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REFLECTIONS ON A DECADE OF EU MEMBERSHIP

EXPECTATIONS • ACHIEVEMENTS • DISAPPOINTMENTS • THE FUTURE

A Decade Of EU Membership: Price Control Law in Malta Revisited

by David Fabri



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A Decade After EU Membership: Price Control Law in Malta Revisited*

by David Fabri

“I see also another embarrassing circumstance arising in Paris of which we have had full experience in America. I mean that of fixing the price of provisions....The people of Paris may say they will not give more than a certain price for provisions, but as they cannot compel the country people to bring provisions to market the consequence will be directly contrary to their expectations, and they will find dearness and famine instead of plenty and cheapness. They may force the price down upon the stock in hand, but after that the market will be empty.”

Letter by Thomas Paine to ‘Citoyen’ Danton advising against the introduction of price controls in the French capital (Paris, 6 May 1793, in the original English)

“So long as there is (as now) vigorously competitive trade in consumer goods and no fear of scarcity or monopoly, price control is an unwanted weapon of consumer protection.”

Final Report of the Committee on Consumer Protection, (The Molony Report) presented to Parliament by the president of the Board of Trade by Command of Her Majesty: Board of Trade, (Cmnd 1781, 1962) para 6, p 3.

1. Scope

This paper examines the significance and place of price control regulation in Maltese law more than a decade into EU membership. The significance of price controls in Maltese consumer policy and practice should not be underestimated. For many years, they have exercised a seductive effect on Maltese public opinion which still seems to consider restraints on unfair prices and price increases as their preferred consumer protection mechanism.

For this reason, any discussion on consumer protection and legislation in Malta would be incomplete without considering the impact of extensive and strict price control legislation in force since before

the Second World War. This paper investigates the role and relevance of price controls in Maltese consumer law and their apparent endurance. The main national legislation is the Supplies and Services Act of 1947¹ which has been amended several times since it came into force on 30 December 1947.

The EU consumer protection Directives and Community law neither require nor exclude State control of the price of consumer goods. No Directive on a harmonized price control procedure exists and price control does not constitute a specific part of the *acquis*. This paper chronicles relevant events, regulations, selected documentation and unusual episodes which throw light on the impact which EU membership has exercised on Malta's pre-accession price regulation framework. It examines how this may have come about and what lessons may be usefully learnt from this peculiar experience. Citing wherever possible previously unpublished or little-known official reports and other documentation which are difficult to access, this paper places the regulation of prices of goods in the context of the island's pursuit and achievement of EU membership.² As EU membership grew imminent, official government policy inclined clearly towards overhauling, eliminating and reducing the existing price control rules to ensure their compatibility with the Community's free movement of goods principles. In the post-membership era, price control regulation in Malta has proved to be more resilient than expected, creating scope for further clarification and investigation.

This paper states the position of Maltese law as at 30 September 2015.

A warning: although mandatory price indications have long facilitated and bolstered the enforcement of price controls, it lies beyond the scope of this paper to consider legislation on price indications and the transposition of the relative Directive.³

*With sincere thanks to Dr Dorianne Mifsud, Mrs Victoria Camilleri, Prof. Roderick Pace and unknown reviewer/s for their valuable contribution and assistance in finalizing this paper.

¹ The Supplies and Services Act 1947, Chapter 117 of the Laws of Malta:

<<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8653&l=1>>

² David Fabri, 'Consumer Law in post-Accession Malta: a critical review of price control regulation and the Supplies and Services Act 1947' in E. P. Delia (ed.) Occasional Paper No. 7 (a collection of papers originally presented at the International Association of Consumer Law 2006 Annual Seminar, APS Bank Publication 2007); 'A Note on Price Control and Price Indications under current law and the EU Directive on Price Indications' (2000) Law and Practice, Malta Chamber of Advocates.

³ Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers. Official Journal L 080, 18/03/1998 pp 0027 – 0031.

Preliminary

Consumer protection lays down benchmarks for the conduct of business by traders in their relations with ordinary shoppers. Consumer law regulates business activities and establishes limits and restrictions to ensure that consumers do not suffer unfair loss. Regulation is potentially a great ally of consumers and an effective instrument for the promotion and protection of consumer rights. The law uses various techniques, including the operation of a competitive and regulated market, to help consumers receive their money's worth and fair value. In 1994, Malta introduced landmark modern legislation on competition and consumer protection. Today, the Consumer Affairs Act specifically recognizes the consumer's legally recognized right 'to have adequate access to basic essential goods and services at reasonable prices and to be able to choose from a diverse range of goods and services.'⁴

Price controls are not a recent phenomenon. They were applied long before the concept of 'consumer' even existed. They are not loved by everyone and they have not always achieved their objectives. History provides a number of interesting illustrations.

In the Roman Empire, Emperor Diocletian issued the notorious *Edictum De Pretiis Rerum Venalium* in 301. This Edict fixed the highest permissible prices for over a thousand goods, and the respective penalties in case of a breach. A few years later, it proved to be counter-productive and was gradually ignored and finally abandoned.⁵ Another interesting historical footnote saw Thomas Paine writing to his revolutionary friend Georges Danton that price controls in Pennsylvania and other colonial governments administered by the American revolutionaries had been a failure, leading to severe food shortages and famine. He advised him not to repeat the same mistake with the proposed imposition of similar controls in Paris in 1793 through the so-called *Law of the Maximum*.⁶

⁴Consumer Affairs Act, Article 43(2)(a), Chapter 378 of the Laws of Malta (introduced by amendment in 2000).<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8845&l=1>

⁵ Bruce Bartlett, 'The Futility of Price Controls' (15 January 2010) Forbes Magazine http://www.forbes.com/2010/01/14/venezuela-inflation-price-controls-opinions-columnists-bruce_bartlett.html (accessed on 27 June 2015), claims that after the Edict was issued, there was soon nothing left for sale as merchants stopped taking their goods to the market.

⁶ This measure was introduced by the Directory in May 1793 but was withdrawn a few years later. <<http://alphahistory.com/frenchrevolution/law-of-the-maximum/>> and <<http://encyclopedia2.thefreedictionary.com/Maximum,+Law+of+The>>, (both accessed on 26 September 2014).

This measure indeed proved unsuccessful. Closer to our times Richard Nixon, a Republican and hardly a believer in big government, introduced various price controls during his terms of office as US President.⁷

In Malta, the effectiveness and reach of price control regulations were, for a long time, the measure by which consumer protection was judged. A large section of consumers felt protected by government-imposed price restrictions when going about their daily purchases of essential and semi-essential commodities. Price controls also enjoy the advantage of being easy to explain and understand.

