

CYPRUS AND THE EUROPEAN UNION THE LONG ROAD TO ACCESSION

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Abstract

This article examines the present status of the candidature of Cyprus for accession to the European Union in the light of the EU Council Declaration of 6 March 1995. In order to illuminate the current developments on the issue, the writer analyzes the whole procedure of the EEC - Cyprus relations starting from the period before 1972, and from the conclusion of the Association Agreement. The article examines in detail all the phases and stages leading to the application for membership and analyzes the Commission's Opinion of 30 June 1993. An attempt is made to view the recent developments in the relations between Cyprus and the European Union and to prescribe the possible future course, through a historical, socio-economic and legal perspective.

I. Introduction

Beyond their rather formal character, some declarations issued by the Council of the European Union¹ can be of the utmost importance for third countries as they may indicate a shift in the Union's position towards these countries or, at least, point to reapproaching between the Union and its partners. Such is clearly the case of the EU Council Declaration of 6 March 1995. In re-examining the candidature of Cyprus in the light of the developments that had occurred since the Commission Opinion of 1993, the fifteen EU Member States agreed that the negotiations on the accession of Cyprus to the European Union would begin six months after the Conference of 1996.² This decision was warmly welcomed in Nicosia since it was the first time the European Union formally set a date for the opening of these negotiations. Not less important in the view of the Republic of Cyprus' leaders, this decision also implied a new EU approach to the Cyprus question. By making an explicit reference to a date for the opening of accession negotiations, the EU Member States commit themselves to begin the discussions on the integration of Cyprus into the European Union whatever the results of the intercommunal talks may be. This could eventually lead, in due time, to the accession of the sole Republic of Cyprus!

How important this decision may be, it is not, as such, revolutionary, nor does it constitute the final step in EU-Cyprus relations. The 6 March decision is the logical follow-up in a process which began more than twenty years ago with the signature, in December 1972, of the EEC-Cyprus Association Agreement. This agreement - which provides for the gradual establishment of a customs union between the Community and the Republic of Cyprus-has significantly contributed to" reapproaching the Contracting Parties. Most trade barriers have been removed, the same customs tariffs are gradually applied to products originating from third countries and, above all, Cyprus has embarked on the difficult task of bringing its legislation in line with the Community one in order to meet the most fundamental requirement for EU membership: full acceptance of the Treaties and of subsequent legislation, statements and resolutions adopted within the Community framework, including international agreements entered into by the Community and the case-law of the Court of Justice and the Court of First Instance (the so-called "*acquis communautaire*"). In this perspective, the EU decision of 6 March 1995 can be interpreted as a "reward" for the efforts which have already been made by the Republic of Cyprus on the accession road and as a further incentive to strengthen the links existing between the European Union and Aphrodite's island. However, it would be premature to infer from the terms of this decision that the marriage is imminent. A lot of questions have to be solved before the enlargement can take place. Accession implies some fundamental changes on the part of both the Union and applicant countries. An applicant country must be able to fulfill the stringent conditions laid down in the Treaty on European Union (the famous "Maastricht" Treaty) for participating in the Economic and Monetary Union which is to come into force, at the latest, by the end of the century. It must also subscribe to the goals of a Common Foreign and Security Policy which could gradually move towards a Common Defense Policy. This is not so evident for a country which has been for years an active member of the Non-Aligned Movement³. For its part, the Union is faced with an increased number of applications for membership. It is imperative that it adapt its structures and its decision-making procedures if its wants to avoid its dilution into a wide inefficient free-trade zone, unable to cope with the full range of its responsibilities. Finally -and this aspect should not be underestimated, even if it is no longer formally regarded as a condition on the opening of accession negotiations- the outcome of the Cypriot intercommunal talks will probably weigh in one way or another on the final EU decision and on the terms of the accession of Cyprus to the European Union. It seems therefore highly desirable for all the parties concerned to push for an early solution of the Cyprus question and to involve themselves actively in the search for a lasting settlement which would secure the fundamental rights of each community and, at the same time, bring peace and prosperity to the region.

These few precisions indicate the approach that will be adopted in the present study. After a review of the main steps which led the Republic of Cyprus to apply for membership, in 1990, and an analysis of the two basic instruments -the

agreement of 1972 and the protocol of 1987- which still govern trade relations between the Community and the Republic of Cyprus (Sections II to V), this article will briefly recall the content of the Commission Opinion of 1993 (Section VI). Special attention will be paid, in this respect, to the operational conclusions of this report and its impact on the further developments in EU-Cyprus relations (Section VII). The final section of this study analyses the consequences of the Council Decision of 6 March 1995 and the conditions which are to be fulfilled, both by the Union and by the Republic of Cyprus, in order to make the latter's accession a successful one (Section VIII).

II. The EEC-Cyprus Relations Before 1972

Due to several factors which are further explained, the relations between Cyprus and the European Economic Community were rather limited before the Association Agreement was signed in 1972. However, the birth of the Republic of Cyprus, in 1960, marked a new era in these relations. Therefore, it seems appropriate to make a distinction between the situation that prevailed before 1960 and the situation that resulted from the independence declaration.

Until 1960 the situation was quite simple. As part of the British empire, Cyprus enjoyed preferential treatment within the Commonwealth. There was no real need for searching a close relationship with the European Economic Community as a whole, since the island could direct most of its products-at interesting conditions-to the United Kingdom (and other countries of the Commonwealth). Moreover, the Community itself was yet in a relative embryonic phase. Signed in March 1957 together with the Treaty establishing the European Atomic Energy Community, the EEC Treaty only entered into force on 1 January 1958.⁴ At that time the majority of the Cypriot people was more interested in joining Greece than in establishing formal ties with an organization the success of which could hardly have been predicted, even by its founding members!⁵

The ratification of the Zurich and London Agreements and the proclamation of the Republic of Cyprus in August 1960 marked a turning point in the history of EEC-Cyprus relations since very early the young Republic showed its interest in developing close links with the outside world, both for economic and political reasons. After joining the UNO and the Council of Europe, Cyprus formally requested its association to the European Economic Community in 1962. The main reason for this move was the U.K. application for EC membership. Though politically independent of the British Crown, Cyprus was still heavily dependent on the United Kingdom for its exports.⁶ An approach to Europe seemed then imperative in order to compensate the losses which the island would suffer following Britain's entry into the Community and the subsequent dismantling of the Commonwealth preferential trade tariffs. Due mainly to France's opposition, the UK's application for membership was frozen in the early sixties. Consequently, the interest of Cyprus for the EEC declined. It remained dormant until 1969, when

General de Gaulle resigned and was replaced, at the head of the Fifth Republic, by President Pompidou. The latter's election gave a fresh impetus to the enlargement process since President Pompidou distrusted the United Kingdom less than his predecessor. Moreover, the British approach to EC accession was much more positive than it was previously the case. The United Kingdom was ready to give tangible signs of its willingness to comply with the EC rules.⁷ The first EC enlargement was agreed upon by the Six-together with the necessity of reinforcing and deepening the Community-at the Hague Summit in December 1969. At that time, four countries had applied for membership: the United Kingdom, Ireland, Denmark and Norway. When the accession negotiations began, Cyprus reasoned in the same way as in 1962. A close relationship with the EEC was necessary in order to balance the negative effects of the enlargement of the Community to the United Kingdom. Furthermore, several Mediterranean countries had obtained preferential access to the EEC market through the conclusion of cooperation or association agreements. Cyprus feared to be marginalized if it failed to conclude a similar agreement with the EEC. After preliminary talks, negotiations began in 1971 and led, on 19 December 1972, to the signature of the EEC-Cyprus Association Agreement which entered into force on 1 June 1973 (i.e. only five months after the effective enlargement of the Community to Denmark, Ireland and the UK).⁸ Together with the Association Agreement, The Contracting Parties also adopted a Protocol "relating to the definition of the concept of "originating products" and to methods of administrative cooperation" as well as a Protocol laying down certain transitional arrangements for the products coming from (or going to) the new Member States of the EEC.⁹

III. The Association Agreement of 19 December 1972

Like the agreements with Greece, Turkey and Malta (which had respectively been signed in 1961, 1963 and 1970), the EEC-Cyprus agreement was concluded on the basis of Article 238 of the EEC (now EC) Treaty, and not on the basis of Article 113, concerning the conclusion of tariff and trade agreements. This is, at first sight, a surprising choice since the 1972 Agreement only contains trade provisions. Furthermore, the terms ones of Article 238. The latter only stipulates that the Community may conclude "agreements establishing an association involving reciprocal rights- and obligations, common actions and special procedures." This formulation is not, as such, indicative of the nature of the links the Contracting Parties (CP) intend to create. Nearly all the agreements concluded by the Community include "rights and obligations" and provide for "common actions." It is true that these rights and obligations are not all reciprocal but the latter criterion does not seem to be exclusive to association agreements. Moreover, agreements based on Article 238 of the EC Treaty may also be non-reciprocal, as it appears, for instance, from the case-law of the EC Court of Justice¹⁰ The third criterion referred to in Article 238 of the EC Treaty is also a relative one since a lot

of agreements signed under Article 113 and /or 235 of the same Treaty provide for "special procedures" by establishing common institutions entrusted with the task of supervising the correct implementation of the agreement. Therefore, none of the criteria laid down in Article 238 of the EC Treaty seems to be decisive in order to distinguish association agreements from other types of agreements.¹¹ The specificity of an association agreement must rather be searched in the willingness of the Contracting Parties to upgrade their relations or, at least, to reinforce significantly the cooperation existing between them. In some cases, the choice of Article 238 EC Treaty may also reflect the desire of the Community to support actively reforms undertaken by its partner. Such is e.g. clearly the case of the "Europe Agreements" signed with Hungary, Poland and Czechoslovakia (in December 1991), Romania and Bulgaria (in February-March 1993) and, very recently, with the three Baltic Republics (in June 1995). These agreements are intended to make a significant contribution to the transition process in which all the Central and Eastern European countries have embarked after the fall of the Berlin Wall.¹²

