



**Stanford – Vienna
Transatlantic Technology Law Forum**

A joint initiative of
Stanford Law School and the University of Vienna School of Law



European Union Law Working Papers

No. 51

**San Marino: Navigating the European Union
as a Microstate**

Thomas W. Lopez

2021

European Union Law Working Papers

Editors: Siegfried Fina and Roland Vogl

About the European Union Law Working Papers

The European Union Law Working Paper Series presents research on the law and policy of the European Union. The objective of the European Union Law Working Paper Series is to share “works in progress”. The authors of the papers are solely responsible for the content of their contributions and may use the citation standards of their home country. The working papers can be found at <http://tlf.stanford.edu>.

The European Union Law Working Paper Series is a joint initiative of Stanford Law School and the University of Vienna School of Law’s LLM Program in European and International Business Law.

If you should have any questions regarding the European Union Law Working Paper Series, please contact Professor Dr. Siegfried Fina, Jean Monnet Professor of European Union Law, or Dr. Roland Vogl, Executive Director of the Stanford Program in Law, Science and Technology, at:

Stanford-Vienna Transatlantic Technology Law Forum
<http://tlf.stanford.edu>

Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610

University of Vienna School of Law
Department of Business Law
Schottenbastei 10-16
1010 Vienna, Austria

About the Author

Thomas W. Lopez is a J.D. candidate at Stanford Law School. He earned his bachelor's degree in History from Yale University in 2019. His main areas of interest include public international law and education policy. He is currently working with Stanford's Afghanistan Legal Education Project to craft a textbook on administrative law in Afghanistan.

General Note about the Content

The opinions expressed in this student paper are those of the author and not necessarily those of the Transatlantic Technology Law Forum, or any of TTLF's partner institutions, or the other sponsors of this research project.

Suggested Citation

This European Union Law Working Paper should be cited as:
Thomas W. Lopez, San Marino: Navigating the European Union as a Microstate, Stanford-Vienna European Union Law Working Paper No. 51, <http://tlf.stanford.edu>.

Copyright

© 2021 Thomas William Lopez

Abstract

This paper explores the legal mechanisms through which European microstate San Marino interacts with the European Union. Although San Marino is not currently a Member State of the European Union, the Italian enclave is afforded certain privileges through bilateral agreements with both the EU and Italy. By tracing the history of these agreements, the paper illustrates the legal shortcomings and benefits of the current system and outlines strategies for future integration.

Table of Contents

1. Introduction	1
2. History of San Marino.....	1
3. Early Bilateral Agreements with Italy	3
4. Early Multilateral Agreements	4
5. The 1991 Agreement	6
6. The Creation of the European Union.....	7
7. The Euro	8
8. An Evolving EU.....	9
9. Current Integration.....	11
10. Future Integration.....	15
11. Conclusion.....	19

Introduction

Nestled eighty miles east of Florence, Italy, near the coast of the Adriatic Sea is the autonomous, land-locked nation of San Marino. For over 1,600 years San Marino has not only retained its miniscule, mountainous territory, but also its republican form of government—one which some believe to be the oldest-surviving republic in the world.¹ The Italian-encapsulated microstate has survived the geopolitical dynamism of European state-making over the past 250 years and has successfully navigated partial integration into the European Union. Although San Marino is not officially a Member State of the European Union, the microstate is afforded certain legal privileges. My research seeks to clarify what exactly these privileges entail.

History of San Marino

The state of San Marino began as a Christian community during the Roman Empire in the early 4th century.² Fabled stonemason Marinus is said to have found refuge from Roman religious persecution on San Marino's crown jewel of Mount Titano—the highest peak of the Apennine Mountains.³ Marinus then established a Christian pilgrim community and instituted a republican form of government for the small territory.⁴

From the decline of the Roman Empire to the Napoleonic Wars, San Marino existed as one of many sovereign regions within the Italian peninsula.⁵ San Marino faced one of its greatest tests

¹ *San Marino country profile*, BBC (May 18, 2018) <https://www.bbc.com/news/world-europe-17842338>.

² Charles de Bruc, *THE REPUBLIC OF SAN MARINO* 9-12 (William Warren Tucker trans., Cambridge: Riverside Press, 2nd ed. 1880).

³ *Id.* at 13-15.