1. The notion of price and its pivotal role in consumer protection

In the sale of goods, price is a vital element. Price is what a buyer pays, his single major obligation under the law of sale. Equally, receiving the agreed price is usually the vendor's main interest. The price is so essential that in the absence of an express clear mutual agreement on the price, a contract of sale cannot come into existence.⁸

Maltese price controls and consumer protection were for a very long time effectively considered synonymous. In times of financial hardship, price control is perceived as a useful and swift device to keep consumer prices at a reasonable level and to prevent speculation. Certainly, price controls would be more easily justified in the absence of laws and structures to safeguard fair competition and consumer rights. On the other hand, if employed inefficiently, price controls may themselves cause supply shortages, reduce consumer choice and become a problem. A public administration which believes that consumer protection and increased price controls are synonymous will probably fail to implement the necessary measures to raise the standards of quality and safety of consumer products, safeguard contractual fairness, and provide better dispute mechanisms, remedies and access to the judicial process. These aims cannot be achieved by government-imposed price or trade restrictions.

⁷ For a recent illustration of the controversial use of price regulation outside Malta, Reuters (12 July 2007) reported: 'Zimbabwe has sent crack police to enforce price freezes in the rural strongholds of President Robert Mugabe, where businesses have failed to heed measures aimed at reining in inflation and halting economic collapse.' Macdonald Dzirutwe, Harare, 'Zimbabwe price crackdown moves to Mugabe heartland' <http://www.reuters.com/article/2007/07/12/us-zimbabwe-prices-idUSL1287321920070712> (accessed on 20 August 2009) The report claims that the price freeze had 'prompted panic buying, leading to empty stores...and pushed the economically depressed southern African nation closer to breaking point.' Some weeks later, the Zimbabwe government reversed its price-freeze decision and allowed manufacturers and retailers to increase the prices of basic commodities.

⁸ Civil Code, Of Sale, Articles 1345-1358 and 1433-1439, Chapter 16 of the Laws of Malta: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580&l=1>

Traders have frequently resorted to abusive price fixing through a number of devices and trickery. Abusive pricing is the ultimate objective of price-fixing cartels, black-market activities and hoarding in circumstances when supplies are scarce particularly in an emergency. The law also tries to ensure that buyers know the price before committing themselves contractually and are able to make reasonable comparisons. Consumer law specifically obliges traders to show the correct and final price of products offered for sale. Apart from preventing nasty surprises, the law prohibits over-charging, the application of misleading prices and the promotion of false sales.⁹

2. The EU position in brief

Price controls have no place and do not form part of the EU's consumer strategy and remain a matter for the national law of the Member States.¹⁰ In brief, price controls are permissible in EU Member States provided that they are non-discriminatory and do not obstruct the free movement of goods across borders. Aspects of the validity of price controls introduced by Member States have been tackled by the European Court of Justice in various cases, but these are not discussed here. Howells and Wilhelmsson have described the ECJ's approach to national price regulation as one which does not declare any:

general prohibitions or restrictions on national price regulation measures. Only if the measures are practiced in a discriminatory way or lead to discriminatory effects are they to be considered to violate the Treaty: for example, if the prices are fixed at such a level that it becomes impossible or more difficult to sell imported products, the measure will be considered to have an equivalent effect to a quantitative restriction of trade.¹¹

Member States still retain wide operational autonomy as to what price controls they implement in their territory. Consequently, price controls are not illegal by their nature in the EU, but they may become illegitimate by virtue of the way they operate and their practical implications and consequences, especially if applied in a discriminatory fashion or are used to disguise trade barriers.¹²

⁹ Article 13 of the Trade Descriptions Act 1986, Chapter 313 of the Laws of Malta: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8789&l=1> repealed by Act No. VI of 2014: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25974&l=1>

¹⁰ On the other hand, price indications were discussed and 'screened' as they are regulated by an EU Directive 98/6/EC of 16 February 1998.

¹¹ Geraint Howells and Thomas Wilhelmsson, *EC Consumer Law* (Dartmouth Publishing Company Limited 1997) p 87. See also Peter Oliver, *Free Movement of Goods in the European Community* (3rd edition, Sweet and Maxwell 1996) pp 161-171 and judgements referred to therein.

¹² Care is taken to identify and withdraw price control restrictions which might obstruct inter-member trade. Stephen Weatherill and Paul Beaumont, *EU Law*, (3rd edition, Penguin Books 1993) Chapter 17, pp565-619; and Gareth Davies, *European Union Internal Market Law* (2nd edition, Cavendish Publishing 2003) pp 38-30 which

3. The Supplies and Services Act of 1947

For many years, stringent price controls supported by equally wide-ranging price indications were (wrongly) considered to be the main pillars of consumer protection. The main legislative acts relevant for this enquiry are the Supplies and Services Act 1947¹³ and the Sale of Commodities (Control) Regulations 1972¹⁴ issued under this Act both of which are still in force.

Adopted by the British Colonial government, the 1947 Act extended the powers of the authorities to intervene in the market. At the time, these powers were justified by the poverty and scarcity that followed the end of Second World War. The economy was in tatters and scarcities of essential consumer commodities led suppliers to resort to hoarding and black market practices. This Act led to the publication of hundreds of Price Orders to control the price at which goods and services could be sold to the public. Indeed, the Act has over the years spawned the publication of an impressive list of regulations and mandatory Price Orders on a wide variety of consumer goods, essential or otherwise. Mandatory price indications and price and other trade restrictions were approved in the name of consumer protection, particularly in the 1970s and 1980s.¹⁵ All imports became illegal unless duly licensed. Manufacturers, importers and distributors could not place any article on the market before submitting costings certificates and justification of the profit margins. Unless a Price Order has been issued, a product cannot be sold or distributed in the local market. The 1947 Act became one big enabling Act launching unlimited state intervention in the market to control practically any aspect of the process of selling and distributing goods and services.¹⁶

In 1972, the administration diligently constructed a labyrinth of governmental restrictions covering prices, profits and conditions of sale of goods. Various methods were designed to calculate, regulate and restrain prices and to control profit margins. The main methods were: fixing a stated maximum

quotes the ECJ decision in Groenveld: "...a national measure ...is not incompatible with Art. 34 (now 29) of the Treaty if it does not discriminate between products intended for export and those marketed within the member state in question."

¹³ Act IV (1947).

¹⁴ Sale of Commodities (Control) Regulations, Legal Notice 117.15 of 1972.

