

TRANSPOSING THE CONSUMER PROTECTION *ACQUIS* AT PRE-MEMBERSHIP STAGE: CURRENT CANDIDATE STATES AND OTHERS

*Dr. David Fabri**

1. Scope

New countries¹ continue to apply to join the European Union (hereinafter 'EU'). In this context, the transposition of the EU Directives and *acquis* at the pre-accession stage remains a relevant subject for academic examination. This paper seeks to shed some further light on this legislative phenomenon unique to the EU. It examines developments happening beyond Malta's borders and investigates transposition processes being currently undertaken by several countries that are seeking membership in the EU.² The focus of this paper is on how the prospective new applicant and candidate States are dealing with the transposition of the EU consumer protection Directives. Malta had undergone this exercise largely during the period 1999 and 2001 when most of the Directives which Malta was obliged to transpose became part of national legislation. The consumer Directives have changed and evolved since Malta's accession. The consumer chapter of the *acquis* has grown since 2004 making the task of complete transposition a bigger and more complex one than Malta had encountered.

At the time of writing, Croatia had just signed an accession treaty and EU membership was approved by a clear majority in a popular referendum. This paper seeks to place Malta's own experience in the negotiation and transposition of the consumer *acquis* in the context of the same accession procedures being pursued by current candidate states, namely Iceland, Turkey, Serbia and indeed Croatia itself. It will also trace developments in the unusual and unique situation of the self-described Turkish Republic of Northern Cyprus, more correctly referred to as the Turkish Cypriot Community, which does not enjoy international recognition. The comparative approach adopted in this paper seeks to offer novel perspectives and unexpected insights arising from current approaches to the transposition of the EU's consumer *acquis*.

* Dr. David Fabri graduated in law in 1979 and is currently a senior lecturer at the University of Malta in consumer policy and law within the Department of Commercial Law, which he has headed for the past five years. Between 1990 and 2005, he served as adviser to successive governments on the development of national consumer policy and law. He led the team which officially handled the screening and undertook the transposition of the EC consumer *acquis* at the time of Malta's accession. The author thanks Dr. Dorianne Mifsud for her valuable assistance in finalising this paper. This paper seeks to reflect the position as at 4 February 2012.

¹ The number of recognised candidate countries is currently five: Turkey which applied on 14 April 1987; Croatia which applied on 21 February 2003; the former Yugoslav Republic of Macedonia which applied on 22 March 2004; Montenegro which applied on 15 December 2008; and Iceland which applied on 16 July 2009. Albania and Serbia applied for EU Membership in 2009, but they have not yet received the status of a candidate country. For reasons of manageability and space, this paper will only focus on developments in the cases of Turkey, Croatia, Serbia, the Turkish Republic of Northern Cyprus and Iceland. These five very different cases sufficiently raise the varied issues which this paper is seeking to address.

² 'After Croatia, who is the next in the EU queue' (Telegraph, 21 January 2012) <http://www.telegraph.co.uk/news/worldnews/europe/croatia/9030411/After-Croatia-who-is-next-in-the-EU-queue.html>> accessed August 2012.

2. The Case of Malta

In the years immediately leading to accession, Malta's relationship with the EU was dominated primarily by its interest in securing membership within the Union. Once it became officially accepted by the EU Commission as a candidate state, Malta found itself obliged to transpose and implement a series of Directives and other measures. Since Malta joined the EU at a later stage, it did not have the opportunity of influencing the drafting of the said Directives. Much legislative effort ensued in many sectors including consumer protection. Indeed thanks to its pre-accession obligations, Malta introduced an array of new remedies and rights for consumers. These included for the first time rules on product liability,³ improved guarantees in consumer sales⁴ and restrictions on unfair contractual clauses.⁵ These were all rather hurriedly adopted by way of statutory amendments to the Consumer Affairs Act⁶ which the Maltese Parliament had passed way back in 1994. A new Product Safety Act⁷ was also adopted in 2001 to transpose the Community Directives on that subject.

Eventually Malta more or less fulfilled its numerous pre-accession obligations to the satisfaction of the Community and its members and was accepted as a member of the EU in May 2004. On that date, the relationship between Malta and the European Community radically changed.

Since membership, Malta has participated in all the planning and drafting stages of new Directives and initiatives, including consumer Directives and proposals, and has had the opportunity to influence their content. This small island state also plays a role in the EU's additional enlargement strategies and consequently may influence the current on-going negotiations and accession procedures involving the new applicant and candidate countries. Some of these candidate countries are currently involved in a programmed transposition of Directives. Transposition of Directives is an on-going phenomenon which keeps evolving as the EU and its *acquis* continue to develop. This is a new context in which to examine the EU consumer protection law and how far, if at all, it duplicates and reflects Malta's own accession-transposition enterprise. The screening and transposition exercises remain conceptually the same and pursue the same objectives as originally conceived in preparation of the 2004 enlargement. They still constitute mandatory stages on the often long road to membership.

At the time of the 2004 enlargement process, of which Malta formed part, the EC *acquis* was divided in thirty-one chapters of which twenty-nine were to be negotiated, screened, and transposed.⁸ The way the EC *acquis* is designed for screening and

³ Consumer Affairs Act, Chapter 378 of the Laws of Malta, arts 56 – 71A.

