

**The Jean Monnet Seminar Series**

**ADVENTURES IN SCREENING AND  
TRANSPOSITION A CASE STUDY:  
THE EU CONSUMER PROTECTION  
ACQUIS 1990 - 2004**

**A NOTE ON CONSUMER POLICY AND LAW IN THE  
CONTEXT OF THE EU ACCESSION AND  
TRANSPOSITION PROCESS - 1990 TO 2004 AND  
BEYOND**

**DAVID FABRI**

***M*alta  
*E*uropean  
*S*tudies  
*A*ssociation**

**Editor  
Peter G. Xuereb  
Jean Monnet Professor**

# **The Jean Monnet Seminars**

The Jean Monnet Seminars are an initiative of the Jean Monnet Chair and the Malta European Studies Association. They are an intrinsic part of the fabric of European Studies development at the University of Malta, bringing together scholars in the field for the purpose of constructive debate and thinking on the main issues in European Integration. The assistance of the European Commission is gratefully acknowledged.

**Professor Peter G. Xuereb**  
**Jean Monnet Chair in EU Law and European Integration**

© European Documentation and Research Centre,  
University of Malta and Dr. David Fabri, 2006

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means - electronic, mechanical, photocopying, recording or otherwise - without prior written permission from the European Documentation and Research Centre, University of Malta and the Author.

The EDRC is an independent, non-political, academic centre for research and teaching in European Studies. The views expressed in publications of the EDRC are the personal views of the authors and do not necessarily reflect the view of the EDRC.

Typeset by the European Documentation and Research Centre.

## **ABOUT THE AUTHOR**

Dr David Fabri is a senior lecturer with the Commercial Law Department in the Faculty of Law at the University of Malta. He lectures on EU consumer law and policy at the EDRC and occupies the post of Director of legal and international relations at the Malta Financial Services Authority. He has been involved in consumer protection matters since 1978. Since 1990 he has advised and assisted government in the development of local consumer legislation and policy. In 1999, he was appointed to lead the screening and transposition of the consumer protection *acquis* in the run-up to EU membership. He has written extensively and has addressed numerous conferences and seminars on consumer and financial services legislation.

**DAVID FABRI**

**Malta European Studies Association  
SEMINAR, 20 APRIL 2006**

***ADVENTURES IN SCREENING AND TRANSPOSITION  
A CASE STUDY:  
THE EU CONSUMER PROTECTION ACQUIS  
1990 – 2004***

**A NOTE ON CONSUMER POLICY AND LAW  
IN THE CONTEXT OF THE  
EU ACCESSION AND TRANSPOSITION PROCESS  
- 1990 TO 2004 AND BEYOND**

## **Introduction**

The objective of this paper is to trace the recent development of national consumer policy and law in Malta and its convergence, if any, with the island's recent EU accession and transposition process. It deals with the period starting with Malta's 1990 application to join the European Union up to date of accession in 2004. The paper accompanies the talk and slide presentation given at the seminar organized by the MESA on the 20 April 2006, in which the speaker also narrated personal experiences from his involvement in a number of screening meetings and in the transposition of EU Directives during that extremely eventful period. These experiences are outside the scope of this paper.

This is a selective and personal interpretation of the events and laws which mark the recent history of Maltese consumer law and policy as seen in the light of progress in Malta's application to join the European Union in the crucial years between 1990 and 2004. The paper sets out and compares

two processes and argues that for the most part they developed in parallel and were largely unconnected, converging only during the intensive, often rushed, transposition activity undertaken in the 2000-2001 period.

Attention shall be given to the broad manner in which transposition of the consumer protection *acquis* was achieved, rather than to the detailed rules involved. The present exercise does not aspire to analyze in detail how Maltese consumer protection came about or to examine all the laws and events that trace the development of our national consumer policy and law. I have covered these subjects elsewhere.