⁴ *Id.*

⁵ William Miller, *The Republic of San Marino*, 6 AM. HIST. REV. 633, 645-46 (1901).

during Napoleon's massive consolidation of European states in the early 19th century.⁶ By 1797, the French commander seemed destined to overtake the microstate, yet when asked what his plans were for the small mountainous community, he remarked that he planned to keep San Marino intact due to its rich history as a republic.⁷ Napoleon respected the political freedom the Sammarinese enjoyed, and he hoped to see the nation continue to thrive.⁸

San Marino was tested again during the Italian *risorgimento* of the mid-19th century.⁹ Leaders like Giuseppe Mazzini and the Count of Cavour had taken advantage of surging nationalism in Southern Italy and sought to unify the northern Italian states.¹⁰ In 1849, San Marino provided sanctuary for General Garibaldi's fallen unification forces.¹¹ Austrian units soon arrived in pursuit of Garibaldi, pinning the small microstate between fierce rivals.¹² Through deft diplomacy, the Sammarinese were able to both allow for Garibaldi's escape and offer housing and food for the Austrians.¹³ By the end of the 20th century, the strains of the *risorgimento* had faded, and San Marino had secured a comfortable foothold in the Italian landscape.¹⁴ San Marino later avoided tumult by striving for neutrality in World Wars I and II, successfully retaining its sovereignty throughout the rest of the 20th century and up to the present day.¹⁵

⁶ *Id.* at 646.

⁷ *Id.*

⁸ *Id.*

⁹ James Theodore Bent, *A FREAK OF FREEDOM; OR, THE REPUBLIC OF SAN MARINO* 191 (Kennikat Press, 1970) (1879).

¹⁰ *Id.* at 192-94.

¹¹ *Id.* at 194-97.

¹² *Id.* at 197-98.

¹³ *Id.* at 198-99.

¹⁴ *Id.* at 191, 210.

¹⁵ U.S. DEP'T OF STATE, *FOREIGN RELATIONS OF THE UNITED STATES DIPLOMATIC PAPERS* 290-96 (1944) <http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=div&did=FRUS.FRUS1944v04.i0008&isize=M>; Thomas R. Brooks, *THE WAR NORTH OF ROME: JUNE 1944 - MAY 1945* 210-11 (1996).

Early Bilateral Agreements with Italy

San Marino's earliest recorded bilateral treaty was signed in 1862 between Luigi Cibrario of San Marino and Domenico Carutti of Italy.¹⁶ The treaty both acknowledged the individual sovereignty of each nation and included a multitude of ways the two nations were to be linked.¹⁷ One such bond between the two states would be through the judicial system.¹⁸ Per Article 1, judicial rulings of each nation would be executable in the other.¹⁹ Subsequent articles address extradition, choice of law in criminal matters, and consequences for military desertion.²⁰ These articles reinforced the notion that the citizens and armies of San Marino are legally distinct from those of Italy. Other notable articles include Article 22 which abolishes the need for a passport to travel between Italy and San Marino,²¹ Article 23 which allows for free movement of goods across the two states' shared border,²² and Article 29 in which Italy pledges to conserve San Marino's liberty and independence.²³

Subsequent treaties between Italy and San Marino echoed the language and sentiments of the 1862 Agreement. These agreements built upon on the existing base of legislation between the two states and furthered detailed how the two nations' political, economic, and legal systems

¹⁶ Convenzioni fra la Repubblica di San Marino e il Regno d'Italia, San Marino-It., Mar. 3, 1862, Segreteria Di Stato Per Gli Affari Esteri, Per La Cooperazione Economica Internazionale E Le Telecomunicazioni.

¹⁷ *Id.*

¹⁸ *Id.* at Art. 1

¹⁹ *Id.*

²⁰ *Id.* at Art. 2-20.

²¹ *Id.* at Art. 22.

²² *Id.* at Art. 23.

²³ *Id.* at Art. 29.

would interact.²⁴ For example, the 1897 renewal agreement included new provisions detailing family and contract law as well as a verbatim copy of the Article 29 sovereignty pact from the 1862 Agreement.²⁵ A total of 154 bilateral agreements have been signed between the two states since the 1862 Agreement, including the 1939 Convention of Friendship and Good Neighborhood which has since been tacitly renewed.²⁶

Early Multilateral Agreements

The first major European economic cooperation agreement was the European Coal and Steel Community (ECSC), formed in 1951.²⁷ The ECSC was comprised of six countries: France, Germany, Italy, Belgium, Luxembourg, and the Netherlands.²⁸ Although independent states like Monaco and San Marino resided within Member States, neither were mentioned in the ECSC Treaty.²⁹ Four independent bodies were established to run the ECSC, including the High Authority, the Assembly, the Council, and the Court of Justice.³⁰ The distribution of authority to a

²⁴ See *Convenzione di buon vicinato e amicizia conclusa il 28 giugno 1897 tra la Repubblica di San Marino e S.M. Umberto I Re d'Italia, San Marino-It., June 28, 1897, Segreteria Di Stato Per Gli Affari Esteri, Per La Cooperazione Economica Internazionale E Le Telecomunicazioni.*

²⁵ *Id.* at Art. 7, 46.