⁴ *Ibid.*, arts 72 – 93B.

⁵ *Ibid.*, arts 44 – 47C.

⁶ *Ibid.*

⁷ Chapter 427 of the Laws of Malta.

⁸ European Commission, 'Conditions for Membership' (13 August 2012) <<http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the->

transposition purposes has in the meantime been altered to reflect new developing priorities. Since 2004, EC law has continued to change, evolve and perhaps inevitably, expand. The current *acquis* now being presented to candidate countries has been enlarged to thirty-five chapters, new ones having been added since the 2004 enlargement. Today, thirty-three chapters have to be individually (and successfully) negotiated before accession can be secured.⁹

Indeed, reflecting the substantial legislation adopted at EU level since Malta's accession, the current *acquis* is now longer and more complex. Intellectual property rights are now located in a distinct chapter¹⁰ having been, correctly, hived off from its original location within the company law chapter. One now finds a new chapter dedicated exclusively to financial services,¹¹ whereas in 1999, financial services formed part of a broader free movement of services chapter. These new chapters acknowledge the increased importance now given to these two subject areas.

3. Current Candidate Countries

Some candidate countries have recently finalised the negotiations on the consumer *acquis*. This section of the *acquis* looks very different from the one Malta had been obliged to implement in the years leading to membership in 2004. The chapter now includes recent EU measures on tobacco, communicable diseases and unfair commercial practices. The consumer protection chapter is changing radically as additional new Directives are adopted and as the EU Commission continues to update, streamline and further harmonise the older consumer Directives.

While this paper was being compiled, two major milestones were recorded: first, the EU Commission's opinion on Iceland's application to join the EU was published and negotiations with that country are proceeding in earnest, while secondly, a Stabilisation and Association Agreement has been signed with Serbia, a tangible positive step towards eventual membership. Negotiations with Turkey are on-going and difficult, whereas Croatia has moved ever closer to membership. Although undoubtedly these constitute truly interesting developments from the political and enlargement perspectives, this chapter narrows its focus on the respective consumer protection dimensions contextualising their implications to Malta's own transposition of the consumer protection Directives as a pre-condition of membership. The following case studies are not intended to be exhaustive but have been selected for the significant issues and peculiar challenges they offer to studies examining the transposition of EU Directives at pre-accession stage.

[acquis/index_en.htm](#)> accessed on August 2012; and European Commission, 'Bulgaria' (17 December 2004) <http://ec.europa.eu/enlargement/archives/enlargement_process/future_prospects/negotiations/eu10_bulgaria_romania/chapters/index_en.htm> accessed August 2012.

⁹ Ibid.

¹⁰ Chapter 7 of the *Acquis*.

¹¹ Chapter 9 of the *Acquis*.

4. The Consumer Protection Chapters: Turkey

Turkey applied to accede to the EU on 14 April 1987. Officially accepted as a candidate state for full membership on 12 December 1999 at the Helsinki summit of the European Council, negotiations with Turkey were officially started on 3 October 2005. They are far from finalised. Turkey has been engaged in completing the negotiations, the screening and the transposition procedures, but progress appears to be slow as Turkey still needs to implement substantial reforms in various areas. Strikingly, at the time of writing, and despite the considerable time that has elapsed, Turkey has opened only thirteen chapters of the Community *acquis* for negotiation with the EU Commission. It has managed to provisionally close only one of these chapters.¹²

Turkey opened negotiations on the consumer chapter (now designated 'Consumer and Health Protection') on the 19 December 2007. The consumer chapter remains open although the screening procedures were finalised between 6 and 9 June 2006. The EU Commission's official twelve page report on the results of the screening concludes that:

Turkey is developing a consumer protection system in line with EU consumer protection strategies and values. The Turkish legislation has been aligned with the *acquis* to some extent. The administrative capacity is at a reasonable level, but needs further strengthening.¹³

In its screening report, Turkey formally acknowledges that despite the screening and transposition having already been completed, '[it] is aware of the fact that new EU rules will come up in due course'.¹⁴ The references were specifically made in respect of the Directives on timeshare and package travel. Broadly, Turkey appears quite advanced in the transposition of the measures included in the consumer protection chapter and relatively little remains to be done to complete it. However, as more years elapse, an ever-changing *acquis* seems to be making the closing of this chapter more difficult to achieve.

In its progress report¹⁵ the European Commission states that:

Limited progress can be reported in the area of **consumer protection**. The consumer movement continues to be weak. Existing mechanisms for government-civil society dialogue are not being used effectively and

¹² Commission Staff Working Paper: Turkey 2011 Progress Report, Brussels, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012, 12 October 2011, (SEC (2011)1201 final).

¹³ Turkey-Screening Report: Chapter 28 - Consumer and Health Protection. Dated 3 May 2007, this Report explains in detail the degree to which Turkey has brought its laws and administrative structures in line with EU requirements. The Report describes the level of transposition of every Directive comprised in this chapter.

¹⁴ *Ibid.*

¹⁵ Commission Staff Working Paper: Turkey 2011 Progress Report, Brussels, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012, 12 October 2011, (SEC (2011)1201 final).

participation by consumer NGOs in policy and law making activities remains low.