### **National Consumer Law and Policy**

The development of a consumer policy in Malta has been a slow, gradual and definitely a recent and bumpy phenomenon, featuring false starts, ups and downs, missed opportunities and discontinuity.

The Civil Code adopted during the latter half of the 19<sup>th</sup> century was intended to be and remains the source of most of our private law. The Code was and remains blissfully unaware of the consumer. As a consequence, consumer protection in Maltese law has largely, and often indirectly, been achieved through special legislation. Originally, these laws would have sought to regulate trade practices rather than provide rights for consumers. Inevitably, these initial steps towards a form of consumer protection were badly co-ordinated and lacked a common conceptual basis. At that stage, the figure of the consumer was not properly identified and consumer protection was not yet articulated as a subject that warranted attention and study in its own right. Consumer protection should have resulted as a by-product of measures really intended to promote trader-to-trader relationships, to protect public order

or to implement often restrictive trade policies. The first moves towards more directly consumer-oriented special laws appeared in the eighties, starting with the flawed Consumers Protection Act 1981. This Act constitutes both a false start and a missed opportunity.

Consumer protection, properly so-called, probably started in 1990, a landmark year when things changed for the better. That year saw the launching of two parallel processes that have led to a substantial amount of good quality consumer legislation that would have been unheard of in or before 1990. These two processes and whether and how they interacted constitute the main focus of this paper.

It may be useful to divide this review of the development of consumer law and policy in Malta into two distinct periods, pre-1990 and post-1990. The following notes briefly trace the main events that mark the development of Maltese consumer law and policy up to 1990.

### **The pre-1990 period**

**1960/70s** - some legislation on the then new industry of tourism, and new laws regulating standards of food and other products; included the Food, Drugs and Drinking Water Act, modelled on the UK original of the same name.

**1980s** - continued very restrictive trade policies introduced in the seventies, comprising severe price controls, bulk-buying importation and import substitution leading to poor consumer choice and competition. Three generally unsatisfactory, patchy but pioneering consumer-oriented laws were passed:

**Consumers Protection Act 1981** - a missed opportunity; poor drafting and design; no definition of ‘*consumer*’; soon proved ineffective in practice; was repealed by the Consumer Affairs Act 1994.

**Trade Descriptions Act 1986** - poor legislative effort; copied the UK Act of 1968; inadequately enforced.

**Door-to-Door Salesmen Act 1987** - (later renamed Doorstep Contracts Act); an improved but still flawed effort; defined ‘*consumer*’; introduced the first ever cooling-off period into Maltese law.

An assessment of the pre-1990 situation shows that, so far, no coherent policy nor a uniform concept of ‘consumer’ had been constructed. These still unconnected efforts reveal a still immature piecemeal approach, and desperately cried out for three important elements which were still clearly lacking:

- (a) the articulation of a unifying conceptual and ideological basis;
- (b) a long-term vision supported by a concrete policy programme;
- (c) a central oversight and co-ordinating administrative authority.

These objectives were achieved later, and 1990 paved the way.

### **The Post-1990 Period**

1990 marks a turning point and it is crucially significant perhaps not so much in its own right but for the processes that it helped launch. That year marked the moment when the Maltese government realized that it should have a consumer policy and that it did not have one. Secondly, it was the year when Malta submitted its formal application to join the EU. There is no evidence of any connection between these two events.

1990 saw the establishment of an EU Directorate within the Ministry for Foreign Affairs to lay the ground for and guide this massive and ambitious

EU membership project. At the same time, domestic political concerns forced the government to acknowledge that it had no consumer policy and that it should start thinking about developing one without delay. The first clear signs in this direction were revealed in the 1990 Budget speech. A new dawn for consumer protection in Malta was promised as government unveiled an outline preliminary plan for imminent legislative and structural reforms. Later in the year, and for the first time, a newly appointed Parliamentary Secretary was assigned specific political responsibility for consumer protection. He soon set up a small unit to assist consumers and to receive and handle consumer complaints. Work on a White Paper on consumer reforms was commenced.

