

Note

## Nomination of Tonio Borg for the European Commission

**SUMMARY** Tonio Borg’s views on abortion, homosexuality and divorce are staunchly conservative and outdated. While not necessarily on topics of EU competence, he views his strong opinions as ‘issues of conscience’, which would prevent him from being an impartial commissioner—especially with the public health portfolio.

### 1. BACKGROUND

Following John Dalli’s resignation, the Council will appoint a new Commissioner<sup>1</sup>. Dr Anthony Borg was nominated by Malta’s EPP Prime Minister to fill the position until 2014 (see endnote <sup>2</sup> for a biography). Their PN party is widely expected to lose Malta’s upcoming general election in March 2013. It is probable PM Lawrence Gonzi put Borg forward with this national ‘expiry date’ in mind.

### 2. ARISING ISSUES

**Dr Borg is known for staunchly conservative views on women’s rights including abortion; divorce; and homosexuality.** He belongs to the most conservative branch of the Partit Nazzjonalista, which doesn’t seem to enjoy party-wide support even in a country where conservative views widely prevail.

**WHY IT MATTERS** This Commission portfolio includes public health, comprising issues such as healthcare, access to healthcare and discrimination in healthcare; health-related research; health inequalities; at-risk populations including single mothers and men who have sex with men; issues such as contraception in public health, sexually-transmitted diseases and prevention campaigns; and health in education<sup>3</sup>. Moreover, all 27 Commissioners are always consulted before Commission proposals are made public; **this would give him considerable influence across EU competences.**

**HOMOSEXUALITY** Tonio Borg supported Malta’s incorrect transposition of the Free Movement Directive (2004/38/EC), for which the European Commission had started infringement proceedings because it explicitly excluded same-sex couples, breaching EU law. **He vocally defended that only relationships that were “in Malta’s national interest” should be recognised<sup>4</sup>.** The law was changed shortly after the infringement procedure started.

When discussing rent reform in 2009, he opposed Labour leader Joseph Muscat’s proposal to include same-sex couples under this law (he accused Labour of attempts to “use this [rent] law to regularise gays”<sup>5</sup>). He said “We will only protect those who deserve protection”, inferring that **same-sex couples and unmarried heterosexual couples do not deserve legal protection**, and shouldn’t be able to inherit property from one another<sup>6</sup>. According to him, this is a matter of “social conscience”<sup>6</sup>.

He further expressed contempt and disdain towards gay and lesbian people: “That’s all we need now! After we’ve finally decided to limit inheritance to married couples and children, now we are expected to extend this protection”

to those who decide to go and live with someone of the same sex<sup>6</sup>; “That is all that we need now, to put up with gays, too!”<sup>7</sup>.

**DIVORCE** Despite Maltese voters supporting the introduction of divorce in a 2011 referendum (53% in favour)<sup>8</sup>, **Tonio Borg was one of 11 MPs voting against the divorce bill after the referendum**<sup>9</sup>, despite the proposal including 4 mandatory years of legal separation before divorce. He repeatedly tried to further weaken the divorce law before it passed<sup>10, 11</sup>.

**ABORTION/IVF** Dr Borg unilaterally supports the Maltese NGO Gift of Life, whose mission is “making it harder for abortion to ever be legalised in Malta”<sup>12</sup>, notably by entrenching criminal anti-abortion provisions in the constitution<sup>13</sup>. As Minister for Justice and Home Affairs, Tonio Borg told the conference ‘The Well-Being Of The Unborn Child’ that **the Maltese constitution should define life as beginning from conception**<sup>14, 15</sup>, defining any abortion as murder. Borg affirmed that “an embryo starts from fertilisation. There is no pre-embryo”<sup>16</sup>, meaning any fertilised egg is a full human embryo and must be legally protected as a person. Gift of Life believes abortion should remain illegal even in the case of rape or incest<sup>17</sup>, and Borg has never opposed this. He spoke as Deputy PM at the Malta Unborn Child Movement’s Pro-Life Day in 2009 and 2010<sup>18</sup>. **He opposed proposals to stop prison terms for mothers who performed an abortion**<sup>19</sup>.