¹⁵ During this period, a regular weekly sitting of the Magistrates Court was dedicated to the alleged breaches of the price control and price indications regulations. Most cases involved small amounts and petty violations.

¹⁶ Article 3 of the Act stipulates that : 'The Minister responsible for trade may make, and, when made, amend, repeal or re-enact regulations for maintaining supplies and services essential to the life of the community and for controlling the production, distribution, use or consumption of goods and in particular but without prejudice to the generality of the foregoing power, may make regulations for all or any of the following purposes (a) for regulating or prohibiting the production, treatment, keeping, storage, movement, transport, importation, exportation, distribution, sale, purchase, use or consumption of articles of any description, and, in particular, for controlling the prices at which such articles may be sold.'

price for a particular article; fixing a maximum margin of profit; or fixing maximum percentages of profit for goods not otherwise specifically regulated.¹⁷

The trade sector objected very strongly to the extensive 1972 regulations. The three principal trade organizations at the time submitted a formal report to the Minister of Trade highlighting their concerns at the ever widening application of stringent price control and other restrictions. The joint report by the then General Retailers and Traders Union, the Chamber of Commerce and the Federation of Industries was given prominent space in local newspapers. The Times reported that the trade sector associations “deplored the fact that the government had thought it fit to move backwards to, instead of away from, the 1939-46 war-time conditions which might have justified the introduction of the original price controls.”¹⁸

What is rather surprising is that the Supplies and Services Act authorized the issue of Price Orders for any consumer product, no matter how non-essential it may be.¹⁹ This over-use of Price Orders was regrettably allowed to expand to practically all consumer items, without exception.²⁰

To make matters worse, intervention under the very broad 1947 Act provisions was occasionally resorted to in reaction to industrial action. Sometimes it was directed against certain sectors of economic activity not toeing the Government line. The use of trade restrictive rules for political purposes, rather than consumer protection, explains why peculiar regulations sought to control (and indirectly also to punish) bakers and bakeries,²¹ tugboats and lighters²² as well as the maximum fees

¹⁷ Tonio Briguglio, ‘Consumer Protection in Malta’ (Dissertation, Faculty of Economics, Management and Accountancy, University of Malta 1985) highlighted various Legal Notices which collectively created a superstructure for extensive price regulation of practically any product. He illustrated how extensive regulation at the time had become: “Every trader shall exhibit a sample of every good at his place of business and such a sample has to bear a clear, white label indicating its price. Where a maximum price is fixed by law, the price on the label must not exceed such price. Moreover, a price list has to be exhibited at the door of any hotel or restaurant.” P. 25.

¹⁸ The Times (19 April 1972) p 2: ‘Joint submissions on new price controls’.

¹⁹ The definition of ‘essential goods’ in article 3 of the 1947 Act adopted a subjective test assigning to the Minister responsible for Trade draconian intervention powers in relation to ‘articles of any description, and, in particular, for controlling the prices at which such articles may be sold’.

²⁰ See Table I.

²¹ Legal Notice 2 of 1980, which assigned the Minister absolute powers over bakers’ licenses.

²² Legal Notice 9 of 1975, which empowered the Minister to requisition and take control over any tugboat or lighter.

that may be charged by private schools.²³ These instances show that Price Orders often served political control purposes unrelated to strictly ‘bona fide’ economic or consumer protection reasons.²⁴

TABLE I

An illustrative list of products subjected to specific Price Orders between 1979 and 1980 reveals very graphically the variety and surprising extent of Price Orders that were being issued almost on a daily basis, usually even on a brand by brand basis:

Price Orders issued in 1979 (Selected)

Maximum price of:

Swordfish – Price Order No. 1 of 1979
Fresh frozen pork - Price Order No. 154 of 1979
Butter - Price Order No. 155 of 1979
Locally canned peas – Price Order No.156 of 1979
Oranges – Price Order No.169 of 1979
Pasteurized milk, cream and yoghurt - Price Order No. 170 of 1979
Exercise books - Price Order No. 212 of 1979
Mundo corned beef - Price Order No. 215 of 1979
Gramophone records - Price Order No. 218 of 1979
Jif scouring cream – Price Order No. 219 of 1979
Dot lavatory cleaner – Price Order No. 220 of 1979

Price Orders issued in 1980 (Selected)

These Price Orders published in 1980 are highly significant in their variety and reach. Even Church publications did not escape the bizarre anti-inflationary efforts of zealous bureaucrats. Hardly an essential commodity necessary for the well-being of the community, one might have thought, and possibly also a constitutional freedom of expression issue.

Maximum price of:

Milo Food Drink - Price Order No. 1 of 1980
Coarse Salt - Price Order No. 4 of 1980
Lehen is-Sewwa (a weekly Catholic Church publication) - Price Order No. 5 of 1980
Maltese type bread - Price Order No. 12 of 1980
Lyons Maid ice-creams - Price Order No. 68 of 1980

Some measures were more complicated to work out: Price Order No. 172 of 1983 regulated the ‘Maximum prices of books’. The broad effect of this price order was to require that school textbooks could not be sold at more than 20% profit to the retailer. Other books were subjected to a maximum price not ‘exceeding 85% of the United Kingdom published price, the relative figures being considered as if they were expressed in Maltese currency’.

²³ Legal Notice 67 of 1982,

<<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9301&l=1>>

²⁴ BBC NEWS/Africa, ‘Mugabe seeks election price cuts’ BBC NEWS (UK, 25 March 2008) <http://nws.bbc.co.uk> (accessed on 7 April 2008) with price restraints and controls used as a political weapon at election time.

Since 1947, the Maltese legal system has witnessed and undergone extensive changes. In 2004, Malta joined the European Union adopting its Directives and rules on the liberalization of markets, free movement of goods, consumer protection and fair competition. In this radically changed environment, the continued existence of the 1947 Act and of the 1972 regulations, together with numerous Price Orders of indefinite duration issued thereunder, represented a legal anomaly in comparison to the liberalized market principles pursued by the Community. In 1947 the notion of consumer law had not yet been conceived or conceptualized and the government's concerns were largely conditioned by the realities of the post-war conditions. The 1947 measure was designed to give extensive administrative discretionary powers to the Governor to deal with the dire situation, guarantee basic supplies for the public in a context of poverty, considerable product shortages, black market practices and other hardships.

