. In other words, the mixture of the qualitative process-tracing and elite interviewing techniques with the quantitative 'decision weights and measures' approach proved to be extremely useful and rigorous tools to achieve findings about the Maltese government's exercise (Cases 1 and 2) and non-exercise (Case 3) of influence in the processes examined.

Therefore, besides being useful to academic communities, this methodology could also prove valuable to EU small state administrations when selecting strategies to influence uploading processes in any EU policy sphere.

9.5 Paving the Path for Future Research in This Study Area

Even though, as observed in Chap. 2, small states have been the subject of substantial research over the years, there are many researchers and authors who believe that this subject still offers considerable opportunities for future research to be conducted. For instance, Neumann and Gstöhl (2006: 16) maintain that such studies could offer insights to the broader discipline of IR by focusing on individual small states and on theoretical aspects relevant to IR. As one may observe, this book drew upon this last issue offering a case study of Malta as a small and new EU state in the context of its influence in differing EU legislative policy spheres. However, as with all studies, there are multiple aspects to this topic that were beyond the book's scope and which could be fruitfully dealt with in the future. This section highlights some of these aspects, by identifying four areas of study that would have the prospect of being potentially insightful.

First, there is a need for future research to develop further knowledge on EU decision-making, particularly legislative decision-making processes. This could be approached either as a separate study on EU decision-making processes (for instance, there is still a general lack of knowledge on what occurs, in a practical sense, in Council Working Group and Coreper meetings during such processes), or in conjunction with studying small state influence in a similar manner as in this book.

In relation to this last point, additional studies could also focus on the application of more theoretical approaches to the studies of small state behaviour (capacities and strategies) in EU decision-making.

Second, different and more EU member states could be examined. There is, indeed, relatively little knowledge on the 'newer' small EU member states (that have acceded into the EU post-2004) and whether they influence EU legislative decision-making processes. Therefore, adopting more comparative research on this subject matter opens the way for a deeper understanding of EU small state governmental capacities and strategies to influence EU decision-making.

Third, and similarly to the previous point, more studies that focus on a broader spectrum of EU policy/legislative spheres would be useful. As seen, this book covers two main policy areas. Therefore, more EU policy spheres and their relevance for small EU states (for instance, the relevance of financial services and the e-gaming sector for Luxembourg,

Cyprus and Malta; agricultural policy for small EU central and eastern states; environmental policy for small EU Nordic states; amongst others) would form an interesting framework for future studies to embark on. This would permit a fuller understanding of EU small state influence across a wider selection of EU decision-making processes.

A final recommendation concerns the need for literature to further knowledge on small states in the particular EU policy sphere of immigration. There are, of course, many different aspects in this research area which could go beyond the focus as found in Chap. 8. As previously stated, immigration (notably irregular migration) is a recent and very delicate phenomenon occurring in Malta (and in other states, particularly those located centrally in the Mediterranean), especially since acceding into the EU in 2004. Due to its critical geographical location on the irregular migration front, the Maltese government has been almost overwhelmed by this process. However, it often has had to struggle to convince the Commission and other EU member state governments to solve this problem together (i.e., through concrete interventions and not solely through financial hand-outs). Therefore, future research could focus on the extremely relevant subject matter of how the EU is to fulfill and apply burden-sharing responsibilities in line with Articles 78(3) and 80 TFEU. This immigration problem illustrates just one of the ways in which there is a real need for studies to be produced on the influence of small state governmental capacities and strategies in EU decision-making.

9.6 Conclusion—a Review of the Main Empirical Findings

The main finding emerging from the book's empirical research concerns the importance of timely interventions in EU legislative decision-making processes, an issue of particular importance for small state governments to exercise influence and yield positive outcomes from such processes. As empirically examined, it is necessary that states adopt appropriate strategies early in EU decision-making processes if they are to exercise influence.

The empirical research has also demonstrated that there is a causal link between a government's capacities and strategies and that it is difficult for a government to successfully upload a legislative process without both being actively present. In other words, a government's capacities complement the adoption of its strategies in an EU decision-making process and vice versa.

In brief, a government's capacities and strategies are interlinked. The empirical analyses demonstrate that Malta's government was aware of this in Cases 1 and 2 but not in Case 3.

The analyses in Chaps. 7 and 8 reveal how the three cases produced two positive and a negative result for Malta's government. Table 9.4 illustrates this last point.

Chapter 7 on Cases 1 and 2 discloses that Malta held positive capacities (variables 1–3) and adopted a 'winning' pace-setting strategy (variable 4) throughout both EU processes. This enabled the government to produce positive outcomes for itself in these legislative decision-making processes, i.e., being able to exempt the local fireworks industry from falling within the remit and scope of the adopted EU directives (which as seen represented the government's main preference in these negotiations).

