RECENT STRATEGIES TOWARDS THE MEMBERSHIP OF CYPRUS TO THE EUROPEAN UNION: A CASE STUDY ON TRADE *

Stéphanie Laulhé Shaelou**

Abstract

The present article draws on the theory developed in international relations and political sciences addressing the issue of the resolution of the Cyprus problem through EU involvement, referred to as the 'catalyst proposition', in particular in its 'subversion' version. Although it will be argued that the relevance of the catalyst effect of EU membership for Cyprus becomes more remote after 1999, this theoretical approach is nevertheless of great significance to explain issues related to Cyprus in a European context, as well as to examine the EU-Cyprus relations, at least until the Helsinki Summit. In particular, the legal dimension of the 'subversion' approach of the catalyst effect of EU membership will be examined with respect to Turkey's EU membership prospects. It will however be shown that the absence of any political reform in Turkey's policy towards Cyprus could well mean that the 'catalyst proposition', even in its 'subversion' version, has become inappropriate to address issues related to Cyprus within a European context. It would appear that there is a need for a new method of analysis of the integration of Cyprus into the EU. It is contended that socio-legal studies can offer this method of analysis of issues related to Cyprus in a European context, providing a link between law and policy and proving useful for Cyprus' successful integration into the EU. Socio-legal studies acknowledge the existence of new modes of governance, which produce regulations, which interact with the social field. In the case of Cyprus, there exist several social interactions created by European integration, due in particular to the island's specificities associated with the Cyprus problem. The EU has therefore built up a pluralistic approach leading to the European integration of Cyprus, of which EU general policies, but also Community primary and secondary legislation as well as ECJ case law are the main components. It is argued that the integration of Cyprus into the EU could provide a particular model of integration, based on the specific need to fully integrate Cyprus despite its unsolved conflict. Trade can be used as a case study in order to validate this hypothesis.

Introduction

The purpose of this article is to analyse the acquis communautaire (the 'acquis'')[1] specific to Cyprus, relating to the application of the principle of free movement of goods, and its impact on the EU-Cyprus' trade relations. It is argued that there exists a set of rights and obligations created at EU level forming part of the acquis and focusing on Cyprus, composed mainly of the Community general policies, of primary and secondary sources of Community legislation as well as of case law from the European Court of Justice (the 'ECJ'). An important part of this acquis was finalised during the period immediately preceding Cyprus' accession to the EU on 1 May 2004. It is contended that a case study on the specific acquis governing the application of the principle of the free movement of goods in Cyprus provides a good illustration of the EU strategy towards Cyprus during the period leading to accession and beyond. A more systematic analysis of the EU attitude towards Cyprus from a socio-legal perspective can be extracted from this case study, focusing in particular on whether the EU strategy has been coherent and efficient throughout, on the road towards the integration of Cyprus into the EU. This analytical exercise will reveal some variations in the scope and the position adopted by the EU institutions regarding Cyprus during the period leading to accession. It is argued that this relative degree of inconsistency between the EU institutions is the manifestation of the low level of legal legitimacy of the current EU policy towards Cyprus. The conclusion of this paper will explore whether this lack of legal legitimacy or 'ratio' identified in the acquis on Cyprus, is in fact due to the presence of a stronger political will at supra-national level, or 'voluntas' expressed within the EU for the integration of Cyprus as a whole into the EU. The balance between the ratio and voluntas elements of law, specific to Cyprus, could serve as a socio-legal justification for the current EU strategy towards Cyprus.[2]

Socio-Legal Studies as a Conceptual Framework

The 'Catalyst Proposition' of EU Membership for Cyprus

This article draws on the theory developed in international relations and political sciences addressing the issue of the resolution of the Cyprus problem through EU involvement, referred to as the 'catalyst proposition'. Diez[3] has identified three main versions found in the literature, namely the 'carrot catalyst'[4] and the 'stick catalyst', sometimes considered together,[5] and finally the 'subversion catalyst'.[6] The 'catalyst proposition' has been widely used in the literature on the Cyprus problem and on the EU-Cyprus relations. Adherence to a particular version of the 'catalyst proposition', or to a combination thereof, is dependent upon the underlying assumptions as to "the nature of the conflict and the actors involved".[7] In this article, the conflict is considered merely to the extent that it interacts with the process of European integration of Cyprus and, to that intent, is approached from

the perspective of socio-legal studies. It is believed that the EU is playing a major role in Cypriot national affairs, guiding Cyprus towards full integration into the EU, and as such, is an important actor to the conflict (as opposed to a party). As a result, the 'subversion' approach to the catalyst effect is preferred for the purpose of this paper. Taking into account the existing literature on this concept, the 'subversion' approach can be defined as the process of satisfaction of technical requirements linked to the accession negotiations and EU membership, serving the underlying political purpose of improving relations between the parties affected by the negotiations.

Many observers have adopted either this latest version of the 'catalyst proposition', or a combination of approaches including the 'subversion' one. They all tend to agree that the EU pre-accession strategy, both with Cyprus and Turkey, as well as EU membership for Cyprus, could potentially have played a constructive role towards the resolution of the Cyprus problem, mainly through the satisfaction of the membership criteria and the compliance with the accession negotiations.[8] Whether Cyprus' EU membership and the accession negotiations have in fact acted as a positive catalyst on the Cyprus problem is however highly debated among scholars, their positions being largely determined by their underlying assumptions.[9] Overall, it can be said that the limits of the catalyst effect of Cyprus' EU membership have been uncovered,[10] as outlining a new dimension to the Cyprus problem, which challenges the existing status quo, thereby increasing its complexity[11] and, perhaps worsening the prospects for a settlement.[12]

It seems clear that there has been a catalyst effect of EU membership for Cyprus, the nature of which remains controversial. In any case, it is argued that the relevance of the catalyst effect of EU membership for Cyprus becomes more remote after 1999, following the conclusions of the Helsinki European Council Summit, where the link between a solution to the Cyprus problem and Cyprus' EU membership was effectively lost.[13]

The above theoretical approach is nevertheless of great significance to explain issues related to Cyprus in a European context, as well as to examine the EU-Cyprus relations, at least until Helsinki. In particular, it is contended that the 'subversion' version of it outlines the legal dimension of the catalyst effect of EU membership, to the extent that it requires the Member States and candidate countries to comply with the Accession acquis at all times, through the satisfaction of various legal requirements. For example, Cyprus found itself in the past under an obligation to lift a ban on Turkish goods because this was not in line with the EU customs union arrangement with Turkey.[14]

Following the accession of Cyprus to the EU, it appears that the EU continues to apply the 'subversion' technique for matters associated with the island. The