4. A new Government starts to develop a policy

(a) Speech from the Throne: a slow start

After its election to government in 1987, the Nationalist administration embarked on a number of initiatives, with the publication of two policy documents on consumer protection in 1991 and 1993 respectively, the liberalization of trade and the withdrawal of various trade restrictions. On the opening of the new Parliament In 1987, the Acting President referred to price controls in the course of setting out the legislative policy programme of the new government. Consumer protection was barely mentioned but a commitment was made that: "Price controls will remain and shall be enforced in a more serious and rational manner."²⁵ This was the official position of the Government which in 1990 applied to join the EU.

Strong objections to this policy line came from within the governing Nationalist Party itself as many of its supporters had opposed the price control system applied by the previous Labour governments and repeatedly voiced their strong criticism of the system.²⁶

(b) Price Control in the 1991 White Paper²⁷

The 1991 White Paper acknowledged that 'unfortunately' price control was still important in the minds of the Maltese public. It also warned that the significance and scope of consumer protection

²⁵ The so-called 'Speech from the Throne' sets the government's program at the start of the legislature. It was read by the acting President of the Republic, Mr Paul Xuereb on 9 July 1987.

²⁶ The then Minister responsible for trade, Dr Emmanuel Bonnici criticized the widespread resort to price controls during the discussion on the budget for 1990 and he called for further trade liberalization: Parliament sitting number 327, 18 December 1989, pp 687-694. (Years later, former Labour Minister of Trade Lino Spiteri criticized the Nationalist government's contradictory on / off approach to Price Orders: The Times (21 July 2005) Business Section p5, 'Ordered Pricing').

²⁷ Department of Information, *Rights for the Consumer* (White Paper) August 1991, pp 30-31.

went far beyond price restraints. The political reading of the situation was that the public was not ready to accept price controls being swept away so suddenly. The document explained how trading officers would be adding price regulation to their other new proposed duties of checking safety, quality, labeling etc. The general idea was for the proposed Consumer Protection Council to take over the investigation and enforcement roles in the price control field. In an interview given two months after its publication, Michael Frendo, Parliamentary Secretary responsible for consumer protection, who piloted the 1991 White Paper, provided insights into his thinking on price control.²⁸ Responding to a question as to whether the proposed new Consumer Protection Council would be continuing the role played by the so-called 'Difensuri tax-Xerreja' (literally the Defenders of the Consumers), Dr Frendo replied:

No. Absolutely not. The Difensuri tax-Xerreja were intended to check prices. We are saying that prices are but a small aspect in the protection of consumers. Who looks at consumer protection as simply the need to control prices would be speaking the language of Communism, which is being discarded the world over. Consumer protection is much more than that. (Translated)²⁹

(c) *Price control in the 1993 White Paper*³⁰

The 1993 White Paper, "Fair Trading...the next step forward", provided an update of developments in Maltese law and administrative structures in the consumer field since the publication of the 1991 White Paper. The implementation of the consumer protection proposals of the 1991 White Paper were designed to bolster the various measures that were gradually paving the way for an increasingly liberalized market and greater consumer confidence and choice. The policy orientation of the 1993 statement favoured the replacement of the price regulation regime by a comprehensive new competition law administered by a newly set up central competition agency with powers to issue temporary Price Orders. The new-style Price Orders were to be issued only sparingly and selectively, where strictly justified.

The 1993 White Paper thus placed consumer protection within a new context of competition law; the approach and the tone differed significantly from the 1991 White Paper. It offered a very candid criticism of price controls:

The present price control system is outdated and constitutes another unnecessary distortion of the trade pattern. This system attacks the problem where it can be least effective.....the existing price control system has not always ensured optimum prices. Realising how difficult it may be to have a price increase

²⁸ In-Nazzjon Tagħna (Malta, 15 October 1991) pp 13-16.

²⁹ Ibid.

³⁰ Department of Information, *Fair Trading...the next step forward* (White Paper) November 1993.

approved by the Department of Trade, importers tend to leave their prices at the maximum allowed by a price order for fear of attracting further constraints should they put their prices down.³¹

Henceforth free and open competition, not state intervention, was to be the best regulator of prices. A new law would replace the old price regulation structures:

Import liberalization coupled with the lifting of price controls in certain areas including part of the food sector are already showing that competition is a more effective method of ensuring realistic prices. Provided competition is fair and that it could not be manipulated by cartels or dominant undertakings, prices to the consumer should also be fair.³²

The broad approach that emanates from the 1991 and 1993 White Papers is that price controls should preferably be phased out as they could not be removed in one fell swoop. The controls would be gradually replaced by new comprehensive laws and structures reflecting a higher awareness of and sensitivity to the true values of consumer protection and fair competition.

(d) Price Orders under the Competition Act 1994³³

The new price order framework introduced by the new competition law of 1994 was meant to be the first step towards dismantling the 1947-1972 price control structures, replacing them by a lighter and proportionate approach. During the Parliamentary debate on the Competition Act, different views on the use of price control orders were expressed.³⁴

Minister Mr John Dalli, piloting the Bill, justified the continuation of temporary price orders for essential items. He contested the view that price orders were illegal in the EU.³⁵ The Labour Opposition spokesman, Mr Leo Brincat, criticized Government's proposal to continue to resort to Price Orders. Remarkably, in this context, Brincat³⁶ made the following interesting admission: "it is an undeniable fact that price controls, as a principle, are anathema to the mechanisms of the European Union..." He challenged the Minister to explain which EU countries still resorted to price controls. Mr Brincat also quoted Prof. Richard Whish who (with reference to price control regulation) had remarked that the European Commission had "tended to shy away from its use", and that he personally "would discourage its use".³⁷

³¹ Ibid. pp.18-22.

³² Ibid.

³³ The Competition Act 1994, Act XXXI of 1994, Chapter 379 of the Laws of Malta, entered into force on 23 December 1994. Its full name was 'An Act to regulate competition and provide for fair trading in Malta'.

³⁴ See Parliamentary sittings number 354 to 356, December 1994, pp 630 – 784.

³⁵ Parliamentary sitting number 354, 1 December 1994, pp 635 – 636.

³⁶ Parliamentary sitting number 354, 1 December 1994, p 645.

³⁷ Ibid. Prof. Whish had been recruited by Government in 1994 to advise on its draft new competition law.

