

## PERIPHERALITY IN THE EUROPEAN UNION

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**W**hile recognising that major strides have been achieved in the recognition of peripherality and insularity in the European Union, it is important to note that, at the present stage, one should not be too triumphalistic about the current situation. Still, we have come a long way. For forty years there was basically no mention at all of the situation of islands and island regions in the basic Treaties. Even today, although there is a new emphasis on islands and island regions, on peripheral regions and ultra-peripheral regions, and on insularity and double insularity, as we shall see, the focus is very much on the infrastructure and human resources side. More can be done, more is needed.

Excluding the United Kingdom and Ireland, which are rather large islands, the small island states of Malta and Cyprus represent a first for the European Union. Up to now, islands have been mentioned only in the accession treaties of new member states, and the reference has been to specific islands attached to the acceding states, forming part of the acceding states' territories. The experience of small sovereign island states joining the European Union is particular and new. Thus, for example, in the accession treaties, Denmark referred to the Faeroes and to Greenland, the U.K. referred to the Channel Islands and the Isle of Man, Portugal and Spain referred to the Azores, Madeira and the Canaries, Finland referred to the Aland Islands. Reference to all these islands is found in the various accession treaties. These islands have particular rules applicable to them, indicated in the relevant accession treaty.

The Aland islands, for example, still offer duty free goods to tourists

visiting them because the E.U. legislation governing duty free at airports and seaports does not apply to them. Similarly, there is specific E.U. legislation for the Azores, for Madeira and for the Canaries taking into consideration their very particular status and realities.

### **The Maastricht Treaty and the Outermost Regions**

The Maastricht Treaty of 1992 in fact contains a declaration on ultra-peripheral regions such as the French overseas departments, using the terminology of "outermost regions". It is important to emphasise the context within which this reference to outermost regions came about. The Maastricht treaty came into being as a result of the strong impetus for the creation of the Single Market: here was a Europe determined to integrate even further and to push the pace of integration. It is therefore very significant that at that very point where the process of integration was being accelerated, a special consideration was made for those regions on the periphery who might need special attention. The outermost regions refer to the French Overseas Department, to the Azores, Madeira and the Canaries Islands. The Treaty included a declaration which acknowledged that these regions suffered from "major, structural, backwardness compounded by several phenomena – remoteness, island status, small size, difficult topography and climate, dependence on a few products or services."

This was the Maastricht Treaty which put into force the single European market: yet the Union still acknowledged that, with regard to these regions, "it is nonetheless possible to adopt specific measures to assist them inasmuch and as long as there is an objective need to take such measures".... with a view to the economic and social development of those regions to enable them "to achieve the average economic and social level of the Community."

The same or similar text, no longer in the form of a Declaration, is now in the Treaty of Amsterdam. Amending the E.C. Treaty, the Amsterdam Treaty clause became an article in the Treaty itself. That represents a significant legal change.

The E.U. institutions are authorised to adopt specific measures which take "into account the special characteristics and constraints of the outermost

regions” (229:2) So there is now also a legal basis for outermost regions. Still if you look at the general regulations and directives you find in fact not many references to ultra-peripherality.

## **The Treaty of Amsterdam and Island Regions**

It is important to note that the European Parliament as early as 1987, and this was a reflection of even earlier discussions, passed a resolution on the peripheral and island regions of the European Union. As we shall see the European Parliament is an important institution supporting the issue of peripheral and island regions.

However the conceptual breakthrough came with the Amsterdam treaty itself. The Amsterdam Treaty makes reference to “all the island regions” and not to specific islands or simply to islands in the ultra-periphery. It therefore grants legal recognition to island regions as a particular reality demanding particular attention from the Union and its legislative regime.

There was a change from the former text which made reference to “the least favourite regions including rural areas”. Formerly the text referred to reducing disparities with reference to “the least-favoured regions, including rural areas”. The Amsterdam Treaty amended the E.C. Treaty which now refers to “the least-favoured regions *or islands*, including rural areas.” (Article 158; formerly 130A).

After Amsterdam therefore, the text became the least favoured regions or islands including rural areas. The insertion of the concept of an island as requiring special attention was the result of a long and laborious process which included a process of persistent focused lobbying. It represented the achievement of an important step in the formation of the European framework, in the building of Europe: within this great surge forward by the creation of a single market there was also the recognition that account must be taken of the least favoured regions or islands.