'grace' period given to Turkey to sign the Ankara Agreement[15] with the ten new Member States, including Cyprus, until the actual start of the accession negotiations in October 2005, could just have been an illustration of such a technique. Instead of putting added political pressure on Turkey to grant recognition to the Republic of Cyprus through diplomacy,[16] the EU opted for a technocratic approach, based on the satisfaction by Turkey of technical requirements deriving from binding instruments of Community law.[17] The EU executive hoped to achieve the ultimate political result of the recognition of the Republic of Cyprus and the normalisation of the Cyprus-Turkey relations through the satisfaction of legal requirements, deriving in particular from the Ankara Agreement and its Additional Protocol. To this end, the Commission produced a Negotiating Framework with Turkey,[18] which had to be adopted unanimously by the Council before the start of the accession negotiations in October 2005. The document was indeed accepted in Luxembourg on the day of the opening of the accession negotiations with Turkey, i.e. 3 October 2005. The final version of the Negotiating Framework reiterates in section 6 that the advancement of the negotiations with Turkey will be dependent upon its progress in preparing for accession, to be measured in particular against its efforts towards the normalisation of bilateral relations between Turkey and all EU Member States, including the Republic of Cyprus, as well as the fulfilment of its obligations under the Ankara Agreement, its Additional Protocol and the Accession Partnership, as amended.[19]

Turkey signed the Additional Protocol to the Ankara Agreement with the ten new Member States on 30 June 2005, but immediately issued a unilateral statement reaffirming its long-standing policy on Cyprus.[20] The EU had to address the legal implications of this unilateral statement, in particular whether it affects the proper fulfilment of Turkey's obligations under the Ankara Agreement and its Additional Protocol. After weeks of negotiations and several COREPER meetings, at which the EU ambassadors[21] discussed the contents of the EU 'counter-declaration' to Turkey, a compromise was reached and a declaration adopted by the Council on 21 September 2005.[22] In this Declaration, the Council states that it expects "full, non-discriminatory implementation of the Additional Protocol, and the removal of all obstacles to the free movement of goods, including restrictions on means of transport".[23] It further states that "… the opening of negotiations on the relevant chapters depends on Turkey's implementation of its contractual obligations to all Member States. Failure to implement its obligations in full will affect the overall progress in the negotiations".[24] Whereas this Declaration falls short of making the recognition of the Republic of Cyprus a precondition for the start of the accession negotiations with Turkey, it does confirm however the link between the recognition issue and Turkey's accession negotiations with the EU and strongly reiterates Turkey's legal obligations towards the twenty-five Member States. As an illustration of the 'subversion' technique of membership analysed above, this Declaration

comes to confirm that the issue of the recognition of the Republic of Cyprus is to be addressed, albeit indirectly, during the course of the accession negotiations and not only through the course of diplomatic negotiations on the Cyprus problem. This Declaration remains however non-binding in strict legal terms, as it is a political statement. Nevertheless, it denies any legal effect to Turkey's unilateral statement.[25] In the meantime, Turkey has reiterated on several occasions that it will not recognise Cyprus in the absence of a comprehensive settlement within the framework of the United Nations, thereby clearly indicating a strong linkage on its part of the issue of recognition to a settlement of the Cyprus problem.[26]

A legal reading of the catalyst effect through the 'subversion' technique would seem to indicate that a significant step has been achieved towards the normalisation of the bilateral trade relations between Turkey and Cyprus. The signing of the Additional Protocol to the Ankara Agreement effectively extends the benefits of the customs union with Turkey to the ten new member states, including Cyprus. Hence, direct trade between Cyprus and Turkey within the framework of the EC-Turkey Custom Union agreement should, in principle, be possible, having potentially as a practical implication the recognition of the Republic of Cyprus by Turkey. This is however subject to the full implementation of the terms of the Ankara Agreement by Turkey, which has not been the case so far. The EU Declaration of 21 September 2005 however refers to Turkey's contractual obligations to fully implement the principle of freedom of movement of goods with the twenty-five Member States, including Cyprus, thereby promising rather optimistic prospects.[27] However, the absence of any political reform in Turkey's policy towards Cyprus could indicate the limits of the use of legal techniques to serve political goals, when there is no consensus between all parties involved on the policy to follow. It could well mean that the 'catalyst proposition', even in its 'subversion' version, has become inappropriate to address issues related to Cyprus within a European context, as it is only suited to the Cyprus problem and to issues of conflict resolution. It would seem rather that the focus has now shifted towards analysing the European integration of Cyprus, of which specific issues related to the Cyprus problem, such as the recognition of the Republic of Cyprus, form an integral part. Thus, the need for a method of analysis of the integration of Cyprus into the EU has arisen.

Diez has argued that the 'subversion' technique developed by the EU to address the Cyprus problem is a variation of the traditional 'Community method', which he defines as a "functional co-operation in seemingly technical matters [which] helps to overcome political divides".[28] His approach seems limited to conflict resolution and does not embrace the European integration of Cyprus. It is argued that the concept of 'Community method' could be expanded to analyse the integration of Cyprus into the EU from a socio-legal perspective. In this case, the concept of

'Community method' should be understood as addressing the wider issue of EU governance and national strategy in the context of European integration.

Community Method of Integration of Cyprus

The legal analysis of the 'subversion' technique of membership under the 'catalyst proposition' has outlined the instrumental role of law to policy, which can result in the creation of a divide between law and policy. The drawbacks of such a divide have been illustrated above through the consideration of the triangular relationship between the EU, Cyprus and Turkey. It is argued however that this phenomenon derives from the flawed assumption under the 'catalyst proposition' that law is merely a policy instrument.

Should one consider the role of law within the European context as a bridge between policy-making, originating mainly at a supra-national level, and the society, located at a national level, it is argued that new prospects may arise, as far as issues relating to Cyprus in Europe are concerned. It is contended that socio-legal studies can offer a new method of analysis of issues related to Cyprus in a European context providing an unbroken link between law and policy and proving useful for Cyprus' successful integration into the EU. Socio-legal studies can be defined as "a group of disciplines that applies a social scientific perspective to the study of law",[29] thereby taking into account the "broader social and political concept" surrounding legal doctrine.[30] It is believed that this research method is particularly suited to the study of the integration of Cyprus into the EU, given the specificities of the process of integration for Cyprus, resulting mainly from issues associated to the Cyprus problem.