Turning back to Cyprus, the reasons for the conclusion of an association agreement were both economic and political. As stated earlier, it was imperative for Cyprus to offset the losses it would incur as a result of the accession of the United Kingdom to the EEC. But such an agreement was also a means to underline its European character and to obtain a real international recognition. For the Community, the economic motives were unimportant in 1972. Cyprus represented too small an export market for its products. However, the conclusion of an association agreement could significantly contribute to the economic development of the island and, consequently, to its political stability. The latter was particularly important for the Community, due to the strategic position of Cyprus at the crossroads of three continents, and, above all, in proximity to such an important conflict zone as the Middle East.

When compared with other agreements concluded at that time by the Community, the EEC-Cyprus agreement seems to be a priori much more modest in scope than e.g. the association agreements with Greece or Turkey. It contains 19 articles only;¹³ its provisions deal exclusively with trade-such important fields as competition, free movement of persons or services are not covered by the 1972 Agreement-and, above all, no reference is made to a possible accession of Cyprus to the Community. The latter can be somewhat surprising in view of the geographical position of the island and of its history, clearly putting Cyprus at the core of the European culture and civilization.¹⁴ One could have expected a firmer commitment towards EC membership.¹⁵ How important they may be, these differences are however not, as such, sufficient to conclude that the relations with Cyprus are of a different qualitative nature than those with Greece or Turkey. One has also to look at the additional protocols and decisions which were adopted after the entry into force of the agreement. In the case of Cyprus, the Protocol of 1987

(which lays down the conditions of the transition to the second stage of the association) is much more precise than the agreement itself. It defines the requirements for the adoption of the Common Customs Tariff by Cyprus very clearly and provides explicitly for the extension of certain Community policies to EEC-Cyprus relations (e.g. in the fields of competition, state aid, taxation, law harmonization). Such provisions can greatly help the country on the "accession road". Moreover, the correct implementation of the provisions of an agreement as well as the nature of the links which the associated country has developed with the Community after the conclusion of this agreement are more important in the evaluation of a possible EC membership than the inclusion of an accession clause in the agreement itself. It seems therefore appropriate to make a detailed analysis of the provisions of the 1972 Agreement and of the 1987 Protocol in order to assess their effect on the further development of EEC-Cyprus relations.

Like the agreement with Malta, signed in December 1970, the EEC-Cyprus agreement is divided into two short titles. Title I (Art. 3-11) covers the trade aspects of the EEC-Cyprus relations while the second one includes the classical "general and final" provisions, relating to the entry into force of the agreement and to its territorial scope (Art. 12-19). Furthermore, this title contains institutional provisions. Thus, Article 12 provides for the establishment of an Association Council -consisting both of members of the EC Council and Commission and of members of the Government of the Republic of Cyprus- which is responsible for the administration of the agreement and the supervision of its proper implementation. The rather broad formulation of this article could give the impression that the Association Council would play an important role in the development of the EEC-Cyprus relations. This was, however, not the case due mainly to the weakness of the means which were put at the disposal of this body. The Association Council lacked any real decision-making power!⁶ As far as trade is concerned, the 1972 Agreement was much more promising. It provides for the establishment of a customs union between the Community and the Republic of Cyprus.¹⁷ This is one of the most ambitious aims which one can imagine. It implies not only the abolition of the main barriers to trade between the CP but also the adoption, by these parties, of the same Common Customs Tariff towards products imported from third countries. Due precisely to its ambitious character, a customs union may not be established from one day to another. One has to manage some transitional periods. The agreement with Cyprus makes no exception to this rule. It provides for two successive stages during which the Contracting Parties themselves to create the conditions necessary to the proper functioning of the customs union.

The first stage began, simultaneously with the entry into force of the Association Agreement, on 1 June 1973. The main objective of this phase is, as stated in the preamble to the agreement, "the progressive elimination of obstacles to trade between the European Economic Community and Cyprus." For this purpose, products originating in one CP are benefiting, on importation into the territory of the

other GP, from tariff reductions which are detailed in the annexes to the agreement. Furthermore, a protocol details the rules of origin that are to be applied to these products. When they are imported into the Community, products originating in Cyprus benefit from a more favorable treatment than that granted to Community products entering the territory of Cyprus. This is the result of the application of the *asymmetry principle*, according to which the Community intends to favor the economic development of its partner by "giving it more than it gives." While the Community granted e.g. a 70% reduction of the main customs duties it applied on industrial products originating in Cyprus on the date of entry into force of the agreement, the latter applied at the same time only a 15% reduction on the products originating in the Community.¹⁸ The pace of elimination of customs duties also depends on the sensitivity of the products concerned, as it appears from the several exceptions that are foreseen in the agreement and in its annexes. In some cases, the tariff reduction only occurs within the limits of annual tariff quotas¹⁹ The asymmetry in the obligations of the Contracting Parties is also reflected in Article 5 of the second Annex to the Association Agreement. This article provides for the possibility of reintroducing, increasing or establishing customs duties in order to protect or further the development of any "new processing industry not existing at the time of entry into force of the Agreement." In spite of the restrictive conditions to which it is submitted, this derogation cannot be invoked by the Community. It only plays in favor of the Republic of Cyprus. This fact points, once more, to the willingness of the Contracting Parties to take their respective level of development into account. by enabling Cyprus to dismantle its tariffs at a lower pace than its partner and by introducing the so-called "infant industry" clause, the CP were clearly aware of the opening of its borders to Community products. However, they expected a fast development of Cyprus exports in order to compensate these inconvenients. This expectation was somewhat optimistic. Even if the signature of the Association Agreement led to a significant increase in Cyprus exports to the Community, the latter exports grew slower than Community exports to Cyprus.²⁰ This fact provoked considerable balance of payments problems in Cyprus. Due to its permanent character,²¹ the trade deficit issue will undoubtedly be at the core of the discussions relating to the transition to the last phase of the customs union and a fortiori, of those concerning the accession of Cyprus to the European Union.²²

Beyond this aspect of tariffs reduction, the Agreement of 1972 further contains provisions which aim at facilitating the exchanges between the Contracting Parties or, on the opposite, at protecting their respective markets in case serious disturbances would occur as result of trade liberalization. Articles 3 to 6 of the 1972 Agreement clearly belong to the first category provisions. By including, in the agreement itself, such fundamental rules as those which provide for a loyal cooperation between the GP or prohibit any discrimination between these Parties as well as between their nationals or companies -two principles that also appear in the Treaty of Rome and significantly contributed to the development of Community law,²³ -Cyprus and The EEC lay emphasis on the necessity to

strengthen their links in order to achieve the ambitious goal of a customs union. On the other hand, the same CP also feared the possible negative repercussions of implementing this objective on their economy. Therefore, they included several defence instruments in the agreement. In addition to the already mentioned "infant industry" clause, three provisions deal with the problems which could result from the liberalization of the exchanges: Articles 8, 10 and 11 of the 1972 Agreement. The CP are allowed to take protective measures in cases of dumping practices, bounties or subsidies (Art. 8) or if "serious disturbances occur in a sector of the economic activity of (one CP), or jeopardize its external financial stability, or result in the deterioration of the economic situation of any area of Cyprus or the Community" (Art. 10). Furthermore, Article 11 provides that the import, export or transit of goods can be prohibited or restricted on grounds of public morality, public security, the protection of health and life etc. . . . The latter provision mirrors Article 36 of the EC Treaty. Like that article, Article 11 stipulates that these prohibitions or restrictions may "not constitute a means of arbitrary discrimination or a disguised restriction on trade." However, the similar wording of Article 36 EC Treaty and Article 11 of the EEC-Cyprus Agreement does not imply that these provisions will be applied in the same way. While, under the EC Treaty, any dispute concerning the interpretation or the application of Article 36 EC Treaty can be brought before the Court of Justice, the EEC-Cyprus agreement of 1972 does not provide for a dispute settlement body. Therefore, the development of the exchanges between the CP during the first stage of the association remained wholly dependent on their willingness to cooperate in order to reach the goals of the agreement within the agreed timetable.²⁴