There has been limited progress on product safety-related issues. A circular from the Prime Minister's Office published in March 2011 established a Market Surveillance and Product Safety Assessment Board. It brings together the relevant market surveillance authorities to improve cooperation. More systematically comparable surveillance data have been collected and the market surveillance activities of the relevant authorities increased compared to the previous year. However, financial and human resources allocated to market surveillance activities are still insufficient. The number of measures applied remains low which undermines the credibility of the system. Work to revise the general product safety legislation remains incomplete. This is a key element for the accession negotiations in this chapter.

Some difficulties delaying Turkey's accession seem more political than technical. Indeed, Turkey's long and winding road towards the final goal of EU membership is still not a foregone certainty.¹⁶ Germany and France have often expressed doubts in respect of Turkey's eventual membership.¹⁷

5. The Case of Croatia¹⁸

When this paper was first being written, it was remarked that Croatia was well on its way to completing its accession procedures having managed to transpose most of the EU's considerable *acquis*.¹⁹ It was then already far more advanced in its membership process than Turkey, and had managed to close more *acquis* chapters in its accession negotiations.²⁰ In its 2011 opinion²¹ the EU Commission considered that Croatia met

¹⁶ Redmond John, *The Next Mediterranean Enlargement of the European Community: Turkey, Cyprus and Malta?* (Dartmouth Publishing Company, 1993).

¹⁷ However, Andrew Rettman, 'EU must embrace up-and-coming Turkey, German FM says' (EUObserver.com, 23 September 2010) <<http://euobserver.com/15/30874>> accessed August 2012 reported that the German Foreign Minister, Guido Westerwelle had spoken in favour of Turkey's entry into the EU and called for progress in the negotiations. The article reported that: 'The EU in June opened talks on common food safety and veterinary health Standards with Turkey. This move brought to 13 out of 35 the number of accession chapters opened by the EU in the five and a half years since Turkey became an EU candidate'.

¹⁸ European Commission, 'Croatia' (13 August 2012) <http://ec.europa.eu/enlargement/countries/detailed-country-information/croatia/index_en.htm> accessed August 2012.

¹⁹ M Akay, 'A study of the progress of Croatia's EU accession negotiations to date' (Queen's University Belfast Law Faculty 2009); Commission Staff Working Paper: Croatia 2011 Progress Report, Brussels, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011 - 2012, 12 October 2011, (SEC (2011) 1200 final).

²⁰ European Commission, Croatia Screening report, Chapter 28 – Consumer and health protection, (7 February 2007) <http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_28_hr_internet_en.pdf> last accessed March 2012.

the political criteria and expected Croatia to meet the economic and *acquis* criteria and to be ready for membership by 1 July 2013. In December 2011, Croatia signed an accession agreement and membership has also been popularly supported by a large majority of voters in the recent referendum. Membership is scheduled for 2013 and awaits ratification by the current twenty-seven member countries of the EU.

Ten years ago, in June 2003, and as a part of this long and complex accession process, Croatia passed an important law on consumer protection²² which incorporated rules implementing the EU Directives on contracts negotiated away from business premises, consumer credit, unfair contract terms, misleading advertising, distance selling contracts, timeshare and price indications. The law also assigned the necessary powers to administrative authorities to implement and enforce the legislation.²³ The law also set up a Council for Consumer Protection as a consultative body which also monitors the implementation of the country's National Consumer Protection Programme drawn up in 2003.²⁴ This body looks very similar to Malta's own Consumer Affairs Council established as a monitoring and policy-making body by the Consumer Affairs Act of 1994. Moreover the way a single law managed to group together a number of transpositions in a single manner recalls the 2000 amendments to the 1994 Act which successfully transposed several Directives in one single parliamentary enactment.

An important study paper on the Croatian consumer chapter transposition experience,²⁵ warns against a short-term approach to consumer law development in Croatia. It argues that greater efforts are required to ensure that consumer protection becomes more than a simple completion of a check-list but a set of values beneficial to the community. The paper concludes with a comment which is very relevant to this present study:

It is obvious that the consequences of effective consumer protection go beyond the EU accession process itself. The aspiration of Croatia to become an EU candidate country and the successful implementation of the Law on Consumer Protection should influence the awareness of consumer protection and make all the actors more mature and aware of their rights. Nevertheless, the irreversibility of this process and the long-term impact on society as a whole seems to represent even more of a challenge.²⁶

²¹ Commission Opinion on the application for accession to the European Union by the Republic of Croatia, 12 October 2011, (COM(2011) 667 final).

²² The Consumer Protection Act published in the Official Gazette N. 96/2003 on 10 June 2003. It has been amended to transpose new Community consumer Directives as they enter into force.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Aida Liha, 'Consumer protection in the process of European Union enlargement: challenges for Croatia', Croatian Accession to the European Union: Institutional Challenges: Volume 2 (Institute of Public Finance 2004) 201-221 <<http://www.ijf.hr/eng/EU2/Liha.pdf>> accessed February 2012.

²⁶ Round Table "Croatian Consumer protection system in the light of EU accession" organised by the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia on 28 May 2008. Representatives of the EU Commission also participated.