The underlying assumptions of the present article are drawn from the legal pluralism movement within socio-legal studies, which promotes a looser link between law and government.[31] It is argued that the law-government approach has to be revisited in the context of EU integration, as the underlying assumptions differ from the ones applicable to a central government model.[32] In particular, two assumptions come to widen the scope of regulation in the context of EU integration: firstly, the decision-making process in the European model is decentralised, to the effect that the concept of government is replaced by the notion of governance. Secondly, the Europeanisation process adds a major new dimension to national affairs. Legal pluralism takes its full meaning within the European context: there are regulations outside the strict legal field,[33] which influence national affairs. The relevance of socio-legal studies to this study lies in the above finding.[34]

The idea that the EU is a genuine supra-national polity, armed with a very powerful decision-making power, has greatly contributed to the analysis of the EU as a system of governance of EU integration, as opposed to the mere analysis of the integration process itself. The theorising of new modes of EU governance,

which come to supplement the traditional Community method of regulation through legislation normally structuring the integration process, has been developed as a result.[35] From a socio-legal perspective, these new modes of governance are seen as regulations "spontaneously developed through social interaction within a particular field".[36]

In the case of Cyprus, there exist several social interactions created by EU integration, due in particular to the island's specificities associated with the Cyprus problem. As a result, the EU has built up a pluralistic approach leading to the integration of Cyprus into the EU, of which EU general policies, Community primary and secondary legislation as well as ECJ case law are the main components. It is contended in this paper that the integration of Cyprus into the EU could provide a particular model of integration, based on the specific requirement to fully integrate Cyprus despite its unsolved conflict. Trade can be used as a case study in order to validate this hypothesis.

Case Study on the Implementation of the Principle of Free Movement of Goods in Cyprus

The de facto division of the island has a double impact on trade in Cyprus. Firstly, it affects the intra-island trade between the Republic of Cyprus and northern Cyprus, which had been non-existent for the past thirty years (the internal aspect of trade). Secondly, it also has implications on the possibility of direct trade between northern Cyprus and the rest of the EU, which should not, in principle, be possible due to the lack of recognition of the northern part of the island in international law (the external aspect of trade). This paper focuses only on the external aspect of trade between Cyprus and the EU, leading to the identification of some variations in the EU strategy towards Cyprus in this area.

ECJ Intervention through the 'Anastasiou Saga': The Various Scenarios of Direct Trade from northern Cyprus to the EU (1992-2003)

The initial reference to the ECJ for preliminary ruling was made by the High Court of Justice (Queen's Bench Division)[37] under Article 234 EC Treaty. This followed proceedings brought in the UK by producers and exporters of citrus fruits established in the Republic of Cyprus against the Ministry of Agriculture, Fisheries and Food, in connection with the export to the UK of citrus fruits and potatoes from northern Cyprus.[38]

Anastasiou I:[39] A Case of Direct Trade from northern Cyprus to the EU

In the early 1990s, the ECJ gave its interpretation of the issue of direct trade between the northern part of Cyprus and the EU in accordance with the Community principles and rules. The Court took the view that the interpretation of the fundamental principle of non-discrimination embodied in the EC-Cyprus Association

Agreement ('the Agreement') had to be balanced as against the "proper operation" of the Agreement and "the need for uniformity in Community policy and practice".[40] This resulted in the exclusion of the northern part of Cyprus from the enjoyment of the preferential treatment of goods originating from Cyprus, granted under the Agreement. The Court interpreted the relevant Community law strictly, concluding that "the exclusive competent authorities to certify the origin of products in Cyprus are the ones of the Republic of Cyprus, when exports to the Community are involved".[41] The ECJ also made the point that "the special situation of Cyprus, which is the result of its de facto partition … is not such as to alter, with regard to exports of products from its northern part, the conclusions reached on the interpretation of the provisions concerning […] certificates".[42] Through this statement, the Court expressly rejects the possibility of justifying the exclusion of products originating from the northern part of the island from the preferential treatment, on the basis of Article 297 EC Treaty, which allows Member States to deviate from Community law on grounds of public security of a wider scope. On the contrary, the Court sticks to the instruments of Community law governing the EU-Cyprus relations and confirms the proportionality of the restrictions of legitimate trade to the Republic of Cyprus.

Anastasiou II:[43] A Case of Indirect Trade to the EU through Turkey

Following the ECJ's ruling in Anastasiou I, it did not take long for the traders[44] to find an alternative to the prohibition of Turkish Cypriot imports, which were not accompanied by the required certificates issued by the competent authorities of the Republic of Cyprus. The traders subsequently arranged for the goods to be imported via Turkey and for the required certificates to be issued in Turkey, where the ship carrying the goods would stop for one day at most. The appellants therefore sought an order from the UK courts to restrain the import of citrus fruits produced in the northern part of Cyprus through Turkey.

The case reached the House of Lords, who decided to refer to the ECJ[45] several questions, with respect mainly to the interpretation of Directive 77/93/EEC on protective measures against the introduction into the member states of organisms harmful to plants or plant products.[46] The ECJ ruled that Directive 77/93/EEC permitted the importation of plants which were accompanied by certificates from a consignor country, provided three conditions were satisfied, namely that (i) the plants had been imported into that country prior to import into the Community, (ii) that they had been there for such time and under such conditions that proper checks could be carried out, and (iii) that the plants were not subject to special requirements which could be satisfied only in their place of origin. The ECJ therefore appeared to pave the way to indirect trade from the northern part of Cyprus to the EU through Turkey, provided certain technical requirements were satisfied.

On the cooperation between the importing and the exporting states, the Court ruled that it is not for member states to impose further conditions on the importer who has resorted to such a procedure,[47] as this would imply the taking into consideration of the reasons for which the requested certificate has not been issued by the country of origin.[48] The ECJ thereby gave a clear confirmation that any political dimension of the case was excluded from the judgment, in line with its prerogatives under the Treaty.

Looking at the judgment in more details, it appears that the Court remained on technical grounds in order to justify this case, as opposed to its teleological approach in Anastasiou I where it relied on general principles of Community law. This approach seems to be indicative of the very special nature of the case raised in Anastasiou II. It remains however that this ruling is difficult to reconcile with Anastasiou I, as it can be said to have qualified the conclusions reached in the earlier ruling. In particular, the ECJ did not follow the Attorney General's Opinion in Anastasiou II, who had argued that two of the special requirements to be reported on the certificate, namely that the produce be free from stalks and that their packaging bear an appropriate mark of origin, could not be satisfied outside the country of origin.[49] The Attorney General believed that the Turkish authorities simply relied on the certificates of origin issued in northern Cyprus, since Turkey recognises this entity. The Court, on the other hand, merely assumed that compliance with these two special requirements could be checked in the importing state, on the basis of the shipping documents. As a result, it considered that the certificates were in fact issued by the Turkish authorities themselves, to the full satisfaction of the requirements under the Directive, as amended. Thus, the Court avoided any problem of non-recognition of the issuing authorities arising in Anastasiou I. This has been seen as a mechanical application of Anastasiou I, which gives rise to difficulties.[50] In particular, why would 'indirect reliance' (through a consignor country) on the certificates issued by non-authorised authorities be acceptable, whereas 'direct reliance' on the very same certificates has been condemned? The Court nevertheless escaped such considerations, since the House of Lords did not expressly request a preliminary ruling on whether these two special requirements could be satisfied outside the country of origin. Thus, the issue of certification remained only partly addressed.