Pursuant to Article 2 of the Association Agreement the first stage of the transitional period was to end on 30 June 1977. Eighteen months before this date, the CP were supposed to convene in order to define the content of the following phase including the adoption of the Community Common Customs Tariff of Cyprus. This delay would have allowed the second stage to begin on 1 July 1977. The coup *d'etat* of 1974, directly followed by the Turkish invasion of the island, had considerable repercussions on the development of the association since the second stage only started in 1988 (i.e. more than ten years after the expected date). Between 1974 and 1988, the customs union issue was put on the agenda of the EC Council on several occasions, but the latter dismissed any association, in view of the situation of its partner. In this respect, it mainly referred to the economic situation prevailing in Cyprus. The latter had considerably suffered from the splitting of the island into two distinct areas.²⁵ In 1974 about 70% of the island's total capital and natural resources fell under the control of the Turkish army, unemployment rose to around 30% and -above all- more than 200.000 Cypriots were homeless. It was imperative to tackle these problems before envisaging a further deepening of the links, with the EEC. Moreover, how crucial they were for Cyprus, economic parameters were not the only factors the Council bore in mind when it refused to set a date for the beginning of the second stage of the association. Other

considerations weighed on its decision. This became apparent in 1979, when the Community rejected, for the third time, the request made by the Cypriot Government with a view to opening the negotiations on the content of the second stage.²⁶ At that time the economic situation of the island had considerably improved. Cyprus registered an average annual growth of 10% and the unemployment rate had fallen to 2-3%. The Community could hardly justify its refusal by referring to the recession of the Cypriot economy. Political reasons appeared more clearly. Italy and France made a link between these negotiations and the completion of the enlargement negotiations with Greece, Spain and Portugal. Furthermore, they subordinated any new commitment towards third countries to the prior adoption of a new Mediterranean policy and to reforms in the Common Agricultural Policy (CAP). For its part, the Commission stressed that the association should benefit the whole population of Cyprus and not only that of its southern part. The latter position could not be reconciled with the internal political to the customs union was delayed and the first stage of the transitional period was further extended, initially by way of additional protocols,²⁷ later by the adoption of autonomous measures (from 1984 to 1987). In order to offset somewhat the delayed entry into force of the second stage of the association, the Community slightly improved the access of Cyprus products to its market²⁸ and decided to make funds available for infrastructure projects in Cyprus. A first Financial Protocol was signed in 1977.²⁹ It provided for ECU 30 Million and covered the years 1979-1983. The conclusion of this protocol constituted an important innovation in EEC-Cyprus relations since it enabled the Community to contribute to the economic development of the island.³⁰ However, it could hardly replace the benefits that would have resulted from a customs union with the EEC. EEC-Cyprus relations in this period were characterized by a strange paradox: the EEC Member States underlined that the association should benefit the whole population of Cyprus but, at the same time, the political situation of the island and its partition were used as arguments against any real progress towards the establishment of a customs union and thus also-to a certain extent-against the first victim of this partition, i.e. Cyprus population³¹

If the unilateral proclamation of independence of the northern part of the island -occupied by the Turkish army-further aggravated the tension between the Greek and Turkish Cypriots, it contributed however to a shift in EC policy towards Cyprus. While approving the signature of the second Financial Protocol³² on 20 December 1983, the Council reaffirmed its view that the association should benefit the whole population of the island, but it added that this could only be done through the Government of the Republic of Cyprus. The authorities of the self-proclaimed "Turkish Republic of Northern Cyprus" were denied any legitimacy.³³ By that time, the Community had already adopted several decisions that appeared earlier as preconditions for any move towards the second stage of the association. Greece was a member of the Community since 1 January 1981 and pleaded Cyprus' case insistently; enlargement negotiations with Spain and Portugal were going on and

the main features of the new EEC Mediterranean policy had been agreed upon. In this context, progress in the association with Cyprus seemed to be possible. Negotiations were opened in 1986 and led to the signature of the Protocol defining the conditions and procedures for the implementation of the second stage of the association on 19 October 1987.³⁴

IV. The Protocol of 19 October 1987

Apart from the fact that it had to be submitted to the European Parliament for assent as a result of the entry into force of the Single European Act on 1 July 1987, the 1987 Protocol does not differ from a purely formal point of view from the Association Agreement of 1972. It is based on the same provision of the Treaty of Rome (Article 238 EEC); it was signed by the same Parties (the EC Council, on the one hand, and the Government of the Republic of Cyprus on the other hand) and, above all, it refers to the same goal as the Association Agreement: the establishment of a customs union between the EEC and the Republic of Cyprus. However, the way this goal will be reached is significantly different in the 1972 Agreement and in the 1987 Protocol. The latter is much more detailed than the Association Agreement. Beyond the "classical" provisions relating to the abolition of trade barriers between the CP and the adoption, by Cyprus, of the Community Common Customs Tariff, the 1987 Protocol also deals with approximation of laws, competition, state aid or taxation (the so-called "accompanying policies"). In these various fields, it provides for the extension of the relevant principles of the Treaty of Rome to EEC-Cyprus relations³⁵ Furthermore, the Protocol improves significantly the working of the institutional mechanisms of the 1972 Agreement. It provides for the setting up of a new body and extends the competencies of the Association Council. The latter can play i.e. an important role in the final phase of the transitional period or in the settlement of disputes concerning the interpretation of the Agreement.³⁶ Consequently, the 1987 Protocol undoubtedly makes the customs union goal more credible than the 1972 Agreement. It reflects the willingness of the CP to give a new impetus to their relations after several years of immobilism.

As far as trade is concerned, the Protocol applies the same method as the Association Agreement. It divides the second stage of the transitional period into two successive phases, the first one starting on the entry into force of the Protocol and terminating 10 years later and the second one of a duration of five years that could be reduced to four years by a decision of the Association Council (see Art. 1 and 29 of the Protocol). In view of the date of entry into force of the Protocol (1 January 1988), it implies that the customs union between the Community and Cyprus would be fully achieved by the end to 2002.

A. The First Phase of the Second Stage (1988-1997)

During the first phase of the second stage, the task of the Contracting Parties

appears twofold. On the one hand, both are to complete the dismantling of the trade barriers between themselves. On the other hand, Cyprus is to align gradually its customs tariff on that applied by the Community. In pursuing these goals the two Parties draw, however, a clear distinction between industrial and agricultural products. While the liberalization of the former products is submitted to *very* precise timetables, the abolition of the obstacles to trade in agricultural products appears much more progressive. This results both from the sensitive character of the latter products and from the fact that just because of that they were often excluded from the liberalization process initiated during the first stage of the association. Most of Cyprus agricultural products are directly competing with products produced or obtained in the EC Member States. It was therefore necessary to find out appropriate arrangements in order to avoid too great a disturbance on their respective markets.

Industrial products are covered by the second Chapter of Title I of the 1987 Protocol (Arts. 3 - 14). The latter provides for the elimination, by Cyprus, of the main customs duties and charges having an equivalent effect - including customs duties of a fiscal nature - applicable to products originating in the Community. This is to happen over a ten years period, the rates and timetable of the tariff dismantling depending on the sensitivity of the products concerned³⁷ The quantitative restrictions and measures having an equivalent effect, more stringent rules apply. They are to be abolished upon the entry into force of the Protocol.³⁸ It appears clearly from these provisions that the obligations contracted in 1987 lie mainly upon Cyprus. This is the consequence of the asymmetry which had characterized EEC-Cyprus relations during the first stage of the association. Since the Community had already abolished its main barriers to trade when the Association Agreement entered into force in 1973, it was logical that the Protocol would focus more on Cyprus, at least if both Parties wanted to achieve a real customs union between themselves.³⁹ Like the Association Agreement, the 1987 Protocol makes it possible to derogate from its rules in certain circumstances. However, exceptions are formulated in a much more restrictive way than it was previously the case. The possibility for Cyprus to reintroduce, increase or establish customs duties for industrialization or development purposes remains but is now subordinated to the authorization of the Association Council, thus allowing the latter to enquire into the real motivations of the applicant and to assess the possible impact of this measure.⁴⁰ Similarly, the Protocol strengthens controls on the use of the classical safeguard clause, provided for in Article 7, paragraph 3. If Cyprus takes measures in order to restrict the imports of a given product which are or are likely to be "seriously detrimental to the requirements of its industrialization and development", it has to notify these measures to the Association Council. If they are not approved by the latter within 30 working days, the measures will be abolished. The need for this approval-combined with the other restrictive conditions to which the use of the safeguard clause is subject⁴¹- clearly reflects the priority which is given to the achievement of the customs union goal. The latter

implies not only the abolition of the internal trade barriers of the CP, but also the harmonization of their external tariffs. This is the second dimension of the 1987 Protocol. Apart from some products listed in annexes, Cyprus is to align gradually its Customs Tariff with that applied by the Community. Here, too, the alignment schedule depends on the sensitivity of the products concerned. Various techniques are applied: alignments from the entry into force of the Protocol; annual reductions of the difference between the Cypriot Customs Tariff and the CCT by 9%, followed by a last 10% reduction; initial reductions by 4 and 6%, later compensated by larger 15% reductions, etc).⁴²