6. A General Comment on Turkey and Croatia²⁷

A simple comparison of the respective screening results of the various countries in the area of consumer protection reveals how much the consumer protection chapter has changed and evolved during these past seven years. The chapter is much more extensive and complex than the one Malta screened and transposed.²⁸ The current chapter incorporates more measures than before and has consequently become more complex for new candidate countries to screen and transpose. In the official documentation available on the EU Commission's website, at one point Turkey explains that it will have to change laws already adopted to align to EC law because the *acquis* itself had once again changed in the meantime, either through the amendment of existing Directives or the adoption of new ones. Indeed, the consumer protection *acquis* is never static for long.²⁹ Maltese authorities had to face this challenge on a few occasions in the course of the negotiation, accession and immediate post-accession stages. In the case of Turkey there is a greater risk as the accession process has been protracted over so many years. Croatia too has had to keep revising its legislation in order to reflect the changing content of the consumer *acquis*.³⁰

The *acquis* being implemented by applicant states like Turkey and Croatia is different from the one Malta had had to implement. This should not be too surprising seeing the shift in the EU Commission's policy on consumer Directives, from minimum to maximum measures. Some of the original Directives have been amended in the meantime; others have been replaced, while brand new Directives have been introduced in newly identified areas of consumer concern.

7. A Special Case: The Turkish Cypriot Community

A peculiar and possibly unique process is underway in the northern part of Cyprus which is Turkish-Cypriot controlled. The community styles itself the Turkish Republic of Northern Cyprus (hereinafter 'TRNC'), but its status is not recognised by the international community. The administration of this part of the island territory does not fall under the effective control of the Republic of Cyprus which is a member of both the EU and the United Nations and governs the southern part of the island still divided across the so-called 'Green Line'. The Turkish Cypriot Community (hereinafter 'TCC') is

²⁷ EU Health & Consumer Protection Directorate General, *Explanatory Screening: Croatia + Turkey, 8 June 2006*, by David Mair. The Screening Meetings between the EU Commission and Croatia on the consumer chapter were, as in the case of Turkey, held between June and July 2006; and *Screening Report: Croatia*, 7 February 2007. Both documents are available on <<http://europa.eu>> accessed February 2012.

²⁸ Even the numbering has changed. The Consumer and Health Protection Chapter is now Chapter 28 of the *acquis*, whereas it was designated as Chapter 23 during Malta's screening and accession.

²⁹ *Screening Report: Turkey*, 3 May 2007. The Screening Meetings between the Commission and Turkey on the consumer chapter were held between June and July 2006.

³⁰ A Forum organised in Osijek, Croatia on the 26 October 2007 to compare the impact of accession on Ireland and Croatia commented that: '[i]n the last two years, Croatia already twice changed its consumer protection legislation. The last Consumer Protection Law (2007) is completely harmoni[s]ed with the *acquis*' available <<http://www.imo.hr/node/42>> accessed November 2011.

neither an applicant nor a candidate state, but is considered a community. Currently the EC *acquis* does not apply to the northern territory because the administration of Cyprus does not have control and cannot enforce its laws in that territory.

The EU Commission has in recent years started funding an extensive exercise in an effort to bring the largely archaic laws of the TCC in line as far as possible with the EU *acquis*. This project would also have the beneficial consequence that the laws of the TCC would become closer to the laws of the southern part of Cyprus, making any future unification attempt simpler to achieve. Indeed, the objective is to raise the standard in the territory and to upgrade its legal and administrative infrastructure with a view to facilitating an eventual negotiated agreement to re-unite the two separate communities. Funds and expert resources are being made available to reform the territory's laws, structures and administrative practices. The Prime Minister's EU Co-ordination Office directly handles the TCC position on EU membership, relations with the EU and the current EU-sponsored efforts to bring the territory's laws and structures up to EU level in order to help bring an eventual settlement and in some form also re-unification with Cyprus.³¹

A *sui generis* screening and transposition process is being carried out to facilitate trade and other relationship between the TCC and Cyprus and eventually between the TRNC with the rest of the EU. The official Northern Cyprus administration website explains the position as follows:

In light of Protocol 10 of the Accession Treaty 2003 Cyprus as a whole entered the EU, whereas the *acquis* is suspended in the northern part of the island ("areas not under effective control of the Government of the Republic of Cyprus"). This means *inter alia* that these areas are outside the customs and fiscal territory of the EU. The suspension has territorial effect, but does not concern the personal rights of Turkish Cypriots as EU citizens, as they are considered as citizens of the Member State Republic of Cyprus. DG Enlargement has set up a Taskforce Turkish Cypriot Community dealing with the consequences of this unique and complex situation. It exists since 1 May 2004, the date of accession of the Republic of Cyprus to the EU [...]. In order to facilitate the future reunification of Cyprus, DG Enlargement is implementing an Institution Building programme through the TAIEX³² instrument in order to help prepare the Turkish Cypriot community for the future application of Community Law. This should pave the way for the withdrawal of the suspension of the *acquis* in the case of a Cyprus settlement as provided for in Article 1 (2) of Protocol 10 of the Accession Treaty 2003.³³

In the consumer protection sector, the first two measures that were implemented in the TRNC and are undergoing the screening scrutiny are the Directives dealing with

³¹ European Commission, 'Turkey Cypriot Community' (19 June 2012) <http://ec.europa.eu/cyprus/turkish_cypriots/index_en.htm> accessed August 2012.

³² TAIEX is the Technical Assistance and Information Exchange instrument managed by the Directorate-General Enlargement of the European Commission.