Anastasiou III:[51] A Case of Direct Trade through the Republic of Cyprus?

Following Anastasiou II, the House of Lords had to give its judgment on the case.[52] In particular, the question of the fulfilment of the two special requirements for citrus fruits outside of the place of origin was left for the national court to decide. In the meantime, however, Directive 77/93/EEC was further amended by Directive 98/2/EC,[53] which was enacted shortly before the ruling of the ECJ in Anastasiou II and, therefore, had not been taken into consideration by the Court. The new

Directive introduced an additional special requirement, with respect to citrus fruits originating in third countries, where certain diseases had occurred, that an official statement confirming that the fruits are free from such diseases be issued.[54] The House of Lords considered that the amendments were relevant to its eventual decision[55] and found it necessary to make a new reference to the ECJ under Article 234 EC Treaty. They submitted questions regarding the satisfaction of the special requirements, in the event that citrus fruits originating in a third country have been shipped to another third country, and also relating to the place of issuance of the official statement.[56]

The ECJ ruled that the certificates required in order to bring citrus fruits into the Community must be issued "in their country of origin by, or under the supervision of, the competent authorities of that country".[57] The Court took the view that one of the special requirements, mainly that an appropriate origin mark be affixed to the plants' packaging, could only be fulfilled at the place of origin.

It appears quite clearly from this judgment that the Court has retreated from its interpretation in Anastasiou II. In Anastasiou III, the ECJ develops a line of argumentation, which seems to be the mere continuation of Anastasiou II. Had the right questions been referred to the Court earlier, such issues would have been addressed in the previous ruling. But does it mean to say that Anastasiou III automatically refers us back to Anastasiou I? It is rather doubtful.

Unlike Anastasiou I, Anastasiou III does not close the door to trade with northern Cyprus, for two reasons at least. First of all, it seems that, like Anastasiou II, this judgment is based on the specific nature of the produce itself, which justifies the satisfaction of special technical requirements and their strict interpretation under the Directive. One is therefore entitled to wonder whether this approach can be extended to all the produce exported from the northern part of Cyprus to Europe. The answer should most probably be negative. Thus, it would appear that this judgment is not susceptible of generalisation to the trading relationship between the northern part of Cyprus and the EU.

Nevertheless, it seems that the consideration of such special technical requirements, forming an exception, has put the Court in the position to consider the wider socio-legal issues pertaining to the case and to establish a principle. The Court confirms the exclusive competence of the country of origin in order to issue the requested certificates as well as the legitimacy of the role of the authorities in this process, by referring the matter to the authorities legally authorised to carry out this task, in accordance with the principles established in Anastasiou I. The novelty compared to the two previous rulings is that the Court clearly excludes 'indirect trade' through Turkey as an invalid option, as it does not comply with the latest

requirements of Community law for this specific product[58] and, as a result, encourages the parties to search for trade links within the country of origin, Cyprus, through the cooperation of the competent authorities.

It is argued that the Court through its doctrinal approach has established the judicial foundations towards the regularisation of the trade relations between the northern part of Cyprus and the EU. By requiring that the competent authorities within the country of origin be involved either themselves or through supervision, the ECJ has reminded all parties that the possibility of 'cooperation' between the various authorities could exist. In line with the current situation, the wording of the judgment suggests that the competent authorities of the government of the Republic of Cyprus would be the supervisory authority, which could then delegate the exercise of its competence to another authority. Within this framework, the cooperation could then take several forms and the ECJ leaves it up to the parties to determine who the competent authorities should be as well as the rules governing their relationship.

At the time of the judgment, the competent authorities to issue the certificates required for import into Europe were exclusively the ones authorised to do so in the Republic of Cyprus and they have remained so up to today. But following Cyprus' accession to the EU in 2004, the Community prerogative in trade matters under the Common Commercial Policy ('CCP') has come to modify the parameters of allocation of competences. As a result, the EU involved itself with the issue of intra-state trade and authorised the Turkish Cypriot Chamber of Commerce to issue the necessary documents accompanying the goods, which will cross the Green Line to the Republic of Cyprus.[59] More recently, the Commission also became the responsible and accountable authority for the management of financial aid to the Turkish Cypriot community.[60] The EU executive is also quite eager to get involved with respect to direct trade between the northern part of Cyprus and the EU. But whereas the Republic of Cyprus agreed with the Commission to the granting of issuing powers to the Turkish Cypriot Chamber of Commerce with respect to intra-island trade, its position on direct trade does not seem to be supportive of the Commission's proposal.[61]

ECJ Ruling V. EU Policy on Direct Trade from northern Cyprus to the EU

Throughout the Anastasiou saga, it appears that there is a growing, but cautious, trend on the part of the ECJ to recognise a trading relationship between the northern part of Cyprus and the EU, in line with the EU official position of the exclusive recognition of the government of the Republic of Cyprus as the authority exercising control on the island. The latest pieces of Community primary and secondary legislation, namely (i) the Treaty of Accession,[62] (ii) the Green Line Council Regulation[63] (the 'GL Regulation') and the corresponding Commission

Regulation[64] regulating the conditions for intra-island trade, as well as (iii) the so-called 'July Package' comprising of two proposals for Council Regulations[65] on financial aid to the northern part of the island and on direct trade respectively, seem to indicate however a certain shift in the EU strategy towards Cyprus, or at least an acceleration of the above trend. It is clear that the EU, both at the judicial and political level, had no choice but to accept to consider separately the legal and economic implications of Cyprus' accession to the EU for territories not under the effective control of the government of the Republic of Cyprus (the 'Areas'). Although such a shift in the EU strategy towards Cyprus should not be interpreted as implying recognition of the northern part of the island as a separate legal entity,[66] there are strong indications that some sort of recognition of northern Cyprus as an economic entity and a trade partner of the EU is being granted.

It seems that the Court has preceded the EU executive in a highly volatile and unexplored area of European integration, and has potentially facilitated the task of the Council and the Commission in the case of Cyprus. The onus however lies with the Commission and the Council to take further steps towards the integration of Cyprus into the EU through regulation in particular. With respect to direct trade, it would appear that the Commission's Proposal is rather radical and may not fully accord with the position of the ECJ in Anastasiou III.