However, the third case in Chap. 8 reveals how a lack of governmental capacities together with the adoption of an inappropriate fence-sitting strategy in the early phases of the EU decision-making process negatively affected the legislative outcome for the government. In fact, this chapter re-emphasizes what has already been stressed in Chap. 8—that although

Table 9.4 An overall view of the facts and results for all three case studies

Cases 1 & 2	*Case 3*
Negotiations for directives on pyrotechnic articles (Chap. 7)	Negotiations for an amendment directive on LTRs (Chap. 8)
Outcome for Malta's government = POSITIVE	**Outcome for Malta's government = NEGATIVE**
Strategy/ies used: Pace-setting throughout both EU decision-making processes	Strategy/ies used: At first fence-sitting shifting to pace-setting and foot-dragging towards the final stages of the process
Nature of EU negotiations: Supranational	Nature of EU negotiations: Intergovernmental (pre-Treaty of Lisbon phase); Supranational (post-Treaty of Lisbon phase)
Legislative procedure & voting: OLP & QMV	Legislative procedure & voting: Consultation & unanimity (pre-Treaty of Lisbon phase); OLP & QMV (post-Treaty of Lisbon phase)

Source Table compiled by the author

Malta shifted strategy to a pace-setting one (which, in light of the sensitivity of the negotiations and the policy sphere, was the strategy most likely required to influence the process), this occurred too late in the process. This resulted in the government's failure to successfully foot-drag and influence the process to stop a negative outcome from being taken.

In short, the adoption of pace-setting strategies from the very start of the process—when negotiations are still at the decision-shaping stages (and as examined in the first case, even at the preceding stage of agenda-setting)—is ideal for a small EU state like Malta to influence EU decision-making and achieve positive results in the final decision-taking stages.

As to possible further questions that could be asked about whether some EU state governments are more influential than others, the evidence from the Malta cases examined seems to suggest that this largely depends on whether a state has the right capacities and strategies to influence an EU decision-making process. Cases 1 and 2 reveal that Malta was still able to influence these processes for the reasons explained in Chaps. 7 and 9. With particular reference to the first case, Malta's government, even though isolated in the Council and with the Commission being a main opponent in the negotiations, was still able to influence this process and achieve an astonishing result by uploading the Malta clauses into the system. The same cannot be said about Case 3. This means that when Malta's government had appropriate capacities and strategies, it managed to influence EU decision-making favourably and was ultimately successful (Cases 1 and 2). However, when it did not, it was not able to influence the EU process and failed in its objectives (Case 3).

In sum, differences in influence levels between EU governments may be attributed less to a state's size and more to factors that have to do with a state's governmental capacities and strategies deployed in EU decision-making processes. Consequently, one may conclude that those member state governments that hold a considerable degree of influence in the shaping and taking stages of the EU policy process are those that succeed in linking the engagement of good capacities with correct strategies. Tiny Malta proves this last point in the cases empirically researched in this book.

Notes

1. In this case, the Commission opened an infringement procedure against Malta under Article 258 TFEU (ex Article 226 TEC) for failure to comply with this directive protecting wild birds. In a ruling on 10 September 2009 (IP/09/1301), the Court of Justice of the EU clarified that Malta's spring hunting season (until 2008, Malta allowed the hunting of quails and turtle doves during spring which is a key period of bird migration and breeding) resulted in bird mortality rates for that period being around three times higher for quails and eight times higher for turtle doves than for the autumn hunting season and which thus did not constitute an adequate solution strictly proportionate to the aim of conserving bird species. However, in this instance, Malta still managed to maintain a restrictive season thus permitting a shorter spring hunting season. See: http://www.timesofmalta.com/articles/view/20120412/local/Malta-among-most-correct-EU-states.415059 (Accessed on 24 March 2014).
   In a more recent case, the Commission has sent a Reasoned Opinion (RO) on 27 February 2012 (IP/12/171) to the Maltese government to correctly implement the 'Birds Directive' in relation to the incorrect application of derogations allowing bird trapping in autumn.
   See: http://europa.eu/rapid/press-release_IP-12-171_en.htm?locale=en (Accessed on 24 March 2014).
2. It is a traditional festival celebrated each year in the Catalan city of Berga during the feast of Corpus Christi. See parts of this festivity on: http://www.youtube.com/watch?v=3IflVOChmZE
3. Chapter 5 maintained that together, these variables are necessary and need to be present if governments are to exercise influence and affect EU outcomes.

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