²⁶ *Trattati Internazionali - Accordi Bilaterali con altri Stati, SEGRETERIA DI STATO PER GLI AFFARI ESTERI, PER LA COOPERAZIONE ECONOMICA INTERNAZIONALE E LE TELECOMUNICAZIONI*, <http://www.esteri.sm/on-line/en/home/foreign-affairs/international-treaties/bilateral-conventions/bilateral-conventions---bilateral-agreements-with-italy.html> (last visited June 16, 2020); *Convenzione di amicizia e buon vicinato Art. 58, San Marino-It., Mar. 31, 1939, Segreteria Di Stato Per Gli Affari Esteri, Per La Cooperazione Economica Internazionale E Le Telecomunicazioni.*

²⁷ Karen Davies, *UNDERSTANDING EUROPEAN UNION LAW* 8 (7th ed. 2019).

²⁸ *Id.*

²⁹ Treaty establishing the European Coal and Steel Community, April 18, 1951, 261 U.N.T.S. 140.

³⁰ Davies, *supra* note 27, at 8.

supranational organization was a significant development for European cooperation and eventually paved the way for the European Union by the end of the 20th century.³¹

Six years after the formation of the ECSC, European nations would come together again to form the more expansive European Economic Community (EEC) in 1957.³² Rather than focus on a specific industry, the EEC was ambitiously formed to integrate the European economies as a whole.³³ While San Marino was not mentioned in the official ECSC or EEC Treaty, it *was* addressed in a 1968 regulation to the EEC Treaty, passed six months after Italy and San Marino agreed to establish reciprocal embassies in each other's states.³⁴ Article 2 of the Regulation declares that, "The territories situated outside the territory of Member States and covered by the Annex to this Regulation shall, taking the conventions and treaties applicable to them into account, be considered to be part of the customs territory of the Community."³⁵ Subpoint three of the Annex then lists the Republic of San Marino under the Italian heading, citing the 1939 Convention of Friendship and Good Neighborhood between the two countries.³⁶ While the EEC's inclusion of San Marino was important economically (in keeping San Marino part of the European customs union), perhaps the most important development for the nation was gaining a degree of international recognition from the European Community. While San Marino did not have to be an independent signatory of the EEC, it was still considered a sovereign republic albeit intrinsically tied to its big sibling, Italy.

³¹ *Id.*

³² *Id.* at 9-10.

³³ *Id.* at 10.

³⁴ Scambio di Note ad interpretazione dell'art. 4 della Convenzione di amicizia e buon vicinato del 31.03.1939, San Marino-It., Mar. 31, 1939, Segreteria Di Stato Per Gli Affari Esteri, Per La Cooperazione Economica Internazionale E Le Telecomunicazioni.

³⁵ Regulation on the definition of the customs territory of the Community, Sept. 27, 1968, 1968 O.J. (L 238) 1.

³⁶ *Id.* at Annex.

The 1991 Agreement

In 1991, San Marino officially entered into an agreement on economic cooperation with the EEC.³⁷ Signed by all 12 EEC Member States, Title I of the 1991 Agreement established a customs union between the EEC and San Marino.³⁸ In a customs union, goods are assessed the same import tax at any point of entry. For example, goods from a third party such as Canada would be assessed the same tariff on the coast of France as they would if flown into San Marino. A customs union also allows for free movement of goods among Member States. Consequently, Article Six states that trade between the twelve EEC Member States and San Marino would be exempt from import and export duties.³⁹ Being a member of the European customs union has thus allowed San Marino to conduct business with countries throughout Europe. Other microstates such as Andorra have similar bilateral customs union agreements with the EU.⁴⁰ Although San Marino may not currently be a member of the EU, it enjoys the significant perks and ease of such economic cooperation.