EU Executive Action through Instruments of Primary and Secondary Legislation (2003-2004)

Given that no settlement of the Cyprus problem had been reached by 2003, it became necessary to address the situation of Cyprus at Community level through special rules.

Terms of Accession under the Treaty of Accession 2003: Suspension of the Acquis

In particular, a Protocol on Cyprus relating to its de facto partition had to be annexed to the Treaty of Accession, namely Protocol 10.[67] Article 1(1) of Protocol 10 provides for the suspension of the acquis in the Areas. A formal affirmation of the suspension of the acquis, expressly provided for in the Treaty of Accession, was rendered necessary to avoid any confusion as to the status of the northern part of the island upon accession without a settlement.[68]

It should be noted that Article 1(2) of the Protocol provides that the suspension can be lifted by a unanimous decision of the Council on the basis of a proposal from the Commission. It is not made explicit however whether the suspension can be withdrawn partially, in stages. It could therefore be assumed that a gradual lifting of the suspension in accordance with the procedure laid down in Article 1(2) of the Protocol would be possible, leading to the partial and phased application of the acquis communautaire. It has been argued that the preamble of the Protocol

supports such an assumption, to the extent that a “solution” as opposed to a “comprehensive settlement” could trigger the partial lift of the suspension.[69] But beyond the interpretation of the concepts of “settlement” and “solution”, the real question is whether and to what extent the withdrawal of the suspension of the acquis is conditional upon a full settlement of the Cyprus problem or not. There is nothing in the text to indicate so. One is actually entitled to wonder whether the Commission’s proposal on direct trade is not in itself a partial lift of the suspension of the acquis, leading to the application of the acquis in the area of the free movement of goods in the northern part of the island. In any case, since a political settlement seems very difficult to reach in the near future, could a partial solution derive from the establishment of a trading relationship between Cyprus and Europe, based on the ‘cooperation’ between the competent authorities on both sides of the island, as envisaged in Anastasiou III? This would have the merit of enabling a partial implementation of the acquis in the northern part of Cyprus, at least in trade related matters, which the government of the Republic of Cyprus may not oppose in this form.

Article 2 of the Protocol deals with the practical implications of the suspension of the acquis and provides the legal basis for the enactment of secondary legislation regulating the regime applicable to the Green Line itself and to the territories beyond it through a unanimous decision of the Council. If applied to the issue of direct trade, one may therefore wonder why this special legal basis set up for Cyprus was not used by the Commission when creating its Proposal. One obvious argument, also used by the Commission, is that direct trade does not concern the Green line itself or the Republic of Cyprus, but the Areas and the rest of Europe and does not therefore fall within the scope of this special legal basis but rather under the general provisions of EC law applicable to trade as set out mainly in Article 133 EC Treaty (CCP). But given the special nature of the Protocol in the Community legal order, it would seem that unanimity should prevail notwithstanding the fact that some of the areas of policy concerned are normally subject to majority voting, such as matters of CCP. The difference of legal basis between the Protocol and the CCP could however have dramatic implications for Cyprus, as the procedure for voting on the proposed measure will vary from unanimity under Protocol 10 to Qualified Majority Voting under Article 133 EC Treaty; the latter approach having as a consequence the potential neutralisation of the vote by the Republic of Cyprus, should a majority of member states vote in favour of the measure.[70]

It is argued that Article 2 of the Protocol should be read in conjunction with Article 3, so as to fully appreciate the exceptional nature of the whole regime. The justification underlying the above framework is set out in Article 3(1) of the Protocol, which provides that nothing in this Protocol “should preclude the application of measures favouring the economic and financial support to the northern part of

Cyprus". The Commission's Proposal on direct trade is apparently justified by this provision, although it is debatable whether the mandate of the EU institutions under Article 3(1) should extend to measures of such a wide scope, usually envisaged under Article 181a EC Treaty.[71] In any case, Article 3(2) seems to act as a safeguard clause by providing that "such measures shall not affect the application of the acquis in the Republic of Cyprus". So, in so far as the Proposal on direct trade from the Commission potentially sets aside the Republic of Cyprus as the competent authority to deal with trade when exports to the rest of the Community are involved, could there be a deviation from the acquis on Cyprus, in view in particular of the ECJ ruling in Anastasiou III? It is clear that the official position of the EU has always been based on the exclusive recognition of the government of the Republic of Cyprus as the competent authority in Cyprus and this position is deemed to form part of the acquis on Cyprus. So the answer would very much depend on whether one considers that direct trade from northern Cyprus to the rest of Europe amounts to effectively partially withdrawing the suspension of the acquis imposed in accordance with Article 1(1) of Protocol 10 or not. Thus, the real issue at stake might be one of interpretation of the Proposal on direct trade itself.

Regime Applicable to the northern part of Cyprus: Relationship between Existing and Draft Secondary Legislation

A special regime for goods, services and persons was rendered necessary by the fact that, while the Green Line is not considered as an external border of the EU, the Areas beyond it are temporarily outside the EU customs and fiscal territory as well as outside the EU area of freedom, justice and security.[72] The GL Regulation,[73] as amended, together with the Commission Regulation on the implementation of Article 4 of the GL Regulation, [74] set out a special regime for the crossing of goods, services and persons through the Green Line, for which prime responsibility lies with the Republic of Cyprus.[75]

As far as trade between northern Cyprus and the rest of Europe is concerned, the Commission argues that it ought to fall under the CCP, which is the exclusive competence of the EU, since the Areas have been found to be outside the EU customs territory on the basis of the Community's customs code. Consequently, the Commission submitted trade with northern Cyprus to the rules applicable to third countries[76] and addressed this special trade relation in a different instrument of secondary legislation, the so-called Proposal for a Council Regulation on direct trade.[77] Under this Proposal, the goods originating from northern Cyprus are subject to the Community rules on non-preferential origin (Article 3) and to specific tariff quotas (Article 4). There seems to be therefore no application of the acquis in the Areas, which would mean that the Commission's Proposal on direct trade would not amount to a withdrawal of the suspension of the acquis in the Areas.

Whereas the GL Regulation not only refers to the primary responsibility of the Republic of Cyprus in intra-state trade but also promotes cooperation between trade authorities in Cyprus under Article 4, the Proposal on direct trade does not reflect such concerns directly. Recital (9) of the Proposal on direct trade provides that certain provisions of Community law, in particular of the Commission Regulation on the implementation of Article 4 of the GL Regulation, "ought also to apply in the framework" of the Proposal. Nevertheless, Article 2 of the Proposal expressly refers to the Turkish Cypriot Chamber of Commerce (or another body duly authorised for that purpose by the Commission) as the competent authority to issue the accompanying documents certifying the origins of the goods. No reference to the competent authorities of the Republic of Cyprus or to the possibility of cooperation between authorities is therefore expressly made in the Proposal. This appears to be justified by the fact that direct trade from northern Cyprus to the rest of Europe does not concern Cyprus, but rather the twenty-four other Member States.