A series of landmark events and legislative initiatives after 1990 now allow us to consider the decade from 1991 to 2001 as probably the most productive in Maltese consumer law and policy making.

The following short sketches seek to highlight in chronological sequence some of the more relevant events during the period 1991 to 2004, and beyond.

**1991** - Perhaps the beginning of a concrete Maltese consumer policy, the White Paper "*Rights for the Consumer*" is published in August. It unveils the first ever blueprint for a coherent programme of infrastructural and substantive law, which envisages a solution to deficiencies in the consumer laws as they then stood. A new approach is promised.

**1992** - Following a general election, a new Minister is assigned responsibility for consumer protection. In anticipation of the legislative and institutional agenda announced in the White Paper, a new government department is set up to assist the public with their individual complaints and to support the future consumer reform programme. A Director for Consumer Affairs is appointed. Delays are encountered in having the promised new consumer law presented to Parliament.

- 1993** - A second White Paper, *Fair Trading - the next step forward*, is published. Fresh reforms in consumer and competition law and policy are tackled jointly under a newly conceived *fair trading* formula. A draft bill for a new Consumer Affairs Act is included and published for the first time, accompanied by a new draft Competition Act. The EU 1993 Avis is published; unsurprisingly, it considers Maltese consumer law way below EC standards.
- 1994** - The **Consumer Affairs Act** is adopted by Parliament. Maltese consumer law will never be the same again. This landmark law introduces various administrative and support structures including a special tribunal for consumer claims. The Act remains to this day the most significant and comprehensive consumer law and constitutes a formative event in the fledgling Maltese consumer law history. A new Competition Act is also passed.
- 1996** - The 1994 Act is brought into force, after some delays. A new Labour government is elected, which suspends Malta's EU application and pursues its own consumer policy programme and priorities. These include a new autonomous Authority for Fair Trading and Consumer Affairs. A Working Group is appointed and a law is drawn up and consultation commences thereon.
- 1998** - Further progress on the proposed Bill is thwarted by the 1998 general elections which led to a change of government and to the re-activation of the EU application. A new Parliamentary Secretary is appointed to handle consumer and competition matters.
- 1999** - The EU updates its 1993 Avis and then later proceeds to draw up its 1999 Regular Report on Malta's accession progress. An EU Consumer Affairs Task Force is set up to deal with the screening and transposition of the consumer chapter of the *acquis*. The EU consumer protection *acquis* is screened in Brussels between 7 and 8 October 1999. Malta does not request any transitional arrangement or derogation. The race towards EU membership is definitely on.

**2000** - Negotiations with the EU and transposition of directives are in full swing in several areas and constitute the national legislative and administrative agenda priority. Amendments to the 1994 Act are enacted largely to adopt EU Directives, dealing with such important issues as unfair contract terms, misleading and comparative advertising, guarantees in sale of goods, product liability. The amendments also improve the original provisions and structures of the 1994 Act itself. The first NPAA (National Plan for the Adoption of the Acquis) is officially published.

**2001** - Various other laws are introduced to align Maltese law and procedures with the mandatory EU acquis, including the Product Safety Act, a Metrology Act (intended to replace the 1910 Ordinance but still kept in abeyance to date), and new regulations on distance selling under the Consumer Affairs Act.

The programme of reforms carried out between 2000 and 2001 greatly improve the legal framework for consumer protection in Malta. Identified and commented upon in several EU reviews starting with the 1993 Avis, these extensive reforms will remain inextricably linked to the conditions attached to the pursuit of EU membership. Without the EU factor, these significant improvements would probably not have been possible. Indeed, the reforms undertaken between 2000-2001 represent the point of highest convergence between Maltese national consumer law development and the island's progress towards EU accession.