The new competition law which came into effect in 1994 allowed the limited use of Price Orders. The Director for Fair Competition was authorized under Article 11 to prescribe the “maximum price at which products, which he may consider to be essential goods and services, may be sold or offered for sale”. These included food, drink, pharmaceuticals and clothing. The same section established a six month term of validity for any such Price Orders and provided for the possibility of a review by the Commission for Fair Trading. The Competition Act made no reference to the 1947 Act or to the 1952 or the 1972 price-related regulations and did not repeal them. As a result, two different and separate regimes administered by different authorities were now in operation in Maltese law on price controls and Price Orders. The Competition Act only considered price control as a valid concern in the context of high prices resulting from an abuse of dominant position or the consequence of a cartel or restrictive practice, which the Act prohibited.³⁸

5. The Accession Process 1990-2004: the Commission expresses itself

(a) The 1993 Avis

When in June 1993 the European Commission published its first Avis on Malta's EU membership application, Maltese consumer law was considered inadequate and below EC standards. Reference was made to the extensive restrictions and controls under which local business was operating:

The Maltese economy is covered by an administrative and regulatory framework which tends to swell production costs and hamper the business sector's ability to adapt and compete. The restrictive measures include...rigorous control of prices and profits, currently considered essential by the Maltese authorities to curb the monopolistic tendencies of certain firms that are a consequence of the lack of competition in the Maltese market...³⁹

The Avis concluded that

Maltese anti-trust law is incomplete... There is no specific legislation and no central supervisory department or agency. The authorities realize that competition will come to play more of a part in the economy and are considering ways of rectifying the situation.”⁴⁰

(As already indicated above, Malta's first competition law was adopted a year later, in 1994.)

³⁸ The 1947 Act allows the issue of Price Orders in respect of any consumer goods under any circumstances.

³⁹ European Commission (1993), Opinion on Malta's application for membership (1993) COM (93) 312 final, 30 June. Bulletin of the European Communities, Supplement 4/93 pp 16-17.

⁴⁰ Ibid. p A/15.



(b) Commission 1999 Regular Report

When the Commission published its Regular Report on Malta's application for membership in October 1999, it remarked negatively that:

Concerning free movement of goods, major institutional arrangements regarding the implementation of the *acquis*...are missing or not yet finalized...In general terms, Malta lacks legislation in line with the EU *acquis* in the area of free movement of goods and should consider adopting an internal market approximation programme..... No substantial progress has been made since February and Malta should make the internal market its priority.⁴¹

Without doubt this was also a reference to the impressive price regulations in place.

(c) Commission 2000 Regular Report

The Commission's 2000 Regular Report on Malta's application was generally upbeat about Malta's preparations for membership, but like its predecessor was negative and critical on the price control structures:

The remaining price controls distort relative prices and produce an inefficient allocation of resources. The influence of the state in the economy is still too high in some areas.⁴²

6. The Accession 1990-2004: three relevant documents

An examination of official documents and other authoritative policy statements particularly during the four years immediately prior to EU membership reveals that at a number of stages, the government itself had accepted that the 1947-1972 price control framework was no longer tenable or in line with the EU's *acquis*, and was in need of substantial reform. The reforms would have to be compatible with the accession negotiating positions, EU consumer and competition laws and the commitments expressly recorded in the various updated National Programs for the Adoption of the *Acquis* (NPAs). In this part, three separate relevant documents are examined.

⁴¹ European Commission (1999) Report updating the Commission opinion on Malta's application for membership COM (99) 69 final, 17 February pp 16-17.

⁴² European Commission (1999), Regular Report on Malta's Progress towards Accession, (October, updated in 2000) p 66 http://europa.eu.int/comm/enlargement/report-_10_99/index.htm (accessed on 29 May 2014).

(a) *'Regulation of Trading Practices in Malta'*⁴³

Soon after Malta submitted its application to join the EU in 1990, various preliminary studies were initiated to gauge how Maltese laws and administrative practices matched with European standards and expectations. Comparing Maltese laws to the EU *acquis* was a huge task covering many areas of Maltese law, administrative and trading practices. Joseph Borg, then Head of the EU Directorate, and later Commissioner responsible for Fisheries in the first Barroso Commission, presented a paper on 'Regulation of Trading Practices in Malta' which explained what trade restrictive laws and practices existed in Maltese law in 1992 and placed them within the relevant EU context.⁴⁴

After introducing the legal background and the significance of Price Orders issued under the 1947 Act, Borg justified the prevalent maximum price regulation on the grounds that their "real purpose...was to ensure in respect of essential items subject to oligopolistic or cartel situations, availability and stability in pricing – in other words to protect the consumer." He explained that the legal framework generally ensured "that prices of all commodities on the local market are kept within certain established limits...with strict direct control particularly in the pricing of pharmaceuticals, food and other essentials. In respect of all other commodities a General Price Order issued in 1983 merely establishes margins of profit in regard to all classes and types of commodities in general."⁴⁵

The new official thinking on the subject of this paper was however unambiguous:

the present price control system would have to be dismantled upon Malta's entry into the European Union...the main shift in government policy is from reliance on a direct price control system to a greater emphasis on consumer education and the set-up of a functional structure of fair trading.⁴⁶

(b) *The National Programme for the Adoption of the Acquis*⁴⁷

The NPAA which tackled Malta's EU law implementation position as at January 2001 dealt with obligations with regard to the internal market and free movement of goods in particular. This section contained an explicit straightforward and unambiguous statement on the price controls practised in

⁴³ Joseph Borg, paper presented at conference on the subject of Trading within the European Community, Malta Chamber of Commerce, Malta 2 June 1992.

⁴⁴ The paper was written two years before the first comprehensive Maltese laws on competition and consumer protection were adopted in 1994.

⁴⁵ Ibid. p 25.

⁴⁶ Ibid. p 25 Note: The implication is that price controls should continue to apply to goods in respect of which there is insufficient competition.

⁴⁷ European Commission (2001), National Programme for the Adoption of the Acquis as at January, Ministry of Foreign Affairs, Malta, available at <www.mic.org.mt/Malta-EU>. The first NPAA had been published in February 2000.