But such an approach seems to be contradicted by Article 8(3) of the Commission Regulation implementing Article 4 of the GL Regulation, which refers to the monitoring and reporting obligations by the authorities of the Republic of Cyprus for goods, the final destination of which had been a Member State other than Cyprus. This paragraph would seem to indicate that the possibility of direct trade from northern Cyprus to the rest of Europe was envisaged within the framework of the GL Regulation, but through the Republic of Cyprus. Such an interpretation of Article 8(3) of the implementing Commission Regulation would be in line with the ECJ ruling in Anastasiou III. In this case, however, the communication of information on such goods remains limited to the authorities of the Republic of Cyprus and the Commission. There is no tripartite reporting exercise under the Commission Regulation implementing Article 4 of the GL Regulation, which would involve a certain degree of cooperation between the various authorities in Cyprus and in Europe. This could be explained by the fact that the Turkish Cypriot Chamber of Commerce cannot and should not be considered as a governmental body exercising public authority in Cyprus, as it does not derive its power from any recognised source of authority. As a matter of fact, the Turkish Cypriot Chamber of Commerce should be considered as a private body, which provides services to Member States by issuing legally non-binding trade certificates, thereby avoiding any issue of constitutionality arising out of the delegation of powers from the Republic of Cyprus to the Turkish Cypriot Chamber of Commerce.[78] Thus, a bilateral reporting exercise between the authorities in the Republic of Cyprus and the Commission should be deemed sufficient, provided the exercise by the Republic of Cyprus includes the reporting activities of the Turkish Cypriot Chamber of Commerce for the Areas.

The willingness on the part of the EU to create separate instruments of secondary legislation, addressing the issues of intra-island trade and direct trade respectively, may be justified by the fact that northern Cyprus has been technically categorised as a special territory within the EU and that its relationship with Member States other than Cyprus must be addressed distinctly. Consequently, as far as direct trade is concerned, no obligation to provide expressly for any form of supervision or cooperation between authorities in Cyprus seems to be imposed on the EU, provided some sort of Turkish Cypriot administration is in place. It is however debatable whether this legal mechanism promoting the distinction between the external and internal aspects of trade in Cyprus is feasible, whereas the two are in fact inter-related, from a political, social and legal point of view at the very least. The current legal basis of the Proposal on direct trade should also be subject to strong reserves. Thus, one may question the legitimacy of Community secondary legislation dealing exclusively with the external aspect of trade in Cyprus, especially in the light of the ECJ ruling in Anastasiou III.[79]

Conclusion

The mechanism for direct trade from northern Cyprus to the EU can be said to be a complex one, where the Commission plays an active role. In the light of the GL Regulation and its implementing Regulation, it is however debatable whether the Proposal on direct trade, in its current form, is an absolute necessity. From a strict legal viewpoint, it would appear that the current regulatory framework set up prior to accession is sufficient, even if amendments may be required. Hence, the justification for the creation of a specific regulatory framework for direct trade from the northern part of Cyprus to the EU lies elsewhere.

It appears that a socio-legal approach to the integration of Cyprus into the EU would offer a justification for the EU strategy towards Cyprus and a way to advance further towards its full integration. Such an approach would allow for an interpretation of the rule of law more reflective of the actual social and political context in Cyprus. Speaking about the ‘ratio/voluntas dichotomy’, Cotterell writes that “legal values underpin legal doctrine’s political authority”.[80] He adds, however, that “… the extension of law’s political authority has a seemingly inevitable tendency to weaken or deny [law’s] moral authority and hence, in an important sense, to undermine law itself”.[81] This is rightly illustrated in the case of Cyprus, where the balance between the ratio and the voluntas element of law seems to be favouring the latter. As a result, the relationship between law’s moral and political authority in Cyprus seems to be grounded in the supra-national interest expressed at EU level for the promotion of the economic and financial support to the northern part of Cyprus, with the intent to eventually facilitate a possible reunification of the island.

It should be remembered, however, that the ratio element of law need to be present, or else the supra-national policy may face legal obstacles in its implementation. Such obstacles can be anticipated in particular with respect to the legal status of the northern part of Cyprus. How can the same territory be considered, on the one hand, as falling under the regime of the CCP applicable to third countries and, on the other hand, comply with the acquis, even partially, as this territory is within the EU and belongs in fact to a Member State? There seems to be a gap in the legal status of the northern part of Cyprus, which perhaps could be partially addressed through the issue of trade, should an approach along the lines of Anastasiou III be adopted.

At present, however, the legitimacy of the EU strategy towards Cyprus seems to lie in the normative value of 'order', perhaps to the detriment of the one of 'justice'.[82] According to Cotterell, the doctrine of the rule of law is merely "a technical attempt to equate both values"[83] and it is the reconciliation of these two values in the law's ratio which "provide legitimacy for the coercive power of law as voluntas".[84] It is clear in the case of Cyprus that the EU strategy seems to be based on a logic of maintenance of peace, public order and of improvement of the current situation, rather than pure legal considerations of justice. The legitimacy of such an attitude on the part of the EU is therefore grounded in the specific relationship between law and policy justified by the social and political context in Cyprus, thereby creating a specific model of integration of a Member State into the EU. Socio-legal studies can offer a justification for the EU strategy towards Cyprus, which an analysis from the monistic perspective of law or international relations would not offer.

Notes

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** Maîtrise de Droit des Affaires, Maîtrise d' Anglais et Allemand pour juristes, LL.M., PhD cand., Senior Lecturer, Law Department, Intercollege.