Title II of the 1991 Agreement established various economic goals and political commitments shared between the EEC and San Marino.⁴¹ These goals touch upon a wide range of topics including industrial diversification, environmental protection, tourism, discrimination, and the free movement of workers.⁴² Here again, San Marino takes on the role of a cooperating and

³⁷ Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino, Dec. 16, 1991, 1991 O.J. (L 84/43).

³⁸ *Id.*

³⁹ *Id.* at Art. 6.

⁴⁰ *Andorra: Customs Unions and preferential arrangements*, EUROPEAN COMMISSION https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/customs-unions/andorra-customs-unions-and-preferential-arrangements-andorra_en (last visited June 15, 2020).

⁴¹ 1991 O.J. (L 84/43) at Title II.

⁴² *Id.* at Art. 15-22.

friendly partner to the EEC without officially being a Member State itself. To ensure that these commitments described are more than just formalities, Article 23 of the 1991 Agreement establishes a “Cooperation Committee” composed of representatives from the EEC and San Marino to monitor compliance between San Marino and the EEC.⁴³ This procedural safeguard secures the mutual promises in the bilateral treaty between the microstate and the supranational organization.

The Creation of the European Union

The European Union was formally established by the Treaty of Maastricht in 1992.⁴⁴ Also known as the Treaty on European Union (TEU), the agreement stood to broaden the scope of the EEC and created a supranational organization with political, social, and economic aims.⁴⁵ Twelve Member States comprised the original group of EU nations: Belgium, Denmark, Germany, Greece, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, and the United Kingdom.⁴⁶ San Marino is mentioned just once in the TEU—under Section III in a declaration on monetary relations.⁴⁷ The declaration reads, “The Conference agrees that the existing monetary relations between Italy and San Marino and the Vatican City and between France and Monaco remain unaffected by the Treaty establishing the European Community until the introduction of the ECU [European Currency Unit] as the single currency of the Community.”⁴⁸ As in the EEC, San Marino

⁴³ *Id.* at Art. 23.

⁴⁴ Davies, *supra* note 27, at 12.

⁴⁵ *Id.* at 12-13.

⁴⁶ Treaty on European Union, Feb 7, 1992, 1992 O.J. (C191) 1.

⁴⁷ *Id.* at Section III.

⁴⁸ *Id.*

is again recognized by its European peers, but merely to acknowledge the existing monetary relationship between the microstate and its encapsulating state.

While the EU is today comprised of 27 Member States, San Marino remains a third country quasi-Member State.⁴⁹ Although San Marino maintains a close relationship with Italy, it actively engages in its own foreign affairs. San Marino has signed bilateral treaties with 135 nations, assigned ambassadors to 59 nations (19 of which are stationed outside of the Italian peninsula), and houses three foreign embassies in San Marino itself (with the bulk of foreign diplomatic corps to San Marino located in Italy).⁵⁰

The Euro

In 2000, San Marino entered into a monetary agreement with the European Union.⁵¹ The 2000 Monetary Agreement altered the 1991 Agreement and permitted San Marino to use the euro as its official currency as of January 2002.⁵² San Marino had previously used the same currency as Italy, the lira, for over a century.⁵³ Article 24 of the 1862 Agreement with Italy permitted San Marino to mint its own lira which would be weighted in alignment with the Italian lira.⁵⁴ This

⁴⁹ EU ENLARGEMENT FACT SHEET, <http://ec.europa.eu/neighbourhood-enlargement> (last visited June 15, 2020).

⁵⁰ *Foreign Diplomatic and Consular Corps Accredited to San Marino*, SEGRETERIA DI STATO PER GLI AFFARI ESTERI, PER LA COOPERAZIONE ECONOMICA INTERNAZIONALE E LE TELECOMUNICAZIONI, <http://www.esteri.sm/on-line/en/home/foreign-diplomatic-and-consular-corps-accredited-to-san-marino/complete-list-for-printing.html> (last visited June 16, 2020); *Diplomatic Representations of San Marino*, SEGRETEIA DI STATO PER GLI AFFARI ESTERI, PER LA COOPERAZIONE ECONOMICA INTERNAZIONALE E LE TELECOMUNICAZIONI, <http://www.esteri.sm/on-line/en/home/diplomatic-and-consular-corps.html> (last visited June 16, 2020); *Accordi Bilaterali con altri Stati*, *supra* note 26.

⁵¹ Monetary Agreement Between the Italian Republic, on Behalf of the European Community, and the Republic of San Marino, Nov. 29, 2000, 2001 O.J. (C 209/1).

⁵² *Id.* at Art. 1.