The specific reference to island regions therefore, as we said, is clearly significant. Article 159 further states that the member-states must coordinate their economic policies to attain the objectives set out in Article 158 which is the article mentioning directly “least favoured regions or

islands". So now, finally, there is a solid legal basis on which to base argumentation in favour of particular legal treatment of islands, and/or island regions. Beyond policy and lobbying, insularity within the European Union has achieved a legal basis on which argumentation can be based.

### **The Language Question!**

Of course this matter is being treated in a multi-cultural, multi-lingual Europe. The language question does not only arise in Maltese history but also in Europe as well and one of the problems which is currently being faced is a problem of translation, or translations. How do you translate the English version "The least favoured regions or islands including rural areas"?

In French *Des régions ou îles moins favorisées y compris zones rurales* – which is different from the English version because it refers to the regions or islands least favoured including rural areas. One could argue that this translation refers only to those islands which are least favoured and not to all islands in the same way that it refers to least favoured regions and not to all regions.

The Italians went one better. Of course they are our good neighbours! In this case they are also helpful neighbours – this is how their translation runs: *Regioni meno favorite o insulari, comprese le zone rurali*. Insularity in itself, in the Italian version, represents a basis for special treatment of ALL island regions, whether they are less favoured or not.

### **The Conference Declaration**

From a legal point of view, I feel that one should also note that elsewhere in the Amsterdam Treaty there is the following reference:

*Declaration on island regions.*

"The Conference recognises that island regions suffer from structural handicaps linked to their island status, the permanence of which impairs their economic and social development."

"The Conference accordingly acknowledges that Community

legislation must take account of these handicaps and that specific measures may be taken, where justified, in favour of these regions in order to integrate them better into the internal market on fair conditions”

This, in my view, is indicative of the spirit of the above-mentioned Treaty provision and its interpretation should be influenced by this Declaration within the same Treaty document. The translation which considers that islands themselves are at a disadvantage because of their insularity, reflects the Conference’s declaration in the Treaty of Amsterdam. The Conference did not distinguish between islands and least favoured islands.

This interpretation is further supported by the European Parliament, which in its 1998 Resolution on the problems of island regions in the EU, emphasises that:

“Article 130a should be interpreted in the light of the Declaration on island regions (No 30) annexed to the Final Act of the Amsterdam Treaty, which recognises that ‘island regions’ suffer from structural handicaps linked to their island status, the permanence of which impairs their economic and social development”.

In my view, this declaration of policy by the intergovernmental conference, strengthens the hand of island regions, indeed island states, such as the island of Malta, and perhaps even more so, the island of Gozo, in the process of negotiations – and I hope that this is something which the negotiators are taking into consideration.

### **The Canary and the Danish Islands**

As a result of these developments, islands whether peripheral, outermost, or just islands, have been treated differently. For example, there are special tax aid schemes for the Spanish Canary Islands. They allow companies to pay corporate tax starting at 1% to 5%, and they also give special deductions on that rate for companies providing new activities in the area.

Another example refers to the Danish Islands. Certainly not ultra-peripheral or outermost but islands nonetheless. Islands not belonging to a state

which qualifies for the structural or the cohesion funds – but to relatively wealthy Denmark. Yet their special needs are still recognised. In its preamble, Council Directive 98/9/EC states as follows:

“Whereas the permanent natural and geographical handicaps existing in the Danish islands result in higher production and transport costs which prevent farmers in these areas from obtaining, from their production, income on a level with that obtained by comparable farmers elsewhere in the Member State”

As a result, the Danish islands are given particular attention and have a status special enough to justify particular focused legislation “To make good the permanent and geographical handicaps which islands have”.

### **The European Parliament and Insularity**

As earlier briefly indicated, the European Parliament has been a strong supporter of special treatment for islands within the European Union. In its resolution of 16th May 1997 on an integrated policy adapted to the special situation of island regions in the European Union, Parliament noted that island regions suffered from the absence of an appropriate European Union Policy.

This is still true today for while in many programmes of the E.U., including the grand programmes, the Structural Funds and the Cohesion Fund, there is a bias in favour of island regions, the E.U. still lacks a policy of specific action directed at islands regions. *Interreg*, for example, covers border regions which are land based and has special provisions for the British isles. The situation of bordering islands however, such as Sicily and Malta, is not envisaged and is not covered in this programme.