**Borg petitioned all associations in Malta to build support for a constitutional change**<sup>13</sup>. Gift of Life is currently lobbying for harsher penalties for unlawful abortions under the *Embryo Protection Act*<sup>20</sup>. The Act, with Borg’s backing, would **criminalise the transfer of gametes** (i.e. sperm or egg donation for single women or same-sex couples) with a €10,000-23,000 fine and up to 5 years in prison<sup>21</sup>.

Dr Borg closely supported plans to provide unborn children (i.e. any fertilised egg<sup>14</sup>) with legal care<sup>22</sup>. This would mean **forcing pregnant women to undergo drug treatment** when the foetus’ health is at risk, e.g. with drug use<sup>22</sup>. All of these attempts go against UN standards on women’s human rights<sup>23</sup>.

Tonio Borg supported the idea of **restricting pregnant women’s ability to travel outside Malta if they were thought likely to get an abortion**<sup>24</sup>.

**COUNTER-ARGUMENTS** Borg might claim he supported legal progress for LGBT people as he belongs to a government that put forward the Cohabitation Bill, but his **repeated public opposition and disapproval of same-sex relationships**<sup>4, 5, 6, 25</sup> makes this hard to believe. **The cohabitation law eventually proposed by Borg’s government fails to give any serious legal protection to same-sex couples** (for instance, a ‘civil cohabitation partnership’ dissolves automatically if one of the partners gets married to someone else, without consulting the other partner)<sup>26</sup>.

Preparing for his hearing, Borg said that “one must be careful before labelling somebody, and you cannot divest me of my values”<sup>27</sup>. Borg and his supporters may defend his previous statements/actions as ‘choices of conscience’, ‘personal choices’ or ‘conscientious objection’. Some may also label opposing Dr Borg as ‘anti-Christian’, ‘christianophobic’, or against religion. **Dr Borg is entitled to his own views (religious or not), but using such extreme views to define law and policy, and making it a case of conscience above any questioning, would likely prevent him from being a fair-minded commissioner for public health.**

### 3. MOVING FORWARD

The Committee on Environment, Public health and Food safety (ENVI) will interview Tonio Borg for 3 hours, with Members asking questions on his background and capacity to take up the ENVI portfolio. **The hearing will take place in Brussels on 13 November**, between 3pm and 6pm.

Dr Borg has also planned bilateral meeting with key Members to discuss his nomination and appease doubts as to his suitability for the post.

Members could take the following action:

- **Raise these issues in bilateral meetings** with him if the opportunity arises
- **Make their concerns/opposition known** to ENVI Coordinators, political group presidents, and the Chair and Vice-Chairs of ENVI ahead of the ENVI hearing
- **Raise these issues at the ENVI hearing**