⁵³ 1862 Agreement, *supra* note 16, at Art. 24.

⁵⁴ *Id.*

system ended with the 2000 Monetary Agreement. Along with setting forth the timeline for the introduction of the euro, the 2000 Monetary Agreement provided that San Marino would follow Italy's lead in withdrawing Sammarinese lira.⁵⁵ San Marino was also permitted to mint its own euro coins (with artistic liberty for the national side of the coins), but not euro banknotes.⁵⁶ Subjects of the national side designs have included Saint Marinus, Mount Titano, and the San Marino coat of arms.⁵⁷

Today, San Marino is one of few European nations to use the euro as an official currency without being a Member State of the EU.⁵⁸ The other non-Member State nations sharing similar euro privileges through monetary agreements include Monaco, the Vatican City, and Andorra.⁵⁹ A handful of French territories also use the euro as an official currency, but these territories are not currently permitted to issue their own coins.⁶⁰ Lastly, non-Member States Kosovo and Montenegro use the euro as a de facto currency, having not signed a monetary agreement with the EU as San Marino has.⁶¹

An Evolving EU

While San Marino found success through early cooperation with the EU, the EU was changing in the early 2000s. In 2000, the EU was comprised of 15 Member States—most of which

⁵⁵ *Id.* at Art. 1.

⁵⁶ *Id.* at Art. 3.

⁵⁷ SAN MARINO COINS – EUROPEAN CENTRAL BANK, <https://www.ecb.europa.eu/euro/coins/html/sm.en.html> (last visited June 16, 2020).

⁵⁸ THE EURO OUTSIDE THE EURO AREA, https://ec.europa.eu/info/business-economy-euro/euro-area/euro/use-euro/euro-outside-euro-area_en (last visited June 16, 2020).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

were Western European nations with populations well into the millions.⁶² In 2007, the EU had grown to 27 states.⁶³ The new EU of the 21st century included former Soviet Bloc nations like Latvia as well as small nations like Cyprus and microstate Malta.⁶⁴

In October 2002, San Marino sent an aide-memoire to EU leadership highlighting San Marino's development as a third nation to the EU.⁶⁵ The letter recalls San Marino's relations with the EU and notes that implementation of the 1991 Agreement and 2000 Monetary Agreement had proven beneficial for San Marino.⁶⁶ San Marino acknowledged that it was time to broaden the scope of the 1991 Agreement cooperation provisions in order to fully benefit from the Title II provisions.⁶⁷ San Marino also stressed that its economy, culture, and history are closely intertwined with that of Europe as a whole.⁶⁸ The microstate thus concluded that it would consider all possible implications of full EU membership while remaining mindful of its desire to preserve its identity as a microstate.⁶⁹

On October 20, 2013, San Marino held a referendum asking whether citizens desired for San Marino to begin accession negotiations with the EU for full membership.⁷⁰ To pass, the referendum required 32% of voters to approve the measure.⁷¹ Although 50.3% of the respondents

⁶² *EU Enlargement Fact Sheet*, *supra* note 49.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Aide-Memoire from San Marino's Segreteria Di Stato Per Gli Affari Esteri to the European Union, (Oct. 17, 2002) http://eeas.europa.eu/archives/docs/sanmarino/docs/aidememoire_en.pdf.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Dave Keating, *San Marino rejects EU accession*, POLITICO (Oct. 23, 2013) <https://www.politico.eu/article/san-marino-rejects-eu-accession/>.

⁷¹ *Id.*

voted “Yes”, the Yes votes only amounted to around 20% of eligible voters, and thus the referendum failed for lack of a quorum.⁷²

San Marino is a member of the EU customs union; San Marino is part of the eurozone; San Marino cooperates with the EU on a broad range of public policies. Although San Marino is not officially part of the Schengen Area (in which there is free movement of persons without border checks), San Marino is an enclave and does not have a commercial airport; thus, an individual may only enter San Marino through Italy, which *is* a member of the Schengen Area.⁷³ Since there are no border formalities between San Marino and Italy, San Marino is a de facto member of the Schengen Area.⁷⁴ What is left for San Marino to accomplish before achieving full Member State status? What fruits of EU membership are left for San Marino to reap?