Malta at the time:

The system of price control on the sale of commodities includes the setting of maximum margins of profit as well as the regulation of prices through price orders on certain essential commodities. Amendments to the Competition Act (Cap.379) were adopted by Parliament in November 2000. These amendments provide for the application of interim measures with regard to fixing maximum prices on essential goods and services. New legislation to replace the Supplies and Services Act (Cap 117) and the Sale of Commodities (Control) Regulations 1972 (LN 21/72) is being drafted. The main scope of this legislation is to adjust the present price control system to become more in line with Community practices in the area, as well as to transpose Directive 70/50/EEC.⁴⁸

The NPAA also spelt out the Maltese Government's official specific commitment in this area:

The Supplies and Services Act (Cap.117) and the Sale of Commodities (Control) regulations (LN 21/72) will be amended by the third quarter of 2002 to transpose Directive 70/50/EEC (abolition of measures that have an effect equivalent to quantitative restrictions on imports. Existing price controls will be adjusted in line with Directive 70/50/EEC on accession.⁴⁹

(c) *2003 government Report on Economic Reforms*

In November 2003, as membership moved closer, the Maltese government submitted to the Commission a report⁵⁰ which was described as forming "part of the process of the integration of the acceding countries into the Community's economic policy co-ordination process".⁵¹ The 25-page document specifically addressed the issue of price controls:

... It is government's economic policy that prices should, as far as possible, be determined through market forces, whilst taking into account the specific realities of the small domestic market. The imposition of price controls is regarded as leading to misallocation of resources and economic inefficiency as economic agents base their decisions on prices that do not reflect the true market value of the commodity in question. In this regard, during 2003, substantial amendments to the Supplies and Services Act (Cap.117) were enacted, which will repeal the price orders that were issued under the previous Act. The new law envisages a system whereby temporary price orders may be issued in response to abnormal or exceptional situations or where it is manifested that market forces are not working. This new legislation would align

⁴⁸ Ibid.pp 24-29.

⁴⁹ Ibid.p 26.

⁵⁰ Report on Economic Reforms: Products and Capital Markets, Ministry of Finance and Economic Affairs, November 2003.

⁵¹ Ibid. p iii.

the Maltese legislation to the provisions of Directive 70/50/EEC on the abolition of measures which have an effect equivalent to quantitative restrictions on imports.⁵²

The clear vision and the reforming determination emanating from this document have in the meantime been reduced to a footnote of history. The price regulation regime which the Report explicitly promised to sweep away is still there.

7. The shifting Policy of the Malta Labour Party

And what about the Malta Labour Party and its traditional inclination towards price controls? “The control of the cost of living should be the cornerstone of consumer protection”, had declared Censu Moran, Shadow Minister for Social Welfare in 1992.⁵³ Moran was presenting the Labour Opposition’s reactions to the 1991 White Paper. It was clear that price control was still a main pillar of his Party’s view of consumer rights and its policy on the subject had not evolved. The Malta Labour Party only published a revised consumer policy in its electoral manifesto for the 1996 general election, which it went on to win. Price controls were not mentioned in this new policy statement. More than a decade later, in 2007, in a feature headed “Price control: a thing of the past – Sant”, The Times quoted the then Labour Party leader and Prime Minister, Dr Alfred Sant, acknowledging quite candidly that: “the time when one could control prices was over. Controlling prices went against EU rules and did not work. His idea was to control prices by setting up an agency that would publish reports every six months...”⁵⁴ This represented a another significant directional change in the Labour Party’s traditional policy of strongly favouring price control orders.

However, in June 2009 the current Prime Minister and former MEP, Mr Joseph Muscat, expressed a different view and was reported as having announced at a public meeting that:

he has no shame in calling for the setting up of what many used to call the ‘price control’ system...the price control system should be activated in the same efficient way that prices were monitored before and shortly after the conversion to the Euro currency.⁵⁵

⁵² Ibid. pp 3-4.

⁵³ L-Orizzont (Malta, 25 September 1992) p11 (already previously quoted in Law and Practice (2006), False Starts and Broken Promises: Mishaps in the Development of Consumer Law, November).

⁵⁴ The Times (22 October 2007) p4 ‘Price Control a Thing of the Past - Sant’, <http://www.timesofmalta.com/articles/view/20071022/local/price-control-a-thing-of-the-past-sant.1280> (accessed on 30 November 2007).

⁵⁵ MaltaToday (3 June 2009) p 4, ‘Don’t Call us PL, we are the new Coalition’ <http://archive.maltatoday.com.mt/2009/06/03/index.html> (accessed on 23 July 2010).

8. A 2003 Act to replace the 1947 Act: a solution at last?

Of great relevance to this paper is Part IV of Act No. IX of 2003.⁵⁶ In its 10 July 2003 issue, The Times featured a report headed “19 laws being aligned to EU *acquis*”. The report referred to a Bill which *inter alia* “practically repeals the Exchange Control Act and the Supplies and Services Act...”⁵⁷ It quoted the Minister of Finance and Economic Services, Mr John Dalli, as telling Parliament that:

The Supplies and Services Act, which gave the government draconian powers in areas such as price orders, was being amended extensively to the point that it was practically repealed. The government, however, would be able to take drastic action in case of emergencies to protect consumers as in the case of acute shortages of particular products. The government may issue temporary price orders to stabilize the situation when problems arose.

Mr Dalli said experience had shown that price orders did not work, with many ways being found around the system. The government would continue to guard against abuse but his view was that the best way of control was through competition.⁵⁸

In his contributions to the legislative debates, Parliamentary Secretary Mr Edwin Vassallo, who co-piloted the Bill with Minister Dalli, identified three principal negative features of the existing 1947 Act:

- (a) it was not in line with EC policy and acted as a ‘a barrier to trade’ particularly in view of the burdens it imposed on importers;
- (b) it assigned to the minister very wide discretionary powers that could be abused from time to time; and
- (c) it was applied indiscriminately to all goods and products placed on the Maltese market, whether manufactured locally or imported, rather than solely for essential items as had been originally intended.⁵⁹

⁵⁶Various Laws (Amendment) Act, 2003:Act IX of 2003, comprising a new Supplies and Services Act (not yet in force):

<<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=16553&l=1>>(accessed on 28 September 2010).

⁵⁷ The Times of Malta (10 July 2003) p 12, ‘19 laws being aligned to EU *acquis*’, <http://www.timesofmalta.com/articles/view/20030710/local/19-laws-being-aligned-to-eu-acquis.146043> (accessed on 25 August 2010).

⁵⁸ Parliamentary sitting number 23, 9 July 2003, pp. 118-119.

⁵⁹ See debate on the Bill at Second Reading, Parliamentary sittings number 22-26 held between 7 and 15 July 2003, pp. 112 - 275.

During the debate, Mr Vassallo stressed that the power to issue price orders would henceforth be restricted to exceptional circumstances and in relation exclusively to products that were truly essential in the daily life of society, such as bread and fuel. The aim, he added, was to shift towards a more contained, objective and proportionate basis for intervention. This step would have signaled a clear and radical break from the unbridled ministerial discretions embedded within the 1947 framework.⁶⁰

The new Act sought to empower government to intervene in the market and impose maximum prices or price margins only in abnormal circumstances or where competition would not be functioning in an effective manner. In these special instances, the most that the Director of Trade could do was to issue a temporary price order for a duration not exceeding six months. Article 5 then assigns authority to the Minister to make regulations to establish price control over essential goods or services deemed essential for the life and well-being of the community. For greater transparency and predictability, the law required the Minister to list the categories of goods and services deemed by him to be essential for the life or well-being of the community in the Government Gazette.