The 1998 EP Resolution on the problems of island regions in the European Union is important particularly from the point of view of Gozo in relation to its definition of an island region:

“an ‘island region’ is a segment of a Member State which is entirely surrounded by sea, has no physical links to the mainland and is not the seat of the capital city of any European Union country”

A segment of a member state which is entirely surrounded by sea: I think Gozo qualifies for that. Has no physical links to the mainland: Gozo qualifies for that as well. And Gozo is not the site of any capital city of any European Union country.

Once we become a member state, the island of Malta may no longer qualify as an "island region" (though it remains an island nonetheless). but Gozo will. This is important because it automatically fits Gozo within all the documents in the European Union policies referring to island regions and calls for programmes specifically devoted to such islands.

### **Development of Island Economies**

I think programmes specifically devoted to islands are direly needed. Although most islands benefit from the Structural funds and Cohesion Fund, and one study states that eighty per cent (80%) of the islands' populations are covered by these structural funds, these funds are generally directed at infrastructural development. The assistance required goes beyond that. The programmes should be directed at enabling the islands to make the required economic choices. Island regions need to be themselves economically viable rather than be simply assisted in terms of infrastructural development.

We have to make sure that there are certain options which islands can carry out, for example, certain issues relating to the fiscal regimes or issues relating to assisting investment which allow those regions to carry on developing. Hopefully this line of thinking will find more support as the experience of the Single Market settles and as the European Union becomes more confident about the success of single market integration. The further we go in time and experience from the dynamic change brought about by Maastricht, the easier it may become for island regions to be given particular special attention and be allowed to carry out special activities on the periphery of Europe which do not affect the main markets.

The European Parliament has stated unequivocally that even where the GDP per capita at purchasing-power parity of island regions is over the threshold of 75% of the Community average, this should not automatically disqualify them from eligibility for aid under Article 92(3)(a), as a special consideration for their insularity.

## **Double Insularity**

This argument may be even stronger if applied to a situation of double insularity. The European Parliament's Viola Report of 1998, states that:

“In some cases, they (islands) face the additional handicap of remoteness, or what could be defined as ‘dual insularity’, owing to their limited geographical dimensions and the handicap of being part of an archipelago.”

Gozo is a case in point. This is another matter of importance for the negotiators of membership. Gozo is an island part of an island state or of an archipelago which is a region and therefore is again once more removed from the central main economic pull.

The Viola report tackles the issue even more specifically and makes the case for a special consideration for islands in the light of the single market. It makes the following points:

- This specific geographical characteristic results in heavy dependence on sea and air transport and, inevitably, substantial additional costs, partly due to the time lost during the production process (‘non-quantifiable costs’).
- Island economies also suffer from the small size of the local market and poor economic diversification. In many cases, island economies are dependent on a single product (agriculture, fisheries, tourism), making them highly vulnerable to market fluctuations.
- The European Union should also draw up a study on the impact of common policies on island regions and on the additional costs generated by island status, so as to identify specific compensatory measures.
- Common European policies, from the CAP to fisheries or the whole idea of tax harmonisation, are geared to the concept of the single market, which, although beneficial and needing to be fully completed, is actually incompatible with the geographic situation of islands.

These are all concepts that the E.U. is absorbing and that will allow, in my view, a particular approach towards island regions.



Although we are not yet there I think the momentum towards such a particular approach within the European Union is increasing.

## **Negotiations**

The Viola report should be carefully considered by anyone involved in negotiations with the European Union. In the light of the Viola report, the persons involved in negotiations should also consider that:

- the insularity and smallness of Malta is a particular aspect for negotiations;
- Gozo suffers from more than insularity and smallness: it suffers from double insularity being an island which forms part of an archipelago on which there is not the Capital City of the country.

I do not believe that, in our negotiations, we should be fearful of considering the insularity and smallness of Malta. Some people may argue that we should not mention that because the E.U. may see us as “different”. Well we are different – but we are not different from other island regions within the European Union. We are not reinventing the wheel and we need have no hang-ups about that. Gozo has got double insularity problems and that is something that in my view should be used also to its advantage.

What has clearly emerged over the past years, is that peripherality, insularity and double insularity are becoming more and more a consideration of E.U. policy and, indeed, of European Union law. This is particularly true post the Treaty of Amsterdam which came into effect on 1st of May 1999.

Malta and Gozo could be beneficiaries of these developments. These developments indicate that special considerations for island regions in the formulation of E.U. legislation may perhaps also be achieved even within the framework of full membership of the European Union.