Current Integration

In 2010, the Council of the European Union described the EU’s relationships with microstates Andorra, Monaco, and San Marino as “extensive but fragmented,” citing the key remaining impediments of free movement of persons and services.⁷⁵ The Council of the European Union underwent a significant research process to determine whether a new institutional framework could be created for relations with the three microstates.⁷⁶ In 2012, the European

⁷² *Id.*

⁷³ *Stay and Residence Permits*, SEGRETARIA DI STATO PER GLI AFFARI ESTERI, PER LA COOPERAZIONE ECONOMICA INTERNAZIONALE E LE TELECOMUNICAZIONI, <http://www.esteri.sm/on-line/en/home/link/stay-and-residence-permits.html> (last visited June 16, 2020).

⁷⁴ *Border Formalities*, REPUBBLICA DI SAN MARINO <http://archivio.visitsanmarino.com/on-line/en/home/discover/border-formalities.html> (last visited June 16, 2020).

⁷⁵ EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino – Options for Closer Integration with the EU SWD (2012) 388/F1 of 20 Nov. 2012.

⁷⁶ *Id.*

Commission issued a substantial report outlining major hurdles for future integration of the microstates within the EU.⁷⁷

Politically, while relations and communications between San Marino and the EU are strong, the EU does not have a delegation accredited to San Marino (which is instead represented by Italy).⁷⁸ Despite this shortcoming, San Marino has continually shown a strong interest in harmonizing with the EU. From the 1991 Agreement to the Aide-Memoire and subsequent memoranda to the EU, San Marino has repeatedly expressed a desire to cooperate with both Italy and the EU as a whole.

Monetarily, San Marino is strongly integrated within the EU market as a member of the eurozone and the customs union. Moreover, in 2004, San Marino signed an international tax agreement with the EU with the aim to curb possible double taxation between Member States and San Marino.⁷⁹ The tax agreement generally allows non-Sammarinese citizens from EU Member States to receive tax credits in their own states equivalent to the amount withheld by San Marino.⁸⁰ Given that nearly one third of Sammarinese citizens live and work outside of San Marino, such agreements are essential when assessing taxation.⁸¹

Regarding movement through San Marino's border—although San Marino may be a de facto member of the Schengen Zone, San Marino is not a signatory to the Schengen Acquis.⁸² Consequently, San Marino is not associated with implementation of other Schengen duties

⁷⁷ *Id.*

⁷⁸ *Id.* §2.

⁷⁹ See Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, 28 Dec. 2004, 2004 O.J. (L381/33).

⁸⁰ *Id.* at Art. 10.

⁸¹ Keating, *supra* note 70.

⁸² *Schengen Area*, EUROPEAN COMMISSION https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en (last visited June 16, 2020).

involving policing and judicial cooperation.⁸³ While San Marino may not be an official signatory, it has participated in cooperative policing with other EU states through bilateral treaties (including over a dozen extradition treaties) rather than inclusion into the multilateral legal framework of the Schengen Acquis.⁸⁴

Perhaps the largest divide San Marino faces from EU integration is the lack of a complete free movement of persons.⁸⁵ While San Marino has an open border with Italy and citizens from EU Member States may pass freely from Italy into San Marino, these visits are largely restricted to tourism.⁸⁶ A stay permit is required for visits of three to 12 months and may be granted for tourism, work, or family reunification.⁸⁷ There are two forms of long-term resident permits: registered residence permits and elective residence permits.⁸⁸ Registered residence permits are awarded to foreign nationals for family reunification with a Sammarinese citizen or by establishing or holding a management position in a Sammarinese business.⁸⁹ Elective residence permits are awarded to foreign nationals who make and maintain an eligible property or financial investment and hold a health insurance policy.⁹⁰ Applicants can neither work for the public sector nor benefit

⁸³ EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino, *supra* note 75, §2.4.2.

⁸⁴ *Accordi Bilaterali con altri Stati*, *supra* note 26.

⁸⁵ See EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino, *supra* note 75, §3.1.

⁸⁶ *Id.* §2.4.