The provisions of the Protocol on *agricultural products* (Arts. 15-26) are much more complex than those on industrial goods. Basically, the principles are the same. The Community and Cyprus commit themselves to remove trade barriers under the same conditions and timetable as for industrial products⁴³ and to apply the same customs tariff (the Community CCT) in their relations with third countries.⁴⁴ However, these principles only apply to the products covered by reciprocal concessions. Before concluding to their possible application, it seems therefore appropriate to make a detailed analysis of the annexes to the Association Agreement, as amended by the successive protocols (or decisions) which were adopted between 1972 and 1987. Moreover, the Protocol itself provides for numerous derogations, thereby reflecting the sensitive character of this matter. While certain products are nearly systematically excluded from the liberalization process—at least, during the first phase of the second stage of the association^{4,5}—others are subjected to specific rules. This is e.g. the case of potatoes, table grapes or liqueur wines, three products, Article 18 provides for tariff quotas which shall gradually be increased.⁴⁶ Finally, one has to mention the exceptions that result from the enlargement of the Community to Spain and Portugal, on 1 January 1986. Under certain conditions, the 1987 Protocol makes it possible for the Community to decide whether to adjust the entry price of some products originating in Cyprus (sweet oranges, lemons and fresh table grapes) or to fix a special frontier price.⁴⁷ These measures must ensure that the Spanish and Portuguese markets will not be affected by the liberalization of the exchanges between the Community and Cyprus.⁴⁸ In view of these multiple exceptions, one cannot properly speak of a "free movement" of agricultural products. The latter depends on additional measures (regarding quality standards or domestic price constraints) that shall be adopted by the Association Council before entering the second phase of the transitional period.⁴⁹

B. The Second Phase of the Second Stage (1998-2002)

Unlike the Association Agreement of 1972 the 1987 Protocol sets no precise date for the end of the first phase of the transitional period. As a matter of fact Article 1 provides for a ten-year period, starting on the entry into force of the Protocol, but it does not fix a date for the beginning of the second phase of the

second stage. The latter depends on a decision of the Association Council⁵⁰ which, in turn, is contingent on the adoption of several measures related to the establishment of a customs union. Article 30 refers, in this respect, to the regime that will apply to the movement of goods, the measures concerning the "accompanying policies" referred to in Article 27, or the abovementioned measures concerning the free movement of agricultural products covered by reciprocal concessions. In view of the sensitive character of these measures one could have serious doubts about the willingness of the CP to enter the final phase of the transitional period especially if the unanimity rule still prevailing within the Association Council is borne in mind.⁵¹ However, the impact of this formal difference with the 1972 Agreement should not be overestimated. The mere presence of a date in an agreement or a protocol does not constitute, by itself, a guarantee that their objectives will be fully attained in time. This appears, very clearly, from the development of EEC-Cyprus relations. Due to the events of 1974-and in spite of the terms of Article 2 of the 1972 Agreement that provides that the first stage of the association will end on 30 June 1977-the latter stage was only completed in 1988, when the Protocol on the second stage was only completed in 1988, when the Protocol on the second stage entered into force. In the meantime, the CP were obliged to adopt additional protocols and decisions in order to avoid any gap in their relations. This risk is wholly excluded in the 1987 Protocol. According to the third paragraph of Article 29, "the provisions of the first phase of the second stage shall continue to apply until the entry into force of the second phase." This provision aims at ensuring continuity in EEC-Cyprus relations in case the final phase of the transitional period would not start at the end of the ten-year period. The latter hypothesis appears, however, unlikely in view of both the provisions of the 1987 Protocol-the wording of which is much more detailed than that of the 1972 Agreement-and of a Declaration adopted by the CP upon signing the Protocol, in which they reaffirm their commitment towards the establishment of a customs union "within 15 years of the entry into force of the Protocol." Even if no date is foreseen for the beginning of the second phase of the second stage, a deadline is thus provided for the realization of the customs union. The latter will be fully achieved by the end of 2002. The willingness of the CP to strengthen their links was further enhanced by a fundamental decision taken, on 4 July 1990, by Cyprus' Government: the decision to apply for full EC membership. This step provides the strongest guarantee that the objectives of the association will be reached, since accession to the EC (now EU) implies much more than a "single" customs union. It also assumes the acceptance of the Internal Market rules and, soon, the creation of an Economic and Monetary Union between the Member States.⁵²

V. The Application for Membership (1990)

As it is the case for each similar request, a number of factors-whether explicit or not-influenced the Government of the Republic of Cyprus. Central in its decision was undoubtedly the country's growing economic integration with the Community. With the conclusion of the Protocol on the second stage of the association and the prospect of a customs union with the EC, in 1990 Cyprus enjoyed one of the most advanced relationships between an associated country and the Community. Accession appeared, logically, as the next step in the EEC-Cyprus relations. The latter would not only allow Cyprus to pursue broader objectives than those laid down in the Association Agreement. It would also imply a more active participation which is, in practice, often characterized by an imbalance between the rights and obligations of the Community and its partner.⁵³ Beyond this aspect, another major factor-perhaps less apparent, but not less real-played a crucial role in Cyprus Government's decision, namely the desire to involve the EC in the solution of the Cyprus problem. After several rounds of negotiations under UN auspices, the intercommunal talks had come to a deadlock. The respective positions of the Greek and Turkish Cypriots appeared irreconcilable and the prospect for an early settlement of the Cyprus question more distant than ever. By requesting Cyprus' accession to the European Communities,⁵⁴ the Government of the Republic of Cyprus thought-rightly or wrongly-that the EC would be forced to play an active role in the intercommunal talks and that it would use all its bargaining power in order to bring a lasting settlement of the Cyprus question.⁵⁵

Notwithstanding the strong opposition of the *de facto* authorities of the northern part of the island (who challenged much more the approach followed by the Government of the Republic of Cyprus than the objective itself, i.e. EC membership),⁵⁶ the Council reacted favorably to the accession request. At its meeting of 17 September 1990, it felt that the application was admissible and initiated the procedures laid down by the Community's Treaties. The Commission was thus asked to draw up an opinion on the candidature of the island. This approach was both in line with the Community stance on the Cyprus question and with its global approach to accession. Since the EC Member States only recognized the legitimacy of the Government of the Republic of Cyprus, there was no reason for submitting the latter's request for membership to the prior consent of the Turkish Cypriot authorities. Not only would it have been inconsistent with the EC (and UN) established position of non-recognition of the Turkish Republic of Northern Cyprus, but it would also have undermined the position of the Government of the Republic of Cyprus in the discussions concerning the future structure of the Cypriot State. Moreover, Cyprus met the only condition which was, at that time, explicitly foreseen by the Treaties for applying for membership: being a "European" State.⁵⁷ Therefore, there was no ground for rejecting a priori the examination of this candidature, as it has been the case in 1987, when the Council dismissed the application of Morocco.

The "*prima facie*" acceptance of a candidature by the Council forms undoubtedly

an important step on the accession road. it confirms the eligibility of a specific country for EC (EU) membership. However, it does not remove automatically all the obstacles to that accession. A lot of conditions may have to be fulfilled by the candidate and by the Community (Union) before the enlargement takes place. Further, the Community may have other priorities than the enlargement. This appears very clearly in the case of Cyprus. Three years elapsed between the latter's application for membership and the adoption of the Commission Opinion. The reasons therefor the impact of Cyprus' accession to the EC⁵⁸, but also the evolving context in which such an accession request had been formulated. A few months only after the fall of the Berlin Wall, the Community was much more concerned by its relations with its eastern neighbours than by those with the southern ones. It was imperative to assist the former in their transition towards democracy and market economy if it wanted to avoid political instability at its borders. Moreover, the Community itself was undergoing major changes. Meeting within the framework of two distinct conferences launched in Rome in December 1990, the Twelve were redefining both the competences and the powers of the Community. It did not seem appropriate to make any new commitment towards third countries-especially regarding a possible EC membership-before that process was achieved. Serious discussions on enlargement only began in 1992, after the signature of the Treaty on European Union.

The Lisbon Summit (26-27 June 1992) was, in this respect, an important meeting. Referring to the conclusions of a Commission report on "the challenge of enlargement",⁵⁸ the twelve Heads of State and Government accepted the principle of a first EU enlargement northwards. Official negotiations with Austria, Sweden, Finland and Switzerland (i.e. the four EFTA countries that had applied for membership at that time) would be opened "immediately after the Treaty on European Union is ratified and the agreement has been achieved on the Delors II package."⁶⁰ By so doing the Twelve wanted to give tangible signs of the open character of the newly created European Union. However, this opening was closely related to the internal situation of the applicant countries. The accession of the EFTA countries was possible because of the similarities between their economic and political structures and the European Union's. This was not the case for Turkey, nor for the Central and Eastern European countries. With the latter, the Twelve recommended the development of a partnership within the framework of the Europe Agreements and the reinforcement of the political dialogue. Basically, the same approach was followed towards Cyprus and Malta. The Twelve preconized the strengthening of the mutual relations "by building on the association agreements and (the) applications for membership and by developing the political dialogue."⁶¹ This rather broad statement did not imply any firm commitment towards a date for the opening of accession negotiations with Cyprus. In the view of the Twelve, the latter was depending on the content of the Commission Opinion and on the outcome of the ongoing Cypriot intercommunal talks.⁶²

No major change could be noted in this position six months later, at the Edinburgh Summit (11-12 December 1992). While formally approving the opening of the negotiations with the EFTA countries, the European Council only invite the Council to continue developing "appropriate and specific links with (Turkey, Cyprus and Malta) along the lines set out in Lisbon".⁶³ Such a statement could hardly be qualified of "revolutionary"! As a matter of fact, the Twelve were, at that time, much more concerned by the problems resulting from the negative result of the referendum on the Maastricht Treaty in Denmark than by their relations with third countries. The Edinburgh Summit was therefore much more an "internal affairs summit" than an external one.