³³ See <<http://www.eucoordination.org>> last accessed on August 2012.

guarantees in sales of goods and the package travel tours Directives. They were followed more recently by the introduction of new legislative measures that would 'transpose' the product safety and unfair terms Directives. These measures formed part of the priorities formally listed in the Programme for the Future Adoption of the *Acquis* (hereinafter 'PFAA') drawn up in January 2009,³⁴ which clearly parallels the NPAA's that had been drawn up by the Maltese government and the other new member states before they joined the EU in 2004. The different designation of the TCC document reflects the *sui generis* status of this peculiar process of harmonisation. The PFAA describes the various Directives and measures that have to be implemented, the administrative structures required to enable their effective implementation and the dates when the draft legislative instruments were to be finalised. It covered the period from 2009 to 2011.³⁵

Clearly it is still early days for consumer protection in the TCC. The growth of new legislative interest in consumer rights is undoubtedly due and is inextricably linked to the adoption of EU regulations and standards. This development must therefore be considered against the backdrop of the current PFAA and the landmark project funded and encouraged by the EU Commission in its highly political objective of seeking to remedy the legislative weaknesses in the TCC and to reduce possible structural obstacles to a future potential re-unification of Cyprus.³⁶

During a press conference held on 7 October 2011, to explain the territory's 'Second Harmonisation Package and Public Administration Reform', the TCC 'Prime Minister' (Irsen Kucuk) provided a useful balance sheet revealing the progress being achieved in the alignment and reform programme.³⁷ Of interest here is his announcement that a new Product Safety Draft Law has been drawn up. He also confirmed that four sets of Regulations had been prepared under the TCC Consumer Protection Act to implement the Community rules on unfair contract terms, consumer guarantees, package tours and timeshare. There seems to be no specific reasons why these Directives were singled out for transposition before the others.³⁸

It will be noted that the method chosen for transposing the EU laws is very similar to that which had been adopted by the Maltese authorities. Product safety was introduced

³⁴ Ibid.

³⁵ Ibid.

³⁶ European Commission (n 31) which contains and explains the formal measures adopted by the EU Commission to assist the TRNC to align its laws and administration to the level of its southern counterpart especially COUNCIL REGULATION (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction; Kaya Arsian, 'Integrating North Cyprus into the EU' (Turkish Policy Quarterly 13 February 2006) <<http://www.euractiv.com> and <http://www.turkishpolicy.com>> accessed November 2011.

³⁷ The text of the speech is available on <<http://www.eucoordination.org/docs/press%20statement.pdf>> accessed February 2012.

³⁸ A clarification given to the author by Mr Mehmet Munir, TAIEX Local Support Point to the Turkish Cypriot community on 6 December 2011.

by a primary Act of the Maltese Parliament, namely the Product Safety Act of 2001.³⁹ Similarly, the four sets of rules mentioned had been transposed in Malta by way of ministerial regulations on the strength of powers inserted in primary legislation.

The Prime Minister also announced that a new updated PFAA was being drawn up to cover the years from 2012 to 2014.

8. Serbia

In June 2010, the EU and its members entered into a Stabilisation and Association Agreement with the Republic of Serbia.⁴⁰ This extremely long document traces how the relations between the two sides could develop in order to open the way for Serbia's eventual membership of the EU. Article 78 of this Agreement specifically dealt with 'Consumer Protection' and contained the following opening statement, '[t]he Parties shall cooperate in order to align the standards of consumer protection in Serbia to those of the Community'.

The Agreement then proceeds to require the parties to 'ensure [...] a policy of active consumer protection, in accordance with Community law [...] and the harmonisation of legislation of consumer protection in Serbia on that in force in the Community'.⁴¹

The SAA establishes a harmonisation process and constitutes the main legal instrument governing the relationship between Serbia and the EU. The SAA gives an important place to consumer protection.

Jovanic⁴² reports that as it slowly moves towards ever closer relationship with the EU, Serbia has been forced to address the state of consumer protection. Serbia is described as a market in transition where consumer protection was given low priority. The Stabilisation and Association process contains provisions on the need for Serbia to upgrade consumer rights to EU standards.

In 2005, Serbia enacted a new extensive law on consumer protection.⁴³ Before this new law, Serbia still held on to remnants of legislation that dated back to the Federal Republic of Yugoslavia era and which tackled some consumer issues in a piecemeal fashion. Jovanic summarises the various features of the new law and the various consumer rights that it seeks to protect, and highlights instances where the law was still

³⁹ Chapter 427 of the Laws of Malta.

⁴⁰ Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Montenegro, of the other part [2010] L 108 3.

⁴¹ *Ibid.*

⁴² Tatjana Jovanic, 'Consumer Protection Law and Policy in Serbia: The Current Status and Projections for the Future', in C Twigg-Flesner, D Parry, G Howells, A. Nordhausen (eds), *The Yearbook of Consumer Law* (2008) 465-472.