⁸⁷ *Stay and Residence Permits*, SEGRETARIA DI STATO PER GLI AFFARI ESTERI, PER LA COOPERAZIONE ECONOMICA INTERNAZIONALE E LE TELECOMUNICAZIONI <http://www.esteri.sm/on-line/en/home/link/stay-and-residence-permits.html> (last visited June 16, 2020).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

from State contributions.⁹¹ After 10 years, the elective permit transfers into a registered residence permit and affords the relevant rights of the latter.⁹²

The European Commission also noted a number of pitfalls in San Marino's current immigration policy for nationals wishing to work in EU Member States aside from Italy.⁹³ Sammarinese citizens must obtain a residence permit for stays of over three months in an EU Member State, with conditions varying by Member State and by type of employment.⁹⁴ One major impediment is an individual's lack of a right to stay in the EU after their economic activity ends (having not met the requirements for permanent residence).⁹⁵ Some of these requirements pose a significant burden for Sammarinese citizens and students who wish to move for employment, research, and education.⁹⁶ Moreover, while San Marino has a partnership status with the EU's Erasmus exchange program for students, some aspects of the program may be limited for Sammarinese students.⁹⁷

Another pitfall stems from the free movement of services and freedom of establishment for companies.⁹⁸ Companies established in San Marino do not have a right to directly provide services to EU Member States.⁹⁹ While Sammarinese companies may resolve this issue by creating a

⁹¹ *Id.*

⁹² *Id.*

⁹³ See EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino, *supra* note 75, §3.1.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Erasmus+ Programme Guide*, EUROPEAN COMMISSION https://ec.europa.eu/programmes/erasmus-plus/programme-guide/part-a/who-can-participate/eligible-countries_en (last visited June 16, 2020).

⁹⁸ EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino, *supra* note 75, §3.2.

⁹⁹ *Id.*

foreign subsidiary in an EU Member State, doing so may pose burdensome administrative costs.¹⁰⁰ This impediment may effectively prohibit small businesses from extending their services into the broader EU market.¹⁰¹

While San Marino may be a member of the EU customs union, there are a few shortcomings to the current arrangement. For one, the nature of San Marino having a bilateral agreement with the EU requires that the agreement be continually updated to keep pace with the evolution of EU legislation.¹⁰² Goods from San Marino must also meet the EU internal market's standards for product safety and consumer protection while also abiding by standard customs procedures.¹⁰³ These additional requirements may occasionally cause delays for products.¹⁰⁴

Future Integration

After observing the aforementioned strengths and weaknesses of San Marino's status within the European Union, the European Commission presented five possible avenues for future integration.¹⁰⁵ The first option is to retain the status quo—accepting the disadvantages of the current system and creating legal uncertainty for the future.¹⁰⁶ Option two is a sectoral approach in which agreements would be negotiated to address certain liberties and shortcomings.¹⁰⁷ Separate agreements would afford the most flexibility but would require significant effort and labor on behalf of the EU to negotiate numerous disparate agreements. Moreover, these agreements would

¹⁰⁰ *Id.*

¹⁰¹ *Id.* §3.3.

¹⁰² *Id.*

¹⁰³ *Id.* §3.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* §5.

¹⁰⁶ *Id.* §5.1.

¹⁰⁷ *Id.* §5.2.

be subject to economic and political changes and may require repeated adaptation and revision over the years.¹⁰⁸ If San Marino and other microstates were to separately negotiate each individual provision, the European Commission may be burdened by an “incoherent web of unconnected agreements.”¹⁰⁹ Option three is a framework association agreement through a multilateral treaty, perhaps with other European microstates.¹¹⁰ The European Commission favors this option.¹¹¹ Option four is participation in the European Economic Area (EEA).¹¹² Participation would allow for complete integration into the European internal market.¹¹³ While option four benefits from the ease of using the existing EEA Agreement, San Marino would be required to become a member of either the EU or the European Free Trade Association (EFTA).¹¹⁴ While joining the EEA would require a renegotiation of the EEA Agreement, this option is another feasible avenue for San Marino to achieve further EU integration.

The final option is perhaps the most obvious: San Marino applies for EU membership.¹¹⁵ Pursuant to Article 49 of the TEU, San Marino would need to notify the European Parliament and national parliaments of the EU Member States of its application for membership. The Council of the European Union would then need to consult the European Commission and receive consent from the European Parliament through a majority vote.¹¹⁶ While EU membership would solve many of the aforementioned difficulties under the current system, the EU would have to confront the legislative and political intricacies of bringing a microstate into a supranational organization.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* §5.3.

¹¹¹ *Id.*

¹¹² *Id.* §5.4.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* §5.5.

¹¹⁶ Treaty on European Union, *supra* note 46, at Art. 49.