With the important exception of the formal confirmation that the countries of Central and Eastern Europe could be admitted within the European Union as soon as they would satisfy the economic and political conditions, the Copenhagen Summit (21-22 June 1993) was also dominated by internal issues and, above all, by the search of appropriate means to tackle the growing unemployment and the deep economic recession faced by the Union. On the external front, the European Council only reiterated earlier commitments. No major evolution could be expected concerning Cyprus or Malta since the Commission had not yet presented its opinions of the applications of these countries. The latter were delivered a few days later, on 30 June 1993.⁶⁴

VI. The Commission Opinion of 30 June 1993

As it is usually the case in similar circumstances, the Commission Opinion on Cyprus' application for membership consists of a detailed analysis of the situation of the island. The Commission not only appraises the political regime of the applicant country and its respect for human rights and democracy; it also gives a detailed picture of its development level. Each sector of the economy is reviewed in order to assess the magnitude of the changes required to comply with the *acquis communautaire*. Further, the Commission also raises the question of the participation of Cyprus in the Community institutions. It points, in this respect, to the difficulties created by the small size of countries like Cyprus and Malta and underlines the need to find out solutions that combine the efficiency of the decision-making procedures of an enlarged Community with an adequate representation of each Member State. However, the Commission does not give further indications concerning the nature of these reforms. The latter would be addressed by the Intergovernmental Conference scheduled for 1996.⁶⁵

Since the Commission deals, in its opinion, with several aspects of the EC-Cyprus relations which are addressed elsewhere in this study, it does not seem appropriate to enter into the technical details of that report here. Only the main conclusions of the Commission Opinion are analyzed in the present section. Basically, that opinion conveys a threefold message to the Cypriot people. It confirms, unequivocally Cyprus' eligibility for EC membership (1); it underlines the progress achieved thus far towards a customs union and Cyprus' ability to comply

with the *acquis communautaire* (2) and it recalls the links existing between the settlement of the Cyprus question and the accession to the Community. However, a date is foreseen for the re-evaluation of the latter aspect in view of the (absence of) progress made in the intercommunal talks (3).

1o) The eligibility for membership:

Referring to the geographical location of the island, the intensity of the European influence in Cyprus' history and the proximity of its values to the Community ones, the Commission confirms of its values, to the Community ones, the Commission confirms, very clearly, the "European identity and character (of Cyprus) and . . . its vocation to belong to the Community"⁶⁶. This points forms, undoubtedly, an important aspect of the Commission report since it recognizes that Cyprus meets the most fundamental requirement for EC (EU) membership: the European identity. In the present case, that confirmation came, however, not wholly as a surprise, since the Commission itself (in its general report on the "challenge of enlargement") and the Council (when asking the Commission to draw up its opinion on Cyprus' application) had already given clear expected by the latter was the assessment by the Commission of the efforts Cyprus has to make in order to align its legislation with the Community one and the link that would be made between the accession issue and the settlement of the Cyprus question.

*2o) The ability to comply with the *acquis communautaire**

When dealing with the economic aspects of Cyprus's transition towards integration with the Community, the tone of the Commission opinion is unequivocally optimistic. In reviewing the instruments governing EEC-Cyprus relations (especially the Association Agreement of 1972, the 1987 Protocol and the three Financial Protocols), the Commission assesses their positive impact on the adaptation of the Cyprus economy to the single market mechanisms before concluding that "continuing with the proper implementation of (these) instruments in accordance with the agreed timetable is the best means of ensuring a smooth passage for the Cypriot economy towards possible accession."⁶⁷ It is true that some significant reforms are to be carried out by that country before it can reasonably envisage its effective accession to the Community (Union)-the opinion refers e.g., in that respect, to the necessary modernization of the Cypriot industry and the diversification of the services sector (overdependent on tourism)-but none of these obstacles appears insurmountable. The Commission trusts Cyprus' "ability to adapt and (its readiness) to face the challenge of integration."⁶⁸ Further, the Commission also acknowledges the differences of economic performance between the northern and the southern part of the island but, here also, it expects no "insurmountable problems" in case Cyprus would join the community. On the

contrary, accession would "help the north to make up the economic ground lost to the south."⁶⁹ In view of that positive description of Cyprus' economic situation one could think that accession negotiations would have started immediately after the content of the Commission opinion was known. This was, however, not the case, due mainly to the third major aspect of that opinion, relating to the settlement of the Cyprus question.

3o) The settlement of the Cyprus question

In the Commission's view, a "peaceful, balanced and lasting" settlement of the Cyprus question was still a prerequisite for Cyprus' integration into the Community. The reason therefor was the need to "create the appropriate conditions for Cyprus to participate normally in the decision-making process of the European Community and in the correct application of Community law throughout the island."⁷⁰ In other terms, the Commission wanted to be sure that the ongoing intercommunal talks would result in the establishment of institutions which would be able to carry out the responsibilities resulting from EC membership "both effectively and efficiently."⁷¹ The commission was especially concerned by the fact that the four fundamental freedoms laid down in the Treaty of Rome (the free movement of goods, persons, services and capital) could not be exercised over the entirety of the island's territory. It thus pushed for an urgent solution of that question as part of a comprehensive settlement of the Cyprus question. Further, the Commission underlined the negative impact that the status quo would have, in the event of Cyprus's accession, on the Community's policies, especially those concerning Turkey, a country of "major strategic, political and economic importance to the Community."⁷²

- At first sight, the combination of these factors was hardly encouraging for the Cypriot people. The Commission stressed that the accession would "narrow the development gap between north and south"⁷³ but, at the same time, it made the accession conditional on the prior settlement of the Cyprus question and thus also to a certain extent on the remedies that would be brought to that development gap. That position could have led to a vicious circle if the Commission had not taken the complexity of the Cyprus problem into account. In order to avoid an endless postponement of accession negotiations-provoked itself by the lack of progress in the settlement of the Cyprus question,-it was both imperative to put pressure on the parties involved in the intercommunal talks and to envisage the consequences of a possible failure of these talks. This is precisely the aim of the last - but not least - paragraph of the Commission Opinion. The latter provides that the question of Cyprus's accession to the Community will be reconsidered, "in view of the positions adopted by each party in the (intercommunal) talks... in January 1995."⁷⁴

This statement was warmly welcomed in the Republic of Cyprus since it was the

first time in the history of EC-Cyprus relations that the Community openly envisaged the possibility of a failure of the intercommunal talks and showed simultaneously its readiness to examine the accession issue notwithstanding it. The inclusion of a date in the Commission opinion was regarded as a new encouragement on the accession road. In practice it acted indeed as a catalyst in the development of the EU-Cyprus relations. Significant steps were made since June 1993. . . . Without entering into the details of all the measures which were taken since the adoption of the Commission Opinion, one can briefly mention three major steps pointing to the irreversible character of the accession process, notably the Council Declaration of 4 October 1993, the conclusions of the Corfu and Essen Summits and, the Council Decision of 5 March 1995.

VII. Recent Developments in the EU-Cyprus Relations

Only three months after the Commission opinion was given, the Council confirmed unequivocally the orientations contained in that report. It reiterated the Community support to the endeavors of the UN Secretary-General in order to bring a political settlement of the Cyprus question but, at the same time, it committed itself to re-examine the accession issue-in case of failure of the intercommunal talks-in January 1995. The Council clearly wanted to avoid penalizing the party who would have actively contributed to the search of a solution to the Cyprus problem. Further, the Council also desired to give tangible signs of its willingness to help Cyprus' preparing for accession. It invited the Commission to make an optimal use of all the instruments available under the Association Agreement and to begin immediately "substantial talks" with the Cypriot Government in order to familiarize it with the main elements of the *acquis communautaire*.⁷⁵ Even if the inclusion of these talks in the Council Declaration of 4 October 1993 may appear as an element of relatively minor importance in comparison with the commitment to re-examine the accession issue in January 1995, it plays nevertheless a central role in the Commission and Council strategy. These discussions must help identify in detail all the changes that are required by compliance with the *acquis communautaire*. By so doing, the Community and its partner want to facilitate the conduct of the future accession negotiations since a lot of technical problems would already have been solved before these negotiations start. Moreover, these talks could also have another effect: the shortening of the transitional periods which characterize traditionally any enlargement process. With Cyprus, the discussions began in November 1993 and led, very soon, to a fruitful cooperation with the Union. Six months later, in Corfu, a new evolution could be noted in EU-Cyprus relations.