**2003** - A national referendum favours EU membership and new general elections are held. Political responsibility for consumer affairs is now assigned to a huge new Ministry, which also deals with maritime affairs, the self-employed, small enterprises, competitiveness and communications. This may be the first sign that consumer protection is once again at risk of becoming marginalized.

**2004** - Malta's accession to the EU is finalized on 1 May 2004.

**2005** - The Consumer Credit Regulations are finally published and come into force later in the year. They are the only part of the consumer *acquis* to be transposed late. With the transposition of the EU consumer protection *acquis* screened in 1999 now completed, the work of the EU Consumer Task Force comes to an end.

## **2006 and Beyond - A Final Thought**

Despite being adopted by Parliament (between 2002 and 2003), the new Metrology Act (replacing the 1910 Ordinance) and the new Supplies and Services Act (replacing the 1947 Act) are still not in force. This situation is truly remarkable as it flouts government's own NPAA and EU membership commitments. Parts of these old archaic laws breach fundamental principles of the EU acquis. It is also sad because the country needs these new laws that signal a clear break with the out-moded principles and assumptions of the past.

At this juncture, it could be useful to briefly place the two processes discussed in this paper against the backdrop of EC consumer policy development during that same period. A preliminary analysis of the relevant events and developments strongly indicates that developments in the EC consumer field had no direct effect on or convergence with the two other local processes mentioned above - except perhaps in a strictly broad cultural sense. Indeed, it is suggested that the then generally pro-consumer attitudes and signals exuding from the EU rubbed off on the Maltese authorities during the screening, negotiation and transposition stages of the accession proceedings. The broadly-held perception that the EU was a consumer-friendly entity which was seeking high levels of consumer protection for its citizens must have exercised a benevolent influence on accession countries, including Malta. This may have encouraged these aspiring members to adopt more pro-consumer transpositions, legislation and administrative structures. (During the run-up to EU membership and the relative referendum thereon, both the then Prime Minister and the Foreign Minister (now EU Commissioner Dr Joe Borg) repeatedly referred to consumer protection as one area where the Maltese public stood to gain directly from membership. The EU was

continuously presented as a highly pro-consumer organization in the media and in parliamentary debates.)

Just a few years later, the situation may not be the same, as the EU's resolve and enthusiasm to take concrete action to promote and achieve higher levels of consumer protection seems to have waned. The EU seems to be in re-trenchment mode and is currently in the process of substituting maximal directives for the original minimum directives.

In the immediate post-EU period, Malta's own national policy seems to have evaporated and consumer protection no longer features on government's political and legislative programme. To this extent, sadly and ironically, Maltese and EU consumer policy seem to have surprisingly converged once again. Indeed, consumers get no mention in the government budget speech for 2006, confirming that consumer affairs now play a very marginal part in the country's political agenda.

Two years from EU accession, Malta no longer has a meaningful national policy on consumer protection. The process seems to have turned full circle.

David Fabri ©  
20 April 2006

## **Some useful material, notes and further reading (selective)**

### **Official Publications of the Maltese Government:**

*Rights for the Consumer*, August 1991, White Paper, Department of Information

*Fair Trading.....the next step forward*, November 1993, White Paper, Department of Information

The National Programme for the Adoption of the Acquis (NPAA), September 2000

The National Programme for the Adoption of the Acquis (NPAA), January 2001

### **EU Reports on Malta:**

Commission Avis on Malta's Application, 1993

Regular Report on Malta's Application 1999, updated in 2000

### **Maltese Legislation:**

#### **Primary legislation:**

Weights and Measures Ordinance 1910

Supply of Goods and Services Act 1947

Trading Stamps Schemes (Regulation) Act 1964

Consumers Protection Act 1981

Trade Descriptions Act 1986

The Door-to-Door Salesmen Act) 1987

The Door-to-Door Salesmen (Amendment) Act 2001

(thenceforth designated the Doorstep Contracts Act 1987)

Consumer Affairs Act 1994 (Chapter 378 of the Laws of Malta)