⁴³ The new Serbian Consumer Protection Law was adopted by the National Assembly of Serbia on 14 September 2005
<http://ec.europa.eu/enlargement/archives/ear/serbia/main/documents/2006PublicAdministration_EU.pdf> accessed February 2012.

not in line with the Community *acquis*.⁴⁴ A section of the Act refers to the establishment of a Consumer Protection Council while another sets out rules governing consumer associations.⁴⁵ Another later law of 2005 has brought Serbian law largely in line with the Product Liability Directive.⁴⁶

Serbia has published a National Consumer Protection Programme which is intended to cover the period from 2007 to 2015.⁴⁷ It lays down a programme of objectives and legislation which was designed on the lines already adopted in neighbouring countries, Croatia, Slovenia and Montenegro, and which also took into account the relevant EU consumer protection framework.

In his important paper, Jovanic concludes in terms that echo the evolution Malta itself had to learn to undertake:

In the first place, Serbia must develop the concept of consumer protection, as it is obvious that the concept is not well developed. In order for the concept of consumer protection to emerge, the Serbian legislator must develop a concise and user oriented functional regulatory framework of consumer protection. Part of it has been undertaken by enactment of the Serbian law on Consumer Protection of 2005, but this needs to be further developed and strengthened. In order to pave a way to the EU, this Law needs many amendments. Therefore, a better solution would be to enact a new and up-to-date Law on Consumer Protection.⁴⁸

Jovanic describes the 2005 law as a 'good framework for the legal and institutional harmonization with the EU *acquis*', but warns that the main concern must now be that the new law should be enforced and developed further. He also comments that this process requires political and administrative commitment and that this new law is only a point of departure.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Project Strengthening Consumer Protection, 'Serbian consumer legislation' <<http://www.zapotrosace.rs/en/serbian-consumer-legislation.php>> accessed August 2012; Prof. Crnobrnja & Foreign Investors Council (ed), *White Book: Proposals for improvement of the business environment in Serbia* (Foreign Investment Council 2011) <<http://www.fic.org.rs/admin/download/files/cms/attach?id=261>> accessed August 2012.

⁴⁷ Republic of Serbia, *Amended National Programme for Integration of the Republic of Serbia into the European Union* (2009) <http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/npi/npi_2009_10_eng.pdf> accessed August 2012.

⁴⁸ Tatjana Jovanic, 'Consumer Protection Law and Policy in Serbia: The Current Status and Projections for the Future', in C Twigg-Flesner, D Parry, G Howells, A. Nordhausen (eds), *The Yearbook of Consumer Law* (2008) 465-472.

The similarities with the Maltese White Paper of 1991⁴⁹ and the Consumer Affairs Act of 1994 are indeed remarkable. Even the language used is similar. The 1991 White Paper described itself as a point of departure; it proposed a set of long-term legislative and strategic objectives, as well as the establishment of a new Consumer Protection Council. It led to the adoption of a new Act which provided the foundations of a quasi-code for consumer law and which by itself did not amount to full harmonisation with the relevant parts of the *acquis*. Recently, the former EU Commissioner for Consumer Affairs Meglena Kuneva praised the recent reform efforts carried out by Serbia in the consumer law field:

The ambition to have [fifteen] [D]irectives implemented in your legislation is commendable. The adoption of the law will allow for better implementation of your National Strategy for consumer protection and for a better institutional setting for market surveillance and redress mechanisms.⁵⁰

Consumer Protection law reform had been addressed in an April 2005 Feasibility Study commissioned by the Government.⁵¹ The findings of the study stressed that:

In order to meet its obligations under an SAA, Serbia and Montenegro would need: i) to develop active consumer protection policies, in accordance with Community law, ii) to harmonise their legislation on consumer protection and independent and effective administrative structures and enforcement powers to ensure essential health and safety requirements and the safeguard of consumers' economic interests and iii) to guarantee consumer representation, information and education.⁵²

Despite a number of legislative and administrative steps, effective consumer protection in Serbia remains weak. In view of the commitments assumed under the SAA, and in line with its published Action Programme 2006, it is only now that Serbia is starting to develop overall consumer policy strategies intended to lead to concrete legislative, institutional, and enforcement initiatives.⁵³

⁴⁹ Rights for the Consumer, Department of Information August 1991. In 1991, the Maltese government published the first ever White Paper on consumer law reforms. This policy document provided a useful stock-take of the state of consumer protection in Malta in 1991 and it set out a comprehensive programme for legislative reforms in the area. The White Paper led to the establishment of a new Department for Consumer Affairs in 1992 and to the Consumer Affairs Act of 1994.

⁵⁰ Speech given by Commissioner Kuneva during the discussion of the Law on Consumer Protection of Serbia with the Minister of Trade and NGO's on 1 September 2009. The following reports add some colour to the developments under discussion: The Delegation to the European Union of the Republic of Serbia, 'New Law on Consumer Protection Presented: Commissioner meets Serbian civil society' (Press Release 1 September 2009) <<http://www.europa.rs/en/mediji/arhiva-vesti/2009/618/New+Law+on+Consumer+Protection+Presented.html>> accessed August 2012; The draft Law on Consumer Protection was published on the Ministry of Trade and Services website (in Serbian) accessible at <<http://www.zap-serbia.com/en/event.php?id=6>> accessed February 2012.

⁵¹<http://ec.europa.eu/enlargement/archives/ear/serbia/main/documents/2006PublicAdministration_EU.pdf> accessed August 2012.