The European Council of 24-25 June 1994 formally stated that "the next phase of enlargement (would) involve Cyprus and Malta."⁷⁶ The reason therefor was the "significant progress" made by these countries on the accession road. The Twelve wanted to reward their continuous adaptation efforts by giving them the guarantee that they would not be "by-passed" by other candidates in the next enlargement phase. At the same time, the European Council statement constituted an additional

means of pressure on the parties involved in the intercommunal talks and, especially, on the Turkish Cypriots which had just been designed by the Community observer in these talks as the main responsible for the deadlock in the negotiations.⁷⁷ Even if no date was foreseen for the beginning of accession negotiations, the solemn declaration of the *Twelve* clearly aimed at recalling that the question of Cyprus's accession to the European Union could not be delayed eternally. Therefore, a solution to the Cyprus problem respecting simultaneously "the sovereignty, independence, territorial integrity and unity of the country" was more timely than ever!⁷⁸

The Essen Summit of (9-10) December 1994 brought no major changes in this position. Underlining the strategic importance of the Mediterranean region, the European Council reaffirmed its Corfu commitment. The next enlargement phase would involve, in any case, Cyprus and Malta. Further, the Council was invited to "examine in early 1995 new reports to be presented by the Commission."⁷⁹ However, this precision did not imply, in itself, a significant shift in the Union's position towards Cyprus. The "1995" reference was already included in the Commission Opinion and in the Council Declaration of 4 October 1993. In spite of the insistence of the Cypriot Government, the *Twelve* did not fix a date for the opening of accession negotiations. This date would nonetheless be fixed in a somewhat surprising way-on 6 March 1995.

The 6 March Decision is the result of a process which does not primarily concern Cyprus but ... Turkey! With the latter country, the fifteen⁸⁰ Member States had been negotiating a customs union agreement for several months. That objective was already provided for in the Association Agreement of 1963, but the details of its implementation had *never* been defined. This was precisely the aim of the 1994-1995 negotiations. The Union felt that it was more timely than ever to conclude such an agreement both for economic reasons -Turkey is one of the main trading partners of the EU- and for political ones. The establishment of a customs union with Turkey was regarded as a means to anchor firmly that country to Europe and to keep it far from the temptation of fundamentalism. On the other hand, Turkey's uncertain political situation was also one of the main obstacles to the conclusion of that agreement. Some Member States referred to the human rights situation in Turkey, some others to the Kurdish or Cyprus question. This was notably the case of Greece. That country designed Turkey as one of the main factors for the absence of progress in the settlement of the Cyprus question. It wanted strong guarantees regarding Cyprus; accession to the European Union before giving its assent to the customs union agreement with Turkey. It is in that context that the abovementioned decision must be seen. Greece refrained from using its veto power in the Turkish dossier in exchange for a firm EU commitment concerning Cyprus.⁸¹ Accordingly, on 6 March 1995 the Council considered that "the accession negotiations (with Cyprus) will start on the basis of proposals by the Commission six months after the 1996 Conference, and taking its results into due account."⁸²

VIII. The 6 March 1995 Decision and Its Implications

As already mentioned, the fixing of the date for the beginning of the accession negotiations was greeted with enthusiasm in the Republic of Cyprus. Yiannakis Kassoulides, the Government Spokesman, welcomed the EU decision as "the best thing that has happened in twenty years" while Alecos Michaelides, the Foreign Affairs Minister, explained that it was the "only event which has placed Turkey in such a bad position."⁸³ Above all, both underlined the possible positive effect of that decision. By setting a date for the opening of accession negotiations the 6 March Decision could act as a "catalyst" in the search for a solution to the Cyprus question.

It is too early to assess the real impact of that decision. If it is true that it can give fresh impetus to the intercommunal talks-notably by forcing each party to lay one's cards on the table-it also true that the mere presence of a date for the opening of accession negotiations does not form in itself a sufficient guarantee that the Cyprus question will be solved overnight, as was shown by the virulent reaction of M. Karayalcin, the Turkish Foreign Affairs Minister after the EU position on Cyprus was known.⁸⁴ A lot of positive steps has still to be made in order to bring Greek and Turkish Cypriots closer to each other with a view to facilitate accession to the European Union. Furthermore, accession itself implies prior considerable changes both in Cyprus and in the European Union.

1o) First of all, one has to point to the crucial importance of a continuous reapproaching between the two main communities of the island. Even if the settlement of the Cyprus question is no longer regarded as a prerequisite for the opening of accession negotiations (and, consequently, *even* if the accession of only one part of the island is no longer excluded), accession would be by far easier to organize, both from a legal and a practical point of view, if a satisfactory solution were found prior to accession.⁸⁵ In that respect the European Union can play an important role, both by supporting the UN Secretary-General's efforts to achieve a balanced settlement of the Cyprus question and through the use of the instruments at its disposal. One refers e.g. to the Association Agreement of 1972 or to the financial protocols which were concluded since 1977.⁸⁶ Still, if these instruments can significantly contribute to Cyprus' economic and social development of the Cyprus question. Moreover, they do not give the Union the right to interfere in Cyprus' internal affairs. This was clearly confirmed by the Court of Justice in its Anastasiou judgment, concerning the export of citrus and potatoes to the Community.⁸⁷ The responsibility for the settlement of the Cyprus question lies, in the first place, with the parties concerned themselves, i.e. not only the Greek and Turkish Cypriots, but also the two countries which can exert a major influence on the former, that is Greece and Turkey. In this context, all the measures aiming at bringing the two communities closer to each other (the so-called "confidence-building" measures) must be actively encouraged. Proposals such as those made by President Clerides allowing Turkish Cypriots to cross the "green

line" in order to work in the Republic of Cyprus can only improve the understanding between the Greek and Turkish Cypriots. Further, it could also be useful for Cyprus to search, in close cooperation with the EU, the best means to ensure the full enjoyment by all its products-including those originating from the northern part of the island-of the preferential treatment granted under the 1972 Agreement. In its Anastasiou ruling, the EC Court of Justice precluded the "acceptance by the national authorities of a Member State. . . of movement and phytosanitary certificates issued by other authorities than the competent authorities of the Republic of Cyprus". However, it gave no unequivocal answer to the argument raised both by the United Kingdom and by the European Commission that it was "practically impossible or at least very difficult for exporters from the northern part of Cyprus to obtain for the products which they export certificates other than those issued by the Turkish community in that part of the island." It is not excluded if these parties had proved the existence of a clear discrimination against Turkish exporters established in the northern part of Cyprus.⁹⁰

2o) Whatever the solution found to the particular problem relating to the movement of goods over the entire island's territory, other questions have to be dealt with before Cyprus' accession to the European Union becomes a reality. In that respect the Commission Opinion of 1993 is very instructive since it details, sector by sector, the adaptations required by the enlargement prospect. Thus, beyond the need for a modernization of the Cypriot industry and for a diversification of the services sector⁹¹ the Commission points to the necessary dismantling of tariff protection and to the importance of encouraging foreign investment in Cyprus. Further, it recommends significant changes in the banking and financial system in order to secure a real liberalization of capital movements between the EU and Cyprus.⁹² These reforms could help the latter to reduce its considerable trade deficit with the European Union. In addition to the analysis carried out in the Commission's Opinion, one can mention the importance of the technical talks which took place from November 1993 to February 1995. They allowed Cyprus to identify very precisely all the changes required by the adoption of the *acquis communautaire*. More than any solemn declaration, the affective implementation of these reforms will be the best sign of Cyprus' commitment to joining the European Union and, at the same time, the best guarantee against any postponement of its accession. However, the latter implies, in any case, a prior reform of the Union itself. This is precisely the aim of the Intergovernmental Conference which started in Turin on March 29, 1996.

3o) Initially conceived as a singly "evaluation conference"-necessary to appraise the effects of the changes introduced by the Maastricht Treaty and to review some of its provisions in the light of the experience acquired during the first years of its application⁹³- the 1996 Conference more and more appears as a fundamental rendezvous in the Union's history, at least for two reasons. First of all, the Union faces an internal dilemma. Some of its members, experiencing the

difficulties of applying the Maastricht Treaty-and notably its provisions on the Economic and Monetary Union in a context of economic crisis and high unemployment-put some fundamental objectives of the European construction into question and appear reluctant to agree on any further progress appears all the more necessary if the Union is to perform its task appropriately. The powerlessness of the European Union in the Bosnian conflict is probably the most evident example of the shortcomings of the Maastricht Treaty. In the field of Foreign and Security Policy, the Union lacks the instruments required for acting quickly and efficiently. In this context, the 1996 Conference has the difficult task to find out solutions that can strengthen the European Union's action without infringing the sovereignty of Member States which would resist any progress in that direction. Therefore, it is not excluded that the 1996 Conference will have to formalize, in a lot of fields covered by the Treaty, the principle of *differentiated integration*. Member States would not be obliged to participate actively in the definition and implementation of all the Community policies but, at the same time, they would be denied the right to obstruct systematically the initiatives of the "participating" Member States. Furthermore-and this is the second major aspect of the 1996 Conference-the Union will have to face the challenges resulting from its past and future enlargements. Created originally by (and for) six members, the European Community (henceforth Union) counts today fifteen members. However, no fundamental changes were brought to either its institutions' membership or their functioning. If the Union is to include 25 or 30 members soon it is imperative to make its decision-making process more transparent and more efficient. To mention only one example, it is obvious that the unanimity rule-still prevailing for the adoption of Community legislation in such important fields as taxation and environment-can no longer be applied in a Union of 30 members. It would jeopardize both the strength and the credibility of the European Union. It appears therefore of the utmost importance that new enlargements only occur when these reforms are achieved. A loose Union would neither be in the interest of its present nor of its future members.