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1. The term acquis has been traditionally part of the Community vocabulary, although it has never been given a technical definition in primary sources of Community law. The Commission has however defined the Accession acquis in its Opinion on the application for accession on 19 February 2003 (COM (2003) 79 final), as the acceptance by the applicant states "… without reserve, [of] the Treaty of European Union and all its objectives, all decisions taken since the entry into force of the Treaties establishing the European Communities and the Treaty on European Union and the options taken in respect of the development and strengthening of those Communities and of the Union". The Commission even gave a detailed list of the elements composing the Accession acquis in its Negotiating Framework on Turkey adopted by the Council on 3 October 2005 (section 10). Similarly, it is generally accepted that the term acquis cannot be isolated from other concepts, such as Accession or the Union, and that the Union acquis in particular entails all the body of principles, norms and rules deriving from Community law and European policies, including the case law of the European Court of Justice.
2. The ratio/voluntas dichotomy is one of the paradoxes of law identified by Cotterell in Cotterell, R. (1995) Law's Community, Clarendon Press. Cotterell defines law's voluntas as the "political authority of law (its power to decree)" and law's ratio as its "moral authority, unity, and integrity (its power to persuade)", p. 318.
3. Diez, T. (ed.) (2002) The EU and the Cyprus Conflict. Manchester University Press, p. 144.
4. Ibid.
5. Bourne, A. (2003) 'European integration and conflict resolution in the Basque Country, Northern Ireland and Cyprus', Perspectives on European Politics and Society, Vol. 4, No. 3, pp. 391-415, see p. 395.
6. Diez, see note 3 above, p. 145.
7. Ibid., p. 141.
8. See Baier-Allen, S. (ed.) (2003) Exploring the linkage between EU accession and conflict resolution: the case of Cyprus, Nomos Verlagsgesellschaft, p. 170.
9. Baier-Allen draws a quite optimistic view of the 'catalyst' effect of EU membership, which has not been supported by many authors, but considers that the EU is a third party to the conflict (ibid., p. 213). See Bourne who argues that "the EU has been unsystematic and piecemeal in its approach to the conflicts, and has rarely directed its efforts at the complex core of issues causing conflict" (see note 5 above, p. 395).
10. Diez has provided a very detailed analysis of the assumptions upon which the concept of the catalyst effect of EU membership negotiations is based, concluding that such assumptions are flawed and that "… membership negotiations may well serve as a catalyst, but as one towards deepened division" (see note 3 above, p. 157).
11. "… [W]hile the EU context brings with it the potential for change, it is not a guarantee that such a change will happen and that it will happen peacefully" in Diez, note 3 above, pp. 203-204.
12. See Hatay, A.S. (2001) 'The contribution of European integration to ethnic conflict resolution: the cases of Northern Ireland and Cyprus', The Cyprus Review, Vol. 13,

No. 1, pp. 31-57, who emphasises the "asymmetry" between both parties to the conflict, which has affected the status of the EU as an interlocutor and has prevented it from acting as a catalyst, see p. 46. See also Mavratsas, C. (1998) 'Greek-Cypriot political culture and the prospect of EU membership', The Cyprus Review, Vol. 10, No. 1, pp. 67-76 and Richmond, O. (2001) 'A perilous catalyst? EU accession and the Cyprus problem', The Cyprus Review, Vol. 13, No. 2, pp. 123-132.

13. "If no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without [a settlement of the Cyprus problem] being a precondition", para. 8(b) of Helsinki European Council Conclusions, 10-11 December 1999.
14. See note 5 above, p. 400.
15. EC-Turkey Association Agreement signed in 1963 establishing a customs union with Turkey in three stages. The last stage was reached in 1995 with the signature of a Customs Union agreement.
16. It has been argued by politicians that the signing by Turkey of the Ankara Agreement Protocol, which effectively extends the EU-Turkey customs agreement to the ten new Member States, including Cyprus, will entail the recognition by Turkey of Cyprus as a Member State of the EU and, thereby, of the government of the Republic of Cyprus. The issue of recognition of a state is however a complex one in international law and falls outside the scope of this paper.
17. The EU decided at the European Council meeting on 17 December 2004 that accession negotiations with Turkey would only be opened on 3 October 2005, provided Turkey brought into force six pieces of legislation reforming the Turkish legal system. The six pieces of legislation are the Law on Associations, the Penal Code, the Law on intermediate Courts of Appeals, the Code of Criminal Procedure, legislation establishing the judicial police and on execution of punishments. On 1 June 2005, Turkey fulfilled this condition. See (www.eu-coordinator.gov.cy), 23 August 2005. This was a way for the EU to lead Turkey to undertake major internal reforms leading to a more democratic balance of power.
18. The draft Negotiating Framework was presented by the Commission on 29 June 2005. It laid down the guiding principles and the procedures for the accession negotiations with Turkey. Section 4 of the draft document set out the criteria against which Turkey's progress in preparing for accession will be measured, including "Turkey's continued support for efforts to achieve a comprehensive settlement of the Cyprus problem within the UN framework … and progress in the normalisation of bilateral relations between Turkey and all EU Member States, including the Republic of Cyprus".
19. On the basis of the political agreement reached by the Council on 12 December 2005, the Council adopted a Decision on the principles, priorities and conditions contained in the Accession Partnership with Turkey (Council Decision 2006/35/EC of 23 January 2006 on the principles, priorities and conditions contained in the Accession Partnership with Turkey (OJ L 22/34, 26 January 2006)). The revised Accession Partnership includes a set of priorities defined in the Negotiating Framework adopted by the Council on 3 October 2005.

20. Turkey's unilateral statement prompted an immediate reaction from the EU Presidency, which recalled in a statement that "the Government of the Republic of Cyprus signed the Accession Treaty on 16 April 2003 and the Republic of Cyprus became a Member State of the [EU] on 1 May 2004, and that the established position of the [EU] is that it recognises the Republic of Cyprus, only, as a subject of international law" (www.moi.gov.cy/moi/pio), 23 August 2005.
21. See in particular the contribution on behalf of the Republic of Cyprus contained in the Opinion on Turkey's signature of the Protocol, Declaration and Exchange of Letters, drafted by Brownie I. QC, Crawford J. SC, Pellet A. and Wyatt D. QC, 22 August 2005.
22. Declaration by the European Community and its Member States on Turkey, Brussels, 21 September 2005, 12541/05 (press 243).
23. Para. 3 of the Declaration, ibid.
24. Ibid.
25. Para. 2 of the Declaration, see note 22 above.
26. Cyprus declaration paves the way for Turkey talks (www.euractiv.com), 22 September 2005.
27. Cyprus Government Spokesman Kypros Chrysostomides stated that the Declaration has "adopted Nicosia's three basic demands, for recognition and full implementation of the customs protocol and to allow Cypriot ships and planes to use Turkish ports", in The Cyprus Weekly, 23-29 September 2005, p. 1.
28. See note 3 above, p. 145.
29. Tamanaha, B. (1997) Realistic socio-legal theory: pragmatism and a social theory of law. Clarendon Press, p. 2.
30. Bradney, A. (1998) 'Law as a parasitic discipline', Journal of Law and Society, Vol. 25, No. 1, pp. 71-84, see p. 82.
31. See Roberts, S. (2005) 'After government? On representing law without the state', Modern Law Review, Vol. 68, No. 1, pp. 1-24.
32. See the work of Cotterell in this respect, note 2 above.
33. Cotterell speaks about the process of 're-regulation' as opposed to de-regulation, see note 2 above, p. 301.
34. Cotterell concludes that "socio-legal studies today should stand, in a sense, between policy and community, providing necessary knowledge about law's effects in society which can be used to show how law's significance and relevance in the lives of ordinary citizens might be enhanced", see note 2 above, p. 310.
35. See Eberlein, B. and Kerwer, D. (2004) 'New governance in the EU: a theoretical perspective', Journal of Common Market Studies, Vol. 42, No. 1, pp. 121-142.
36. See note 2, above, p. 300.
37. Case-432/92: reference for a preliminary ruling made by the High Court of Justice, Queen's Bench Division, by order of that court dated 2 December 1992, in the case of The Queen v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and Others (OJ 1993 C31/9).
38. Para. 2 of the reference for a preliminary ruling made by the High Court, ibid.