San Marino would also have to fulfill various obligations to conform to EU regulations and achieve full EU Member Status.¹¹⁷

The 2013 San Marino referendum reflected a major turning point for the microstate's future. Proponents of EU accession argued that approving the referendum would give San Marino a seat at the European table and allow the microstate to help shape the policies that affect it as part of the eurozone and European customs union.¹¹⁸ Sammarinese citizens would be eligible for reduced rates of tuition at EU universities and would be eligible for benefits like medical care in EU Member States.¹¹⁹ The vote represented the first step in a longer negotiation process that may eventually include certain derogations.¹²⁰

Opponents of the referendum argued that the political representation gained by joining the EU was not worth the cost.¹²¹ Under the current EU voting procedure, the symbolic seat at the European table would be miniscule. There are three types of majority voting procedures used by the Council of the European Union.¹²² The first is a simple majority, in which the vote of 14 Member States is required for approval.¹²³ The second is a unanimous vote.¹²⁴ Both of these forms would benefit San Marino, as each nation receives an equal share of voting power. Unfortunately

¹¹⁷ EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino, *supra* note 75, §5.5.

¹¹⁸ Emanuele Guicciardi, *San Marino: Thanks But No Thanks, EU Accession!*, EUROPEAN PUBLIC AFFAIRS.EU (Oct. 21, 2013) <http://www.europeanpublicaffairs.eu/san-marino-thanks-but-no-thanks-eu-accession/>.

¹¹⁹ Keating, *supra* note 70.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Voting System*, COUNCIL OF THE EUROPEAN UNION <https://www.consilium.europa.eu/en/council-eu/voting-system/> (last visited June 16, 2020).

¹²³ *Id.*

¹²⁴ *Id.*

for San Marino and its fellow microstates, the most common method of voting in the Council of the European Union is that of a qualified majority.¹²⁵

Two qualifications must be met for a qualified majority to be found. First, 55% of Member States must vote for the provision (15 out of 27 current Member States).¹²⁶ Second, the proposal must be supported by Member States representing at least 65% of the total EU population.¹²⁷ The population requirement is clearly disadvantageous for a country the size of San Marino.

To illustrate the problem, the following are the current statistics for the smallest EU Member State, Malta. Malta has a population of around 500,000.¹²⁸ The European Union has a total population of over 446 *million* inhabitants.¹²⁹ These populations give Malta a voting percentage of around 0.11%, making Malta's vote only relevant for the 15-state approval requirement. In comparison, San Marino has a population of approximately 33,000.¹³⁰ If San Marino were to join the EU, it would have a voting percentage of just 0.0074%—a negligible share. In contrast, some provisions may be seen as affording *too much* power to each individual state irrespective of population, for example, if a majority vote were required. Moreover, the Council of the European Union rotates its presidency biannually.¹³¹ Some Europeans may feel uncomfortable with the idea that the leader of a nation of just 33,000 could become the leading

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Malta*, BRITANNICA <https://www.britannica.com/place/Malta> (last visited June 16, 2020).

¹²⁹ *Living in the EU*, EUROPA https://europa.eu/european-union/about-eu/figures/living_en (last visited June 16, 2020).

¹³⁰ Keating, *supra* note 70.

¹³¹ *The Presidency of the Council of the EU*, COUNCIL OF THE EUROPEAN UNION (Sept. 21, 2016) <https://www.consilium.europa.eu/en/documents-publications/library/library-blog/posts/the-presidency-of-the-council-of-the-eu/>.

face of the Council of the European Union as a whole—especially considering that San Marino is still mending its reputation as a tax haven for wealthy Europeans.¹³²

Conclusion

Although the legislative disconnect between San Marino's exceptional third country status and full EU membership may be burdensome, San Marino has found success in threading the needle between different legal statuses. While San Marino benefits from general European cooperation, a customs union, the eurozone, and other international policies, San Marino is able to maintain a degree of autonomy and sovereignty by retaining some of its competences. While for now San Marino has presumably chosen the route of future integration by bilateral treaty with the European Union, it remains to be seen if the small enclave will eventually join the EU as a full Member State.

¹³² See also *Ending EU citizens' bank secrecy in San Marino*, EUROPEAN PARLIAMENT (Feb. 25, 2016) <https://www.europarl.europa.eu/news/en/press-room/20160223IPR15509/ending-eu-citizens-bank-secrecy-in-san-marino>; See also Marco Alfieri, *Death of a tax haven*, VOXEUROP (Oct. 18, 2010) <https://voxeurop.eu/en/death-of-a-tax-haven/>; See also Elvira Pollina, *Exclusive: A banking crisis in miniature: San Marino in race against time*, REUTERS (June 5, 2017) <https://www.reuters.com/article/us-sanmarino-banking-idUSKBN18W26A>.