Notes

1. Hereinafter referred to as the "EU."
2. They refer, in this respect, to the Intergovernmental Conference which was to be convened in 1996 in order to examine the amendments to be made to the Treaty on European Union both in the light of the experience acquired after the entry into force of that Treaty and in the perspective of future enlargements of the Union, notably to the countries of Central and Eastern Europe and to Cyprus and Malta.
3. On that specific aspect see paragraph 22 of the Commission Opinion on the application by the Republic of Cyprus for membership (Bulletin of the European

Communities, Suppl. 5/93, p. 13).

4. It is true that the European Coal and Steel Community existed since the early fifties-the ECSC Treaty, signed on 18 April 1951, entered into force on July 23, 1952-but it only covered two products, namely coal and steel. If these products were of major concern to the six signatories of the Treaty (France, Germany, Italy and the Benelux countries), their importance for Cyprus was, comparatively, rather limited.

5. This does not imply, however, that Cyprus had no single contact with individual EEC Member States. Italy, France and Germany were important trading partners of Cyprus at the time of the independence.

6. At the beginning of the 1970s that country still absorbed 40% of the total exports of the Republic of Cyprus. This figure was much higher in the agricultural sector. More than 60% of Cyprus' total exports in that sector were directed to Britain! (For a global picture of the Cypriot economy, see Euraconsult (ed.), *Cyprus and the European Community*, Nicosia, 1991, especially at pp. 29-53).

7. On the shift in the attitude of the Community towards the United Kingdom and the role played in this respect by President Pompidou, see the proceedings of the colloquium held in Paris on 25-26 November 1993, *Georges Pompidou et l' Europe* (Brussels, Editions Complexe, 1995, 691 pp.).

8. Because of the negative result of a referendum held in September 1972 Norway could not join the Community together with the three other candidates. It was the first time such an event occurred in the existence of the Community. It would not be the last one . . . In June 1992, the Danish people rejected the entry into force of the Maastricht Treaty by a narrow majority-thus creating major problems to the other signatories of the Treaty-while the prospect of EU membership would be dismissed for the second time buy the Norwegian people in November 1994.

9. These protocols were published together with the Agreement itself, in the Official Journal of the European Communities no. L 133 of 21 May 1973 (hereinafter referred to as O.J.).

10. See e.g. the case *Bresciani* where the Court of Justice clearly held that the " (Yaounde) Convention had not been concluded in order to ensure equality in the obligations which the Community assumes with regard to the Associated States, but in order to promote their development in accordance with the aims of the first Convention annexed to the [EEC] Treaty" (Case 87/75, [1976] E.C.R., 129, p. 141).

11. The imprecision of the criteria laid down in Article 238 EC-Treaty is such that Walter Hallstein, the first President of the EEC Commission, declared in the early sixties: "*L' association peut etre tout entre l' accord commercial plus un et l' accord d' adhesion mains un*" (as quoted by L. Ananides *L' association aux Communautés europeennes*, Paris, 1967, 352 p., at p. 327).

12. For a detailed analysis of these agreements, see m. Maresceau, "Europe Agreements: a New Form of Cooperation between the European Community and

Central and Eastern Europe" in P.-C Muller - Graff (ed.), *East Central European States and the European Communities: Legal Adaptation to the Market Economy* (Baden-Baden, Nomos Verlagsgesellschaft, 1993, 235 p., pp. 209-233).

13. By comparison, the EEC-Turkey Association Agreement has 33 articles while the Association Agreement with Greece contains 77 articles!

14. See, on that point, the opinion of the EC Commission on Cyprus, application for membership (Bull. EC, Suppl. 5/93, 35 p., pp. 16-17).

15. Ctr., e.g. the EEC-Turkey Agreement, where accession to the Community is envisaged both in the Preamble to the agreement and in its Article 28. See also Article 72 of the EEC-Greece Agreement.

16. Ctr. Articles 12 and 13 of the 1972 Agreement, stipulating respectively that the Association Council is empowered to take decisions "in the cases provided for under Title II of the agreement" (Art. 12) and that these decisions are to be taken "by common agreement" (Art. 13). The combination of these factors did not allow to envisage a far reaching cooperation between the Contracting Parties - at least within the framework of this joint body-since Title II of the 1972 Agreement only referred to two (minor) cases for which a decision of the Association Council was required, namely the adoption of its own rules of procedure (Art. 12) and the (facultative) setting up of committees in order to assist the Association Council in its task (Art. 14).

17. See the Preamble and Article 2 of the 1972 Agreement.

18. This rate was brought up to 25% at the beginning of the third year of application of the agreement and 35% at the beginning of the fifth year (See Article 1 of Annex II to the 1972 Agreement).

19. This is the case e.g. of textile products. Article 2 of Annex I to the 1972 Agreement provides that these products, originating in Cyprus, only benefit from the 70% reduction in customs duties within the limits of annual Community tariff quotas amounting to 70 metric tons for man-made fibres and 100 metric tons for men's and boy's outer garments.

20. C. Lycourgos explains this phenomenon both by the insufficient diversification of the production in Cyprus and by the need, for that country, to import numerous intermediate products and raw materials in order to comply with the strict rules of origin laid down in the 1972 and 1977 Protocols. See C. Lycourgos, *L'association de Chypre a la GEE*, Paris, Presses Universitaires de France, 1989, 95 p., pp. 33-35.

21. According to the last report of the Statistics Department of the Republic of Cyprus, that country still registered, in 1994, an important trade deficit in its relations with the European Union. While EU countries provided more than 55% of Cyprus imports (valued at 672,2 million), the exports from the island to the European Union amounted to 171,2 million, constituting only 36% of the total. See, on that point, "EU is biggest importer", *The Cyprus Weekly*, May 12-18, 1995, p. 11).

22. See *infra*, Section VIII.

23. Compare, in this respect, Articles 3, 4 et 5 of the 1972 Agreement with Articles 5, 6 and 95 of the EC Treaty.

24. On the problems arising from a proliferation of safeguard measures and from the absence of strong dispute settlement bodies in agreements concluded by the Community, see L. Van Den Hende, *EU Safeguards Measures and Dispute Settlement under the Europe Agreements. The non settlement of trade disputes?* (paper presented at a Conference held in Budapest on November 23, 1994). See also C. Lycourgos, *L'association avec union douanière: un mode de relations entre la GEE et des Etats tiers*, Paris, Presses Universitaires de France, 1994, 472 p.

25. For the description of the socioeconomic context prevailing in Cyprus after the events of 1974, see A. Theophanous, "The Role of the Cooperative Movement and the Trade Unions in Addressing the Current Socioeconomic Challenges: The Case of Cyprus", *The Cyprus Review*, Vol. 6 (1994), no. 1, 44-46.

26. Similar requests had already been submitted by the Republic of Cyprus' Government-and rejected by the EEC-in 1975 and 1977.

27. See, in that respect, the Additional Protocol of 15 September 1977 (O.J., L 339, 28/12/1977), as amended by the Protocols of 7 February 1980 (O.J., L 84, 28/03/1980), 18 March 1981 (O.J., L 174, 30/06/1981) and 26 July 1983 (O.J., L 353, 15/12/1983).

28. See the "Supplementary" Protocol and the Protocol "laying down certain provisions on the exchange of agricultural products between the Republic of Cyprus and the EEC", both signed on 11 May 1978. They entered into force on 1 July 1978, following their publication in the Official Journal of the EC (O.J., L 178 of 28 June 1978).

29. See O.J., L 332, 29 November 1978.

30. The funds of the first Financial Protocol were used for the financing of three infrastructure projects in Cyprus: the modernization of the Dekelia Power Plant, the construction of the Nicosia sewed-drainage system and the construction of the Vassiliko-Pentaschoino irrigation system. For further details see *Cyprus and the European Community*, published by Euraconsult, Nicosia, 1991, 179 p., pp.62-68.

31. See, on that point, C. Lycourgos, *L'association de Chypre à la GEE*, Paris, PUF, 1989, pp. 9-13.

32. Signed on 7 July 1983, the second Financial Protocol entered into force on the 1st of January 1984. It covers the years 1984-1988 and provides for ECU 44 Million. As it was the case for the first Financial Protocol, the funds from the second Protocol were used for the financing of infrastructure projects which benefited both the Greek and Turkish Cypriot population (e.g. the Nicosia regional urban plan and its sewer-drainage system). The second Financial Protocol was published in O.J., L 85, 28 March 1984.

33. This Republic was (and remains) only recognized by Turkey.

34. This Protocol was adopted by Council Decision (no 87/607) to be agreed upon by the CP, after a thorough examination within the Association Council (see Article 27 of the 1987 Protocol).

35. This will happen through the adoption of specific measures to be agreed upon by the CP, after a thorough examination within the Association Council (see Article 27 of the 1987 Protocol).