Consumer Affairs Act (Amendment) Act 2000 (Act XXVI of 2000)

Consumer Affairs Act (Amendment) Act 2001

Product Safety Act 2001

*Metrology Act 2002* (not yet in force)

*Supplies and Services (Amendment) Act 2002* (not yet in force)

**Secondary legislation (regulations):**

Consumer Affairs Act 1994:

Price Indications Regulations 2002

Distance Selling Regulations 2004

Consumer Credit Regulations 2005 (Legal Notice 84 of 2005)

Supplies and Services Act 1947:

Sale of Commodities (Control) Regulations 1972

Sale of Agricultural Produce Regulations 1972

**Related papers and publications by the author:**

*Consumer Protection and the Law*, doctoral thesis submitted in part fulfilment of the requirements of the LL.D. Course, University of Malta, 1978

*Sketches on Consumer Protection*, privately printed in 1990

*The White Paper on the Consumer* (title translated from Maltese), article in *Alternattiva*, 21 September 1991

*From Trilogy to Trinity; thoughts on consumer protection in Malta and the recent White Paper*, *The Sunday Times (Malta)*, 22 September 1991

*Maltese consumer policy and the EU Directives: the good news and the bad news*, brief article featured in the EU – consumer awareness section of *Customer Service Column*, the *Sunday Times (Malta)*, 20 December 1998

*The Evolution of a Maltese Consumer Policy: a look at the last twenty years and beyond*, address to a national conference on the theme *The Consumer First – Striking a Balance in a Market Economy*, organized by the Consumer Affairs Council on 15 March 2000

*Consumers and beyond – some developments in related areas*, powerpoint address to the Consumer Affairs Council conference on the occasion of World Consumers Day, 15 March 2001

*Consumer & Financial Services Legislation - allies or strangers?*, a study in two parts. The first part dealt largely with general consumer issues and was published in *IQ (Insurance Quarterly)*, March 2002. The second part focussed on consumer protection in the field of financial services. It was published in *IQ (Insurance Quarterly)*, December 2003

*Lifting the Screen: Welcome to the Silent Revolution*, *The Accountant*, (cover story), March 2000

*A note on price control and price indications under current law and the EU Directive on price indications*, *Law and Practice*, (Malta Chamber of Advocates), Vol 1, December 2000

*And finally the (long overdue) regulation of consumer credit*, *The Sunday Times (Malta)*, 17 April 2005

*The new Consumer Credit Regulations – 10 things they don't do*, address plus powerpoint made to a public Seminar held on 30 March 2005 by the Consumer and Competition Division on the occasion of the publication of the Consumer Credit Regulations 2005

*Maltese Consumer Law and Policy before and after EU membership - the good news and the bad news*, address to a conference organized to launch the European Consumer Centre on 7 December 2005

### **Other useful material**

*Maltese Consumer Law*, Eugene Buttigieg, in *Economic and Legal Reform in Malta, State of the Union Conference 1995*, ed P Xuereb, R Pace, European Documentation and Research Centre, University of Malta

*EU Consumer Protection Legislation and the New Maltese Legislation*, Monique Goyens, in *Economic and Legal Reform in Malta, State of the Union Conference 1995*, ed P Xuereb, R Pace, European Documentation and Research Centre, University of Malta

**EU Consumer Law and Policy**, S. Weatherill, 2<sup>nd</sup> ed. 2005, Elgar European Law, (particularly Chapters 1 (The evolution of consumer policy in the European Union) and 11 (Evaluating Community consumer policy))

**EC Consumer Law**, G. Howells and T Wilhelmsson 1997, Dartmouth, (particularly Chapters 1 (Introduction), 9 (Conclusions), 10 (Epilogue))

*EC Consumer Law: Has it come of age?*, Geraint Howells and Thomas Wilhelmsson, 2003, *European Law Review*, E.L. Rev. 2003, 28(3), 370-388