## NOTES

- 1 The Council will design the next Commissioner in common accord with the President of the Commission, and after consulting the European Parliament (Art. 246 TFEU). When giving his accord, the President must “seriously consider the result of Parliament’s consultation” (Point 6, *Framework Agreement on relations between the European Parliament and the European Commission*, Official Journal, L 304/47, 20th November 2010)
- 2 Dr Borg is from the Partit Nazzjonalista (‘PN’, Nationalist Party, EPP). With a background in public and human rights law, he held ministerial and elected positions from 1992 onwards. He was a member of the European Committee for the Prevention of Torture<sup>(1990-1995)</sup>. Currently Deputy Prime Minister(2004-present) and Minister of Foreign Affairs<sup>(2008-present)</sup>, he was also PN’s Deputy Leader<sup>(2004-2012)</sup>, which he resigned from upon being nominated for the Commission.
- 3 “Health in all policies”, European Commission, <http://bit.ly/de5deL>
- 4 Q&A at the Public Dialogue Meeting between the Maltese government and civil society, Malta, 3rd December 2009. Records held by the Malta Gay Rights Movement.
- 5 “Cassola says Greens will vote against Tonio Borg”, *Malta Today*, 26<sup>th</sup> October 2012, <http://bit.ly/P7B6eH>
- 6 “PN is not liberal - Tonio Borg”, *Times of Malta*, 26<sup>th</sup> January 2009, <http://bit.ly/Xky5JP>
- 7 “Tonio Borg - Hekk jonqos issa...nitqanneq bil-gays”, *YouTube*, 31<sup>st</sup> August 2012, <http://youtu.be/PTO8TZYGo-A>
- 8 “MPs in Catholic Malta pass historic law on divorce”, *BBC News Europe*, 25<sup>th</sup> July 2011, <http://bbc.in/omZ73M>
- 9 ‘Minutes’, “Sitting number 386 – Monday, 25 July 2011”, *KAMRA tad-DEPUTATI*, <http://www.parlament.mt/sittingdetails?sid=393&legcat=7&forcat=12>
- 10 “The ghost of marriage past”, *BondiBlog*, 20<sup>th</sup> July 2011, <http://bit.ly/Xl4Jel>
- 11 “Foreign Minister slams divorce referendum question”, *Times of Malta*, 15<sup>th</sup> March 2011, <http://bit.ly/TbVtDA>
- 12 “Gift of Life – History”, 9<sup>th</sup> March 2005, <http://bit.ly/S54pyT>
- 13 “Conservative Borg gets ready to meet his MEP ‘makers’”, *Malta Today*, 23<sup>rd</sup> October 2012, <http://bit.ly/RwVRy8>
- 14 “Plans for abortion law to be entrenched in Constitution”, *Times of Malta*, 7<sup>th</sup> May 2005, <http://bit.ly/P2MhoU>
- 15 “Malta reiterates stand against abortion”, *Times of Malta*, 7<sup>th</sup> February 2010, <http://bit.ly/VEUDXx>
- 16 “Plans for abortion law to be entrenched in Constitution”, *Times of Malta*, 7<sup>th</sup> May 2005, <http://bit.ly/P2MhoU>
- 17 “93% of Maltese believe that the unborn has human rights.”, *Gift of Life*, 13<sup>th</sup> March 2007, <http://bit.ly/RXuRr0>
- 18 “Photos”, *Movement for the Rights, Protection and Development of the Unborn Child*, <http://bit.ly/Psyolj>
- 19 “Europe, This is Tonio.”, *Opinion, Malta Today*, 29<sup>th</sup> October 2012, <http://bit.ly/S8wlcY>
- 20 “Gift of Life wants tougher punishment for breach of IVF law”, *Times of Malta*, 12<sup>th</sup> October 2012, <http://bit.ly/RgZb2c>
- 21 Art. 9, “Embryo Protection Bill”, *KAMRA tad-DEPUTATI*, <http://www.parlament.mt/billdetails?bid=119&l=1&legcat=7>
- 22 “Care order proposal for unborn children”, *Times of Malta*, 8<sup>th</sup> February 2010, <http://bitly.com/P8lWG3>
- 23 “The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.” Article 96, *Beijing Platform for Action*, United Nations, 1995
- 24 “The pregnancy police”, *Opinion, The Malta Independent*, 14<sup>th</sup> February 2010, <http://bit.ly/dnpQ8X>
- 25 “Minister out of touch with the times”, *Opinion, Times of Malta*, 28th January 2009, <http://bit.ly/TPJMsZ>
- 26 “The Cohabitation Bill | A guide to the gay and lesbian outrage”, *Opinion, Malta Today*, 11<sup>th</sup> September 2012, <http://bitly.com/RPrBAo>
- 27 “Tonio Borg nominated as new EU Commissioner, resigns as PN deputy leader”, *Malta Today*, 20<sup>th</sup> October 2012, <http://bit.ly/S4J4pe>