39. C-432/92, The Queen v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and Others [1994] ECR I-3087 (Anastasiou I).
40. Para. 43 Anastasiou I, ibid.
41. Para. 54 Anastasiou I, see note 39 above.
42. Para. 67 Anastasiou I, ibid.
43. C-219/98, R v Minister for Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and Others [2000] ECR I-5241 (Anastasiou II), para. 38.
44. Cypfruvex (UK) Ltd and Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd.
45. Case C-219/98: reference for a preliminary ruling by the House of Lords, by order of that court of 20 May 1998, in the case of R. v MAFF ex parte Anastasiou (Pissouri) Ltd and Others.
46. In the meantime, Directive 77/93/EEC had been amended by Council Directive 91/683/EEC and Commission Directive 92/103/EEC, to the effect that special requirements are imposed on a group of products (including citrus fruits) originating from a non-member state, for which a phytosanitary certificate must be issued in the country of origin, save "to the extent that the special requirements can be fulfilled also at places other than that of origin", article 9(1) of Directive 77/93, as amended.
47. Para. 40 Anastasiou II, see note 43 above.
48. Para. 42 Anastasiou II, ibid.
49. As the Court did not have to in accordance with the preliminary reference. Also, it should be remembered that an Opinion is not a binding instrument of Community law and therefore, the Court is under no legal obligation to follow it in its judgment.
50. Koutrakos, P. (2003) 'Legal issues of EC-Cyprus trade relations', International and Comparative Law Quarterly, Vol. 52, pp. 489-498, see p. 496.
51. Case C-140/02, Regina v Minister for Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and Others, 2003, OJ 2003 C275/20, 15 November 2003 (Anastasiou III).
52. Regina v Minister for Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and Others, 17 December 2001, [2001] UKHL 71.
53. 8 January 1998.
54. That "the fruits originate in areas known to be free from the relevant [harmful] organism' or if this cannot be said, that 'no symptoms had been shown at the place of production during the period prescribed or that they have been subject to testing".
55. See Opinion of the Lord of Appeal in the Cause, Lord Slynn of Hadley, in the judgment of the HL, note 52 above.
56. Para. 34, 36 and 62 of the Lords' Opinions in the judgment of the HL, ibid. See Case C-140/02: Reference for a preliminary ruling by the House of Lords, by order of that court date 17 December 2001, in the case of Regina v Minister for Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and Others (OJ 2002 C144/23).
57. Para. 75 Anastasiou III, see note 51 above.
58. Para. 65 Anastasiou III, ibid.
59. Decision of 7 July 2004 (OJ L 272/12, 20 August 2004).

60. The Commission Proposal for a Council Regulation establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community (COM(2004) 465 final, 7 July 2004) was finally adopted at the General Affairs Council meeting on 27 February 2006 (Council Regulation No 389/2006 (OJ L 65/5, 7 March 2006)).
61. The Republic of Cyprus has established a link between the issue of direct trade and the opening of the ports in the Areas as well as with the return of Greek Cypriot property located in northern Cyprus.
62. Treaty of Accession, Final Act of 16 April 2003.
63. Council Regulation 866/2004/EC of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession (OJ L 161/128, 30 April 2004), as amended by Council Regulation 293/2005/EC of 17 February 2005 (OJ L 050, 23 February 2005).
64. Commission Regulation No.1480/2004 of 10 August 2004 laying down specific rules concerning goods arriving from the areas not under the effective control of the Government of Cyprus in the areas in which the Government exercises effective control (OJ, L 272/3, 20 August 2004).
65. Of the initial 'July Package', only the Commission Proposal for a Council Regulation on special conditions for trade with those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control (COM(2004) 466 final, 7 July 2004) is pending.
66. This has been confirmed by the Legal Services of the Council and of the Commission over the Summer of 2004.
67. Protocol No 10 on Cyprus of the Act concerning the conditions of accession of the [candidate countries] and the adjustments to the Treaties on which the EU is funded (OJ L 236, 23 September 2003).
68. Uebe, M. (2003) 'Cyprus in the EU', German Yearbook of International Law, Vol. 46, pp. 375-400, see p. 382.
69. Ibid., p. 386.
70. The proposal is currently being discussed at the level of the Council's COREPER meetings. The Legal Services of both the Council and the Commission have expressed different opinions as to what the legal basis for the proposal on direct trade should be, having an impact on the extent of the EU competence in this matter and on the voting majority required to pass the said proposal.
71. This was a point of discussion between the Legal Services of the Council and of the Commission over the Summer 2004.
72. Recital (7) of the GL Regulation.
73. See note 63 above.
74. See note 64 above.
75. Recital (7) of the GL Regulation.
76. Explanatory Memorandum attached to the Commission Proposal for a Council Regulation on special conditions for trade with those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.

77. See note 65 above.
78. Discussions on the possible delegation of powers to local Turkish Cypriot authorities or the local Chamber of Commerce where held both in Cyprus and among Member States on several occasions during the negotiations of the association between Cyprus and the EC. See in particular Tsardanidis C., (1984) 'The EC-Cyprus Association Agreement: ten years of a troubled relationship, 1973-1983' Journal of Common Market Studies, Vol. 22, No. 4, pp. 351-376.
79. A direct implication of the ECJ ruling in Anastasiou III can nevertheless be found in Article 6(1) of the Proposal, which specifically provides for the appointment of independent experts by the Commission, who shall verify the satisfaction of the special requirements under Community law in the case of citrus fruits. Article 6 of the Proposal is however reproduced as such in Article 3 of the implementing Commission Regulation relevant to intra-state trade, which could demonstrate a certain degree of redundancy between the two documents.
80. See note 2 above, p. 320.
81. Ibid., p. 315.
82. The order/justice dichotomy of law is another paradox relating to law identified by Cotterell. See note 2 above, p. 317.
83. Ibid.
84. See note 2 above, p. 320.