⁵² *Ibid.*

The EU Commission's package in the 2011 overview of enlargement policy and the progress made towards EU accession includes the EU Commission's opinion on whether Serbia is ready to start accession negotiations.⁵⁴ In its opinion:

[T]he Commission recommends that the Council should grant Serbia the status of candidate country, taking into account progress achieved so far and on the understanding that Serbia reengages in the dialogue with Kosovo and is moving swiftly to the implementation in good faith of agreements reached to date.⁵⁵

The Commission's opinion⁵⁶ also stated that 'Serbia will have to undertake additional efforts to align with the *acquis* and to implement it effectively in the medium term' in a number of fields including Consumer and Health Protection.

9. Iceland

The enlargement of the European is an on-going process and new candidate countries are busy taking the preliminary measures for the eventual undertaking of the screening of the EU's *acquis*, including the consumer chapter or are busy transposing it under the scrutiny and to the satisfaction of the experts of the EU Commission.

In 2010, the Commission issued its first 'Opinion on Iceland's application for membership of the European Union'.⁵⁷ On 12 October 2011 it issued its second progress report.⁵⁸

Iceland's upcoming membership negotiations offer a brand new perspective from which to compare and reflect on Malta's own accession negotiations particularly in the context of the consumer protection chapter. Iceland, a small island with a population of about 350,000, is comparable to Malta itself an island with about 450,000 inhabitants. As was the case with the latter country's membership application, the Opinion remarked that '[p]ublic opinion and political parties in Iceland are divided on the question of EU membership'.⁵⁹ However contrary to the position in Malta described in the 1993 Opinion,⁶⁰ the EU Commission here established that:

⁵³<http://ec.europa.eu/enlargement/archives/ear/serbia/main/documents/2006PublicAdministration_EU.pdf> accessed February 2012.

⁵⁴ See Communication from the Commission to the European Parliament and the Council: Commission Opinion on Serbia's application for membership of the European Union, 12 October 2011, COM(2011) 668 final.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ (COM(2010)62).

⁵⁸ Commission Staff Working Paper: Iceland 2011 Progress Report, Brussels, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011 – 2012, 12 October 2011, (SEC (2011) 1202 final).

Participating in the single market for over 15 years through the EEA Agreement, Iceland has adopted a significant part of European Union law. The EFTA Surveillance Authority (ESA) regularly monitors Iceland's performance under the EEA Agreement. Overall, Iceland has a satisfactory track record in implementing EEA obligations.⁶¹

The list of areas identified in the Opinion⁶² where 'Iceland will need to make serious efforts to align its legislation with the *acquis* and/or to implement and enforce in order to meet in due course the accession criteria' does not include consumer protection.

The Opinion was accompanied by the Commission Staff Working Document Analytical Report,⁶³ which examined the position on every transposable chapter of the *acquis*. Examining Chapter 28, Consumers and Health Protection, the Analytical Report arrives at the conclusion that '[a] significant part of the *acquis* in the area of consumer and health protection is already implemented. Administrative structures are in place to allow further development in the future'.⁶⁴

In its second progress report⁶⁵ the EU Commission stated that:

Iceland partly applies the *acquis* on consumer and health protection due to its EEA membership. Limited progress can be reported in the field of consumer protection.

Regarding product safety-related issues, Iceland is broadly in line with the General Product Safety Directive (GPSD) and related measures. However, some amendments are necessary to the Act on product safety and official market control which transposes the GPSD.

On non-safety-related issues, the consumer credit directive remains to be transposed as well as the *acquis* on timeshare contracts and injunctions.⁶⁶

⁵⁹ (n 57).

⁶⁰ European Commission Opinion (Avis) on Malta's Application for Membership, June 1993, Bulletin of the European Communities, Supplement 4/93, para 34.

⁶¹ Commission Staff working Document, Analytical Report accompanying the Communication from the Commission to the European Parliament and the Council - Commission Opinion on Iceland's application for membership of the European Union (COM(2010) 62), 4 <http://ec.europa.eu/enlargement/pdf/key_documents/2010/is_opinion_analytical-report.pdf> accessed August 2012.

⁶² *Ibid.*, 7.

⁶³ (n 57).

⁶⁴ *Ibid.*

⁶⁵ Commission Staff Working Paper: Iceland 2011 Progress Report, Brussels, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011 - 2012, 12 October 2011, (SEC (2011) 1202 final); Analytical Report (n 57).

It concluded that:

Iceland has already achieved a good level of alignment and applies a substantial part of the *acquis* in the fields of consumer protection and health. Further efforts to align with the *acquis* are necessary, especially regarding consumer protection, where intensified participation in the RAPEX system is needed.⁶⁷

It shall be interesting to see how Iceland's membership application will progress. As an EEA member, Iceland has already implemented the internal market Directives and its accession may prove relatively straightforward and possibly be fast-tracked.⁶⁸