Significantly, the 2003 reform was not undertaken in a moment of panic or crisis as was the case in 1947. The immediate backdrop to this reform was imminent EU membership and Malta's integration in its highly liberalized internal market based on the free movement of goods between Member States supported by a specific framework to ensure better and more efficient competition between traders and products. The draconian 1947 Act, and the 1939 Ordinance⁶¹ that preceded it, probably necessary for war-time conditions, had simply become outdated. The 2003 reform was drawn up when Malta's consumer and competition law were firmly in place and reasonably functional. The 1947 Act had been based on an underlying assumption that price regulation was the norm. The 2003 law was predicated on the expectation that it should be the exception. It effectively supplemented and complemented the Competition Act and gave the authorities only limited and focused powers of intervention in the market. These would only be exercisable in the event that the 1994 Act safeguards would for some reason fail to ensure reasonable supplies of certain essential commodities at a fair price.

⁶⁰ See also 'Price Orders: an exception not the rule - Vassallo', The Times, on-line version accessed on 15 September 2015; and House ends debate on Bill aligning 19 laws to EU requirements, The Times, online version, accessed on 15 September 2015. The Times (27 April, 2006) p 13.

⁶¹ The Inflation of Prices (Prevention) Ordinance of 1939, Chapter 98 of the Laws of Malta :

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8640> was limited to essential items. See also Certain Articles declared to be Essential Commodities Order, Subsidiary Legislation 98.02, adopted in February of 1939. This Order included candles, *kerosene*, matches and soap in a list of essential commodities compiled for the purposes of the 1939 Ordinance.

The new law assumed that under normal circumstances, market forces would constitute the principal factor in securing fair prices. Focused on ensuring that the market functions properly and that the Competition Act provisions operated efficiently, government would henceforth only be permitted to intervene in three designated emergency situations where the Competition Act safeguards prove ineffective to guarantee supplies at fair prices:

- (a) situations of national emergency or calamity;
- (b) scarcity of a particular good which although not necessarily essential may have relevant social implications, e.g. market imperfections that are external to the Maltese market and hence cannot be addressed sufficiently at local level; and
- (c) other specific economic situations leading to a market malfunction which cannot be resolved by using normal channels.

Under these parameters, the 2003 Act limited its focus to extraordinary situations where the market mechanism has broken down and the Competition Act framework (at that time, administered by the Director for Fair Competition) and market forces were unable to resolve the difficulty by themselves. In such cases, the Act provided a fall back solution of direct intervention by government to secure supplies, prevent over-charging and other abuses. Extraordinary circumstances may include a national emergency, the aftermath of a war in the region, an earthquake, a pandemic outbreak and scarcity of some particular product as a result of economic factors extraneous to the island. These circumstances not only justify, but morally require government intervention to protect the interests of the public. The new Act was devised with the necessary flexibility to permit the swift implementation of extraordinary measures to address abnormal situations. Safeguards were also put in place to prevent the abnormal from once again becoming the norm and to prevent arbitrary or grossly disproportionate action by government, although some element of subjectivity was probably unavoidable.

During the Parliamentary debates on the 2003 Bill, the Labour speakers did not strongly defend the 1947 framework and broadly agreed with the proposal to introduce a much leaner price control regime. Some, but not all, expressed concern that government was ceding its powers of issuing price controls on any product. The anti-membership Opposition was obviously unhappy with government's explanation that the Bill was necessary to secure alignment with the EU acquis in this area. The law was passed, but has not been brought into force with the result that the 1947 Act and the 1972 regulations remain in place.

9. Three separate price control episodes 2007-2010

(a) The change-over to the euro

The introduction of the euro at the start of 2008 raised widespread fears that the changeover would lead to unjustified increases in prices and to over-charging, because consumers would not yet be familiar with the new currency. New rules were introduced to try to curtail such abuse. Regulation 23 of the Euro Adoption (Dual Display and Euro Pricing) Regulations 2007⁶² ordered that: “No person shall increase the price of any good or service, or add on any amount or charge to such price, for the reason that the monetary changeover is taking place.”⁶³ The Euro Adoption Act⁶⁴ authorized the imposition of administrative fines on traders breaching this prohibition.

Government spent massive amounts to transmit the message that it would not allow prices of consumer goods to increase as a result of the Euro’s introduction.⁶⁵ Basing itself on government sources, The Times (Malta) covered the measures being taken to curb price conversion abuses. It reported that: “Goods and services usually bought on a daily basis are being analyzed to ensure their prices do not increase due to the euro change-over...”, and that “detecting whether price changes were euro-related was ‘somewhat complex’ ”. The same article also claimed that abusive over-charging was being detected through extensive mystery shopping.⁶⁶

(b) The price of local bread and the ‘Maltese psyche’

Throughout September 2007, several national newspapers published leading articles dedicated to the price of Maltese bread, an issue deemed of considerable socio-political implications. The articles reflected on the possible repeal of the existing price order establishing the maximum price of the heavily subsidized Maltese loaf. The bakers wanted an increase in the subsidy to compensate for increases in the international price of wheat; or to be allowed to increase the retail price of a loaf to consumers. A Times editorial called for the maximum prices to be scrapped as they no longer make sense, and that instead market forces should be allowed to determine the price. But, rather vaguely and surprisingly, the editorial also called for a political inter-party agreement regarding the abolition

⁶² Legal Notice 4 of 2007.

⁶³ Ibid.

⁶⁴ Chapter 485 of the Laws of Malta

⁶⁵ The Times (29 August 2007) ‘NECC forces eatery to reverse price increase’ <http://www.timesofmalta.com/articles/view/20070829/local/necc-forces-eatery-to-reverse-price-increase.6650> (accessed on 3 September 2008) and Eurotimes (2007) “Ice cream price gets licked” quoting the executive head of the NECC: ‘We always investigate instances of price increases...in one case, the outlet put the price down to its original level as a result of the pressure that we put to bear.’