36. See Article 34 of the 1987 Protocol.

37. See Articles 5 and 6 of the 1987 Protocol. While Article 5 provides for ten successive reductions by 9%, followed by a last 10% reduction, Article 6 applies to more sensitive products limited reductions by 4 and 5%, at least in the first years of the transitional period, the weak initial progressively being compensated by larger reductions (15%) at the end of the transitional period. These rates may further be adapted by the Association Council in order to take account of the requirements of the economic development of Cyprus (see Article 7 of the Protocol).

38. The latter nevertheless provides for certain exceptions by allowing Cyprus to impose import licenses on import of some sensitive products listed in the annexes to the Protocol (See Articles 10 to 12 of the 1987 Protocol).

39. As far as industrial products are concerned, only two provisions deal with the Community obligations: Articles 4 and 14 of the 1987 Protocol. The first Article provides for the abolition of the annual ceilings on man-made fibres and men's and boys' outer garments originating in Cyprus; the second one stipulates that the Community shall abolish -upon the entry into force of the Protocol- the fixed component for some processed agricultural products mentioned in the annexes to the Agreement of 1972 and to the Additional Protocol of 1977.

40. See Article 7, Paragraph 2 of the 1987 Protocol.

41. Beyond the requirement of a (real or potential) serious injury to Cyprus' industrialization and development, Article 7, para. 3 of the 1987 Protocol provides that the increase in imports of a given product must find its origin both in the partial or total reduction by Cyprus of customs duties and charges having equivalent effect levied on that product and in the fact that the duties or charges levied by the Community on imports of raw materials or intermediate products used in the manufacturing of the product in question are significantly lower than the corresponding duties or charges levied by Cyprus.

42. See Articles 8 and 9 of the 1987 Protocol.

43. *Ibid.*, Articles 16 and 22.

44. *Ibid.*, Articles 17 and 19.

45. See, in that respect, the products included in Annex 5 to the 1987 Protocol (referred to in Articles 16, 17 and 23 of the same Protocol).

46. See also Article 19 of the 1987 Protocol which combines the increase of tariff quotas with the phasing out of customs duties.

47. *Ibid.*

48. See also the Protocol to the EEC-Cyprus Association Agreement "consequent on the accession of the Kingdom of Spain and the Portuguese Republic to the Community", which was adopted on the same day as the 1987 Protocol (O.J., L 393, 31 December 1987).

49. See, Articles 20 and 21 of the 1987 Protocol.

50. See, in that respect, Article 29 of the 1987 Protocol which enables the Association Council to decide both on the beginning and on the duration (four or five years) of the second phase of the second stage.

51. Even if the 1987 Protocol significantly extended the competences of the Association Council (e.g. in the field of dispute settlement or regarding the transition to the last phase of the association), it did not change its rules of procedure. Therefore, the Association Council still has to take its decisions "by common agreement" (see Art. 13, paragraph 2 of the 1972 Agreement).

52. See *infra*, Section VIII.

53. While the 1987 Protocol provides e.g., for the adoption of the Community Common Customs Tariff by Cyprus, it does not provide for the latter's participation - or even consultation - in case the Community would bring some changes in this tariff. Cyprus' external trade would therefore remain dependent on decisions taken outside the island. The same remark can be made concerning the regime applicable to agricultural products covered by reciprocal concessions. During the second phase of the second stage, Cyprus has to align its rules with those of the Common Agricultural Policy but without having any say in either the management or the financing of this policy, which still account for more than half the EC budget!

54. Even if no preliminary contacts had been taken with the authorities of the self-proclaimed "Turkish Republic of Northern Cyprus", the application for EC membership was formally lodged on behalf of the whole of the island.

55. See, on that point, the statement issued on the 4 July 1990 by the Cypriot Foreign Affairs Minister, G. Iacovou, *Agence Europe*, no. 5289, 5 July 1990, p. 9.

56. These authorities denied the right of the Government of the Republic of Cyprus to speak in their name. They referred, grants both the President and the Vice-President (a Turkish Cypriot) a veto power over any foreign policy decision and, more precisely, any decision on the accession of Cyprus to an international organization or alliance that would not count both Greece and Turkey among its members.

57. See respectively Article 98 ECSC Treaty, Art. 205 EAEC Treaty and Art. 237 EEC Treaty.

58. These difficulties found, *inter alia*, their origin in the refusal of the Turkish Cypriot authorities to cooperate with the Commission in the technical preparation of its opinion. See, on that question, paragraph 12 of the Commission Opinion (Bull. EC., Suppl. 3/92, p. 9).

59. This report describe the evolving context in which successive applications for

membership have been made and tries, at the same time, to appraise briefly their chances of success in view of the economic and political situation of each applicant country. Furthermore, in this report the Commission underlines the conditions to be met internally in order to enable the Union to work both democratically and efficiently. See "Europe and the challenge of enlargement" (Brussels, 24 June 1992), Bull. EC., Supplement 3/92, 24 p.

60. See Bull.EC., 60-1992, point 1.4. The "Delors II package" refers to the proposals of J. Delors, then President of the European Commission, concerning the financing of the European Union during the years 1993-1997. This package was agreed in December 1992, at the Edinburgh Summit. It covers the years 1993-1999.

61. *Idem.*

62. See also, on that point, the abovementioned report on "the challenge of enlargement" where the Commission stresses the "(inevitable) link between the question of accession and the problem which results from the de facto separation of the island into two entities, between which there is no movement of goods, persons or services."

63. See Bull.EC., 12-1992, p. 26. point 1.75.

64. The Commission Opinions on Malta and Cyprus were published respectively in the fourth and fifth 1993 Supplements to the Bulletin of the European communities

65. See paragraphs 39 to 43 of the Commission opinion (Bull. EC., Suppl. 5/93, p. 16). See also *infra* Section VIII.

66. See paragraph 14 of the Opinion (*op. cit.*, p. 13).

67. See para. 25 of the Commission Opinion (*op. cit.*, p. 13).

68. See para. 46 of the Opinion (*op. cit.*, p. 17).

69. *Idem*, pp. 14-16 (para. 28 and 35 to 38).

70. *Idem*, p. 17 (para. 47).

71. *Idem*, p. 12 (para. 21).

72. *Idem*, p. 8, para. 11, in fine. See also para. 22 of the Commission Opinion.

73. *Idem*, p. 17, para. 46.

74. *Idem*, p. 18, (para. 51).

75. See the conclusions of the Council Luxembourg meeting of 4 October 1993 in *Agence Europe*, no 6078, 4-5 October 1993, p. 7.

76. See the Conclusions of the Presidency at point 1.11 in Bull. EC., 6-1994, p. 13.

77. See the report presented to the EU Council on 14 June 1994, *Agence Europe*, no. 6251, 15 June 1994. p. 4.

78. *Idem.*

79. See the Conclusions of the Presidency at point I. 14 in Bull. EC., 12-1994, p. 14.

80. With the accession of Austria, Finland and Sweden on 1 January 1995, the Union counts henceforth fifteen members.

81. From a legal point of view, the modalities of the final phase of the Customs Union with Turkey are laid down in a Decision of the EC - Turkey Association Council. This Decision (1/95) has been formally adopted on December 22, 1995, after the assent was given by the European Parliament on December 13, 1995 (O.J., C17, 22 January 1996). It entered into force on December 31, 1995 (see O.J., L35, 13 February 1996).

82. For the complete text of the EU position concerning Cyprus, see *Agence Europe*, no 6435, 8 March 1995, p.5.

83. See *Agence Europe*, no 6464, 20 April 1995, p. 11.

84. The latter explicitly referred to a possible annexion of the northern part of the island by Turkey in case Cyprus would join the European Union before the Cyprus question is settled. See *Agence Europe*, no 6535, 8 March 1995, pp. 5-6.

85. See, in that respect, the conclusions of the Commission Opinion referring to the need of ensuring uniform application of Community law throughout the island (Bull. EC., Suppl. 5/93, para. 21 and 47).

86. While the Third Financial Protocol -covering the period 1989-1994 and providing for ECU 62 Million- was signed together with the Protocol on the transition to the second stage of the association, the Fourth Financial Protocol was signed on 12 June 1995. See O.J., L278/22, 21 November 1995.

87. Case 432/92, *The Queen v. Minister of Agriculture, Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd and Others*, 5 July 1994, [1994] ECR, 3087, para. 47. For an interesting comment on that judgment, see No. Emiliou, *Cypriot import certificates: some hot potatoes*, E.L.Rev., Vol. 20 (1995), no 2, pp. 202-210.

88. "Come and Work with Us" *The Cyprus Weekly*, 12-18 May 1995, pp. 1-2.

89. [1994] ECR, 3097, para. 20.

90. See, in that respect, para. 48 of the Court's judgment, *idem*, p. 3134. Also compare the terms of this ruling with those of the judgment of the Court in the case *Bonapharma* (C-334/93, 23 February 1995, [1995] ECR, 1-319).

91. See *supra*, para. 23, 2o.

92. See, on the latter aspect, para. 34 of the Commission Opinion, Bull. EC., Suppl. 5/93, p. 15.

93. See Article N. para. 2 of the Treaty on European Union.

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