An interesting comparison with Malta shows that Iceland's main consumer association, *Neytendasamtökin*, has approximately 13,000 members,⁶⁹ whereas, despite all local and recent EU financed encouragement and assistance, the local Consumers' Union⁷⁰ has throughout its existence sadly failed to attract a critical mass of members. Indeed, in 2000, it lobbied hard (and successfully) to have the 250 minimum membership established in the 1994 Act⁷¹ reduced to a minimum of 100 members, clearly an admission that it struggled to retain a constant membership of 250. Seen in the context of a Maltese population exceeding Iceland's by almost twenty-five per cent,⁷² these facts may point to a cultural mind-set of Maltese consumers which lacks a sense of commonality of interests, rights and values, even in the consumer field.⁷³ In Iceland the position seems radically different and the membership figures are comparatively impressive.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ 'Iceland poised to apply for EU membership in July' (EurActiv.com 27 April 2009) <<http://www.euractiv.com/priorities/iceland-poised-apply-eu-membership-july/article-181653>> accessed August 2012; Ian Traynor, 'Iceland to be fast-tracked into the EU Plan for cash-strapped state to become member by 2011' (The Guardian 30 January 2009) <<http://www.guardian.co.uk/world/2009/jan/30/iceland-join-eu>> accessed August 2012; Omar Valdimarsson, 'Iceland Delivers Pre-Accession Economic Program For EU Bid' (Bloomberg, 2 February 2012) <<http://www.bloomberg.com/news/2012-02-02/iceland-delivers-pre-accession-economic-program-for-eu-bid.html>> accessed August 2012.

⁶⁹ This is the 2010 figure. In 2006, the figure stood at 12,000 members. See its official website <<http://ns.is/neytendasamtokin>> accessed November 2011.

⁷⁰ The Maltese designation is *Għaqda tal-Konsumaturi*.

⁷¹ This rule originated in the proposals originally made in the 1991 White Paper. Minimum membership was laid down as a pre-condition for official recognition, legal immunity and assistance from government.

⁷² According to the Demographic Review 2009 carried out by the National Statistics Office: '[t]he total population of Malta in 2009 was estimated at 412,970 [...] just over half the population were females' <http://www.nso.gov.mt/statdoc/document_view.aspx?id=2776&backurl=/themes/theme_page.aspx> accessed November 2011.

⁷³ This proposition would need to be evaluated by sociological research rather than by legal analysis.

Unlike Serbia, Iceland has now started the formal negotiation and screening stages based on the individual chapters making up the current updated *acquis*.⁷⁴ The screening meeting on the Consumer and Health Protection chapter was concluded in Brussels on 16 May 2011. The screening proved relatively straightforward given that under the EEA Agreement, most of the consumer *acquis* had already been adopted in Icelandic law. The official website of the Icelandic Ministry of Foreign Affairs interestingly commented that '[a]t the screening meetings special attention was brought to the possibility that Iceland preserves its right to provide better consumers protection than generally within the EU'.⁷⁵

10. Final Reflections

This brief foray into the relevant happenings in other jurisdictions (used in a broad sense), each currently involved in screening or transposing EU law, or both, may have once again demonstrated how these activities make more sense when examined within their proper historical and political context. The Maltese road to accession was a hugely political event which divided the nation and was only finally placed to rest by a referendum and a general election. Malta is not unusual in this respect as a similar political division is currently being increasingly felt in Iceland. Again, Turkey's lack of progress in finalising the negotiation and conclusion of the various chapters of EU law can only be understood within the broader context which includes lingering political and cultural scepticism about the very notion of having Turkey, with its history and huge Muslim population, as an integral part of the EU. Turkey's progress cannot be measured merely by the detail of its new consumer legislation or by a series of determinations by EU Commission experts on whether a particular provision of a Directive has been satisfactorily transposed or not. These matters have a relevant role to play in the accession dialogue but they look insignificant when viewed against the backdrop of international geo-politics.

The same considerations apply to the truly anomalous case of the TCC where the adoption of EU law is serving as a device to facilitate the future re-unification of a country, badly divided territorially, politically, linguistically and ethnically. One might fail to comprehend why the EU Commission has intervened in this unusual fashion unless one is aware that first, the Republic of Cyprus does not exercise physical sovereignty over the northern part, and second, that the EU *acquis* does not extend to the TCC. This historical fact has along the years exacerbated the divide between the two communities, especially when Cyprus decided to apply for EU membership and started the accession project which involved huge reforms. The current efforts to increase consumer law in the TCC along EU lines is a direct beneficial consequence of the EU Commission's initiative to fund, assist and encourage what should gradually develop into a modern consumer rights framework similar to that prevailing in the Republic of Cyprus, Malta and the other member states.

⁷⁴ Iceland's Application for the membership of the EU, 'Screening meeting on Consumer and Health Protection concluded' (17 May 2011) <<http://eu.mfa.is/sidemenu/latest-news/nr/6296>> accessed August 2012.

⁷⁵ <<http://eu.mfa.is/phase-2---negotiation-process/news-and-Announcements>> accessed August 2012.

Consumer protection too is a political idea involving a certain philosophy of how a market should be regulated in order to safeguard certain rights and values. One beneficial effect of EU consumer law is the way it has forced national authorities to address consumer protection issues even against their will and to legislate to EU standards. This often constitutes an enterprise which would have likely taken decades to complete on a purely national basis, but the EU Commission's intervention and constant monitoring ensures that the adoption of the required legislation remains a top political and legislative priority.⁷⁶ In many instances, including Malta, the necessity of adhering to EU law in order to secure membership helped to short-circuit the national process and led to an acceleration of the implementation of substantial pro-consumer legislation and structures within a much shorter time-span than would have otherwise been the case.

⁷⁶ The EU Commission provides candidate countries with substantial funding and expert assistance through its TAIEX division.