⁶⁶ The Times (25 July 2007) p 14 ‘Mystery Shopping sprees to monitor prices’, <http://www.timesofmalta.com/articles/view/20070725/local/mystery-shopping-sprees-to-monitor-prices.10215> (accessed on 30 August 2008)

of the subsidy and of the maximum price, because bread, it claimed, 'has a special place and significance in the Maltese psyche'.⁶⁷

Eventually, Price Order No. 1 of 2007 published in the Government Gazette of the 7 September 2007 established the maximum price for a Maltese loaf weighing 600 grams at 20 cents, and that for a loaf weighing 300 grams at 13 cents.

(c) *Prices of medicines in 2010*

The high cost of medicines was all news in 2010. Public opinion was easily swayed in favour of old-time restraints through Price Orders. An editorial in The Times 'Medicine prices: When will action be taken?' highlighted the "widespread concern...over the exorbitant prices of a range of medicines..." and reminded government of its Budget pledge to introduce 'mandatory control of prices of medicine'.⁶⁸ What had in part provoked this editorial was the European Commission's response to a Maltese MEP who had petitioned it to investigate the "inexplicably high prices of medicines in Malta". Commission vice-president Antonio Tajani was quoted as responding that: "national authorities are free to set the prices of medicinal products, to influence these prices through national policies, or to leave the regulation of prices to the market forces"... adding that "the government could intervene in the market to make sure that consumers were getting a fair deal."⁶⁹ However, a few months later, the Commission put Maltese medicinal prices under surveillance.⁷⁰

⁶⁷ The Times of Malta (2 September 2009) [Editorial], 'Market forces and the Maltese Loaf', <http://www.timesofmalta.com/articles/view/20070902/editorial/editorial.6262> (accessed on 14 September 2009) The Times of Malta (29 August 2007) [Front page] also reported that bakers were threatening to 'stop making Maltese bread should they not be allowed to increase prices'; The Times (3 September 2007) 'The price of Maltese bread' [Editorial].

<http://www.timesofmalta.com/articles/view/20070903/editorial/editorial.6164> (accessed on 15 September 2009).

⁶⁸ The Times (1 June 2010) [Editorial] 'Medicine prices: When will action be taken?' <http://www.timesofmalta.com/articles/view/20100601/editorial/editorial.309995> (accessed on 15 September 2009).

⁶⁹ The Sunday Times of Malta (23 May 2010) p 9, Ivan Camilleri: "Brussels refuses to investigate high medicine prices. The European Commission has turned down a call made by Labour MEP John Attard Montalvo to investigate and take action against the inexplicably high prices of medicines in Malta. Instead, it threw the ball back into Malta's court, saying such an issue was within the competence of the Maltese authorities." <http://www.timesofmalta.com/articles/view/20100523/local/brussels-refuses-to-investigate-high-medicine-prices.308584> (accessed on 27 October 2012).

⁷⁰ MaltaToday (11 September 2010), 'European Commission to put 'under surveillance' medicine price movements', http://www.maltatoday.com.mt/news/national/4512/european-commission-to-put-under-surveillance-medicine-price-movements#.VY_tvEbcgil (accessed on 24 November 2011).

10. Final considerations and conclusion

The 1991 White Paper had identified the Maltese obsession with price controls as a negative cultural-legal feature which hindered real progress in consumer law reform. Price controls have probably diverted attention which was desperately needed elsewhere to safeguard more crucial consumer rights. Substantive reforms had to wait till 2000-2001 when several significant Community Directives were transposed into Maltese law.

In the wake of the new comprehensive fair competition and consumer protection laws and administrative and enforcement structures, coupled with other trade liberalization measures introduced in the early nineties, the scope for further extensive use of price controls was greatly reduced. This was the official position expressed in the 1991 White Paper. Despite these developments and effective measures, price controls did not entirely lose their attractiveness as a solution for consumer protection against increasing prices.

For too long, price control regulations had promoted an illusion of consumer protection, diverting precious attention from more important concerns such as unsafe products and better remedies for consumers against defective and low quality goods. Indeed, conceptually, consumer protection in Malta has struggled to free itself from the big shadow cast by price regulation and related restrictive legislation extensively enforced for so many years. That philosophical and conceptual difficulty continues since Maltese politicians occasionally push low prices as the highest priority for consumer welfare. Indeed, politicians often find price controls too attractive to resist. They offer a quick knee-jerk solution of sorts which is guaranteed to secure public support.⁷¹

This paper suggests that the current local legal situation on the control of the prices of consumer goods, including both those locally produced and imported, is unsustainable and should really not have survived intact the EU membership process. Evidence suggests that the Maltese authorities were fully aware and acknowledged that the existing laws and regulations on price controls sat badly with the Community's free movement of goods principles. The findings in this paper may be yet more confirmation of public officials' reluctance to abandon old habits or to renounce discretionary powers.⁷² Once assumed, wide ministerial and administrative powers are not easily or readily

⁷¹ Politicians often seek quick political gains by promising to reduce the price of certain goods by flashing the legislative pen, very aware that, in times of economic difficulty, the introduction of price controls usually proves popular, even if it is just a knee-jerk reaction. These measures may eventually produce shortages, the deterioration of product quality and the proliferation of black market.

⁷² David Fabri, 'Transposition Tables, Toil and Tears...Tales from the Accession in European Union membership: Five Years on and Looking to the Future' in P.G. Xuereb ed., European Documentation and Research Centre, Jean Monnet European Centre of Excellence, University of Malta (2009).

surrendered and temporary measures aimed at meeting emergencies tend to acquire permanence. Price controls reflected the lack of a national consumer policy which could offer more imaginative and sophisticated solutions to a variety of consumer grievances and problems. Such controls offer the ruling political class the opportunity to be seen to implement quick popular measures which enjoy the added advantage of being intellectually unchallenging and therefore easily understood. For many years, governments encouraged and promoted the impression that consumer protection was best achieved through a number of strictly enforced trade restriction measures. They scored high on negative bureaucracy but low on efficiency, effectiveness, consumer choice and intellectual coherence.

This paper does not argue in favour of the total abolition of price regulation. It would be unwise for government to renounce absolutely the power to intervene in the market - for a specified limited time - in particularly troublesome circumstances which may prejudice legitimate consumer interests. A case may surely be made for government retaining a residual power to allow it to react effectively in emergencies or when artificial shortages and abuses appear. However any power given to government to regulate prices should be very restrictively defined and should be limited to goods and services which are truly essential to the proper well-being and functioning of a modern society. The power to intervene so directly in the workings of the market to protect the public should relate exclusively to extraordinary situations where normal competition and competition law fail to provide the required guarantees of adequate supplies of essential goods at reasonable prices. Act IX of 2003 was a brave attempt to achieve this objective but, more than a decade into membership, it has